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# **AN ANALYSIS OF HUMAN RIGHTS LAW AND THE PROTECTION OF CORPORATIONS IN NIGERIA**

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**Amanda Dirisu**  
**Damilola Alabi**

## INTRODUCTION

The idea that a corporation can invoke fundamental rights specifically created for the protection of human beings might appear contradictory. However, the concept of corporate personality has evolved to bestow certain human rights on corporations to enable them to defend their interests<sup>1</sup>. This concept is not alien to Nigerian law and our courts have considered arguments on the applicability or otherwise to companies of the provisions of the Constitution, ordinarily applicable to human beings.

The attitude of the Nigerian Courts has shown that a corporation may successfully invoke the human rights provisions under the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the “Constitution”). Some of these rights which are guaranteed include the right to fair hearing, right to acquire and own property, freedom of speech, and right to privacy.

The aim of this article is to analyse the protection afforded to corporations under the provisions of Nigerian law and the procedure for enforcement of these rights.

## HUMANS RIGHTS AND CORPORATIONS

The need to protect the interests of corporate entities and the economic safety of the society as a whole has metamorphosed the term ‘human’ to include natural and legal persons (which includes entities like corporations and non-governmental organisations)<sup>2</sup>.

Several of the rights guaranteed under Chapter IV of the Constitution have been expressly limited to the ‘citizens’ of Nigeria, while others are available to every ‘person’ in Nigeria. At this juncture, the question of whether a company is a person or citizen of Nigeria arises.

It is settled law that from the date of incorporation, when a company is registered under the Companies and Allied Matters Act 2020 (CAMA), it starts to enjoy the status of a legal ‘person’ distinct from its subscribers and such other persons that may become its members in the future<sup>3</sup>.

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<sup>1</sup> Anna Grear, Challenging Corporate ‘Humanity’: Legal Disembodiment, Embodiment and Human Rights (2007) Human Rights Law Review

<sup>2</sup> Kelvin Peterside v IMB (1993) 2 NWLR (PT. 278) 710

<sup>3</sup> See CDBI V COBEC (NIG) LTD (2004) 13 NWLR (PT. 948) 376 and Salomon v A Salomon and Co Ltd [1897] AC 22

The word ‘person’ has been defined in the Interpretation Act<sup>4</sup> as “anybody of persons corporate or unincorporate”. Courts have reaffirmed this definition contained in the Interpretation Act<sup>5</sup>.

‘Citizen’, on the other hand, has not been defined anywhere in Nigerian law for the purpose of the application of Chapter IV of the Constitution. However, this might not be a bother because case law suggests that some of the rights limited to citizens can also be applicable to corporations. For instance, the right of any citizen to acquire immovable property and the right against compulsory acquisition of property guaranteed under sections 43 and 44 (1) of the Constitution, respectively.

## HUMAN RIGHTS APPLICABLE TO CORPORATIONS

### The Right to Fair Trial

According to section 36 of the Constitution, every ‘person’ is entitled to a fair hearing in public within a reasonable time by a court or other tribunal established by law<sup>6</sup>. The courts have held that corporations also have the right to fair trial in the determination of its civil rights and obligations<sup>7</sup> or when charged with a criminal offence<sup>8</sup>.

It is not a new development that corporations may be criminal liable for some offences under Nigerian law, particularly under CAMA. Sections 89 and 90 of CAMA, a company will be criminally liable for the act of its members, directors or managing director which were carried out in the normal course of business. In such circumstances, the company’s right under section 36 extends to the rights to: (i) the presumption of innocence, (ii) be represented by a legal practitioner of its choice, (iii) adequate time and facilities for the preparation of its defence, (iv) examine witnesses, and (v) an interpreter<sup>9</sup>.

### Freedom of Expression

Section 39(1) of the Constitution provides that “**every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference**”. Freedom of expression encompasses the right to hold

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<sup>4</sup> The Interpretation Act 2004

<sup>5</sup> See *Kasandubu v Ultimate Petroleum Ltd* (2008) 7 NWLR (PT. 1086) 274 and *Ibrahim v JSC Kaduna State* (1998) 14 NWLR (Pt. 548) 1

<sup>6</sup> Section 36(4)

