

TOPIC: FUNDAMENTALS OF HUMAN RIGHTS AND LAW ENFORCEMENT

Aim: The aim of this module is to acquaint personnel with the knowledge of human rights issues in law enforcement operations.

Expected