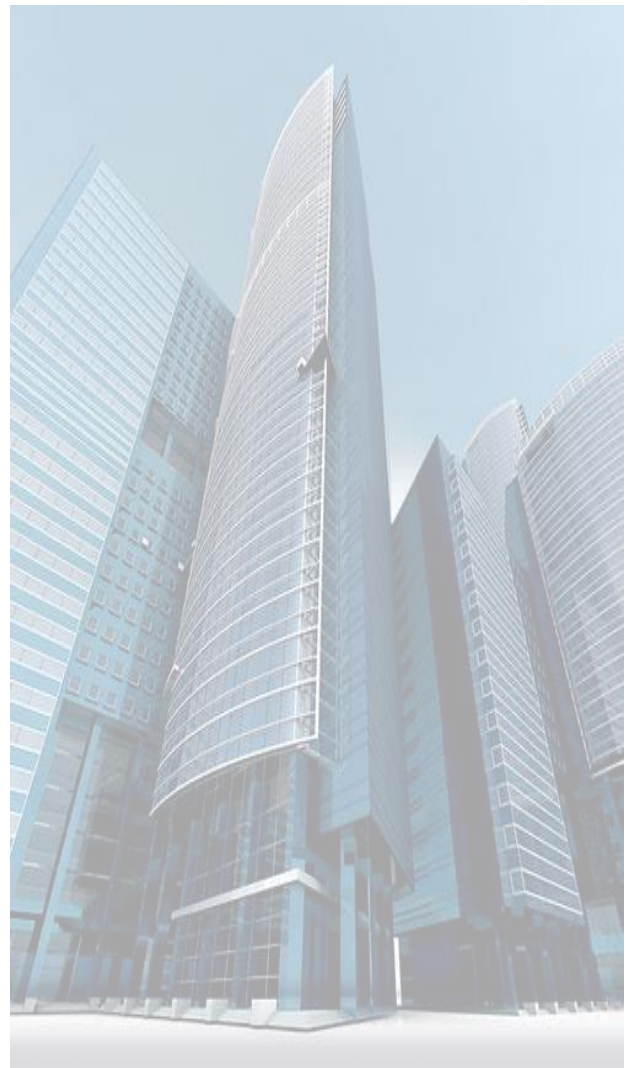
<sup>7</sup> Section 36(1) *Chitra Knitting and Weaving Manufacturing Company Limited V. G. O. Akingbade* 11(2016) LPELR-SC 113/2006

<sup>8</sup> *Martman Transport Limited v AG Federation* (2003) 2 FHCLR.

<sup>9</sup> *ibid*

opinions or ideas and impart same without interference on one hand, and the right to receive or access ideas or information on the other hand. From case law, it is evident that this right is available to companies to express any of their views or opinions with exception to those which might offend public safety, order, morality or health<sup>10</sup>.

In the two famous cases of **Concord Press Nigeria Limited v AG Federation & Ors.**<sup>11</sup> and **Punch Nigeria Limited & Anor. v AG Federation & Ors.**<sup>12</sup>, the two applicants successfully argued before the trial court that the invasion, search without warrant, sealing of their business premises by the Federal Military Government to intimidate them for their publications constituted a violation of their right to freedom of expression. The Federal High Court upheld these arguments and held that that their right to freedom of expression was infringed. The court ordered for the reopening of their business premises and awarded damages to the applicants. These decisions were upheld by the Court of Appeal and Supreme Court. The attitude of the courts in these cases suggest that freedom of expression is undoubtedly granted to corporations, especially to media houses and newspaper companies.



### **Right to Privacy**

Section 37 of the Constitution provides that “**the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected**”. Section 37 uses the word ‘citizens’ rather than ‘persons’ as the beneficiary of the right contained therein. So, the question is whether a corporation can enforce the right to privacy contained under this section. Although the beneficiary status of this right must

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<sup>10</sup> Din v. African Newspapers of Nig Ltd (1990) LPELR-947 (SC)

<sup>11</sup> (1994) FHCLR 144

<sup>12</sup> (1998) 1 HRLRA 488

be a citizen, it would be unfair to hold that a company cannot enforce a right to privacy and correspondence when they are victims of raids or unwarranted searches of its premises or interference of its correspondence by the Government simply because they are not ‘citizens’ of the country.

Case law does not seem to have excluded companies from the ambit of the enjoyment of the right to privacy. In fact, the decisions of the courts have established that corporations are permitted to enforce their rights to privacy. In the case of **Chrome Insurance Brokers Limited & Ors V. The Economic and Financial Crimes Commission & Ors**, the 1<sup>st</sup> Appellant, Chrome Insurance Brokers Limited, claimed that the invasion of and trespass to its offices and business premises, amounted to an infringement of its right to privacy. Though the Court held that the right to privacy was not infringed in that instance, the fact that the 1<sup>st</sup> Appellant was able to seek the enforcement of its right to privacy suggests that the provisions of section 37 apply to corporations.

Based on the foregoing, it might not be out of place for a company to institute an action against the Federal Inland Revenue Service (“FIRS”) for the proposed installation of the Automated Tax Administration System which seeks to provide the FIRS with access to all the company’s “computers, electronic devices or cloud computing facilities wherein records, data or information are stored”, considering that fact that the access sought by FIRS falls within the definition of ‘correspondence, telephone conversations and telegraphic communications’<sup>13</sup> which are protected by Section 37 of the Constitution.

### **The Right to Peaceful Assembly and Association**

Under section 40 of the Constitution, every person has a right to freely assemble and associate with other persons or join any political party, trade union or any other association for the protection of similar interests. Whilst the right of a corporation to join any political party can be debated, it is not in contention that corporations have the freedom to associate with other corporations who have the same interests. Some of the corporate associations in Nigeria includes the Association of Telecommunications Companies of Nigeria, the Association of Nigeria Construction Companies, and the Petroleum Technology Associations of Nigeria.

An interesting question is whether the right to freely associate or assemble will extend to the rights of a company to freely merge with another company without restrictions with respect to the anti-trust laws of Nigeria. In accordance with its powers under the Federal Competition and Consumer

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<sup>13</sup> See The Federal Inland Revenue Service Circular Wednesday March 31 2021 and titled ‘Deployment of Automated Tax Administration Solution’.

Protection Act 2019, the Federal Competition and Consumer Protection Commission may refuse the application for merger of two major companies in an industry if it appears that the merger is likely to substantially prevent or lessen competition in that industry<sup>14</sup>.

This means that, for instance, while it is not expressly prohibited, it might be difficult for companies such as Shoprite and Spar or MTN and Airtel to get an approval for a merger considering that they are major players in the retail and telecommunications industry, respectively.

It is important to note that it is not the argument of the authors of this article that the freedom of association of corporations are unjustly restricted by anti-trust laws in Nigeria as we understand that this restriction is balanced against the protection of economic right and welfare of the country, as however the fundamental human rights guaranteed under the Constitution are not absolute.

### **The Right to Property**

The right to acquire and own property is guaranteed under section 43 of the Constitution. Despite the fact that the wording of the section provides that “every citizen” shall have the right to acquire and own immovable property anywhere in Nigeria, corporations, as legal persons, may acquire movable or immovable property<sup>15</sup>.

In accordance with section 44(1) of the Constitution, no moveable or immovable property of a corporation shall be compulsorily acquired without the payment of the necessary compensation<sup>16</sup>. In **Tell Communication Limited & Ors v State Security Service**<sup>17</sup>, the Court was faced with the issue of whether the 1<sup>st</sup> Applicant, Tell Communications Limited was competent to institute a suit for the protection of its rights contained in section 40 of the 1979 constitution, now section 44(1) in the Constitution. In this case, the respondent’s learned counsel had submitted that the intention of the Constitution was to give protection to human beings against the infringement of their rights. The trial judge held that the use of ‘Every person’ without the use of personal pronouns extends the right to both human and corporate persons. Based on this rationale, the court decided that the 1<sup>st</sup> Applicant was competent to institute an action and to hold otherwise will mean that the Federal Government of Nigeria can acquire property of a company without compensation.

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<sup>14</sup> Section 49 of the Federal Competition and Consumer Protection Act 2019

<sup>15</sup> *Macaura v Northern Assurance Co. Ltd* (1935) AC, P.615 and *JIBO v. Ministry of Education & Ors* (2016) LPELR-CA/OW/425/2013

<sup>16</sup> *Tell Communication Limited & Ors. v State Security Service* (2002) 2 HRLRA 104 @ 138-139

<sup>17</sup> (2000) 2 HHRLRA 104 at 138

## HUMAN RIGHTS INAPPLICABLE TO CORPORATIONS

In **Martman Transport Limited v AG Federation**<sup>18</sup>, the Court held that the right to fair hearing is the only right applicable to corporations because of its inhuman nature. However, case law<sup>19</sup> including those cited above that have shown otherwise. Corporations have constitutionally guaranteed rights but owing to their artificial nature some rights guaranteed under the Constitution are inapplicable to corporations.

For instance, although the compulsory liquidation of a company and excessive taxation of a company, could amount to killing the entity, it will be absurd to argue that the right to life under Section 33 of the Constitution was infringed in the process. Other rights that do not apply to companies include the right to dignity of human person in section 34 and the right to personal liberty in section 35<sup>20</sup>. The Court of Appeal in the case of **Opara & Ors v SPDCN Ltd & Ors**<sup>21</sup>, held that applicability of the rights to life and dignity of human person to corporate or legal persona will be “absolutely odd, absurd, and anachronistic”<sup>22</sup>. These rights can only be applicable to a person with a physical body.

It is interesting to note that there has been debate that the right of life should be extended to corporations. It has been argued that since the definition of right to life has been extended to the right to shelter, healthcare, education, food, clothing, housing and any other rights that makes life meaningful<sup>23</sup>, government or state policies and decisions that tend to make the continuation of a company as a going concern difficult or impossible should be nullified for constituting a breach to life.

## PROCEDURE FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS OF COMPANIES IN NIGERIA

Before, an action to enforce human rights is instituted by a company it is important to ascertain that the company is the direct victim of the act or omission in issue. The courts have established that only persons whose rights have been directly infringed or likely to be infringed can institute an action for enforcement of fundamental rights. This means that shareholders, directors or

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<sup>18</sup> n (8)

<sup>19</sup> *Onyekwuluye V Benue State Government* (2008) 8 NWLR (Pt. 28) 614, *Omegba & Ors V DG NBC* (2001) 1 FHCLR 547; *Robinson International Inspectorate Limited v Iseghohi* (2000) 1 FHCLR 410

<sup>20</sup> *F.B.N. Plc & Ors v. A.G. Federation* (2018) 7 NWLR, Pt. 1617, S.C 121; in this case the court held that a company is incapable of being arrested and detained.

<sup>21</sup> [2015] 14 NWLR (Pt. 1479) 307

<sup>22</sup> n (22)

<sup>23</sup> Amos O Enabule; *The right to life or the right to compensation upon death: Perspectives on an Inclusive Understanding of the Constitutional Right to Life in Nigeria*; Afe Babalola University: *Journal of Sustainable Development Law and Policy* (2014) 99

employees cannot institute a claim on behalf of the company or claim to be the direct victim of the infringements of any rights belonging to the company<sup>24</sup>.

Once it is ascertained that the company is the victim, an action can be instituted in the name of the Company to seek redress for such infringement before any High Court where the rights were infringed or are likely to be infringed.<sup>25</sup> A company may institute an action for the enforcement of its rights by way of an application to court. The application may be made by any originating process which is accepted by that Court. Such application should be supported by a statement setting out the name and description of the applicant, the relief sought, the grounds upon which the relief is sought. An affidavit setting out the facts upon which the application is made should be submitted accompanied by a written address<sup>26</sup>.

## CONCLUSION

It has been debated by several authors and scholars of human rights law that because corporations do not have a body or soul and they are more likely to accumulate tremendous social, financial, and political power, the protection of human rights, which aims to shield the weak against the powerful, should only be applicable to natural persons, humans. However, it is our view that upon the incorporation of a company under the laws of the Federal Republic of Nigeria, such corporation should be treated as a full subject for the purpose of human rights law only to the extent that the rights sought to be protected is that which is applicable to a non-natural person.

Based on the attitude of the Nigerian Courts, it is clear that our views are not absurd as some of the human rights guaranteed in the Constitution, such as the right to own property, freedom of expression, right to fair trial and the right to a private and family life, have been applied to companies. Whether the companies will be able to argue that their rights have been infringed is a different topic.

### Authors



Amanda Dirisu  
**Associate**  
adirisu@alp.company



Damilola Alabi  
**Associate**  
dalabi@alp.company

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<sup>24</sup> Unreported case of Musical Copyright Society OF Nigeria Limited v Nigeria Copyright Commission (2016) Appeal number LCN/9030(CA)

<sup>25</sup> Section 46 of the Constitution Order 1 Rule 1 of the Fundamental Right Procedure Rules 2009

<sup>26</sup> Order II Rule 3 Fundamental Rights Enforcement Procedure Rules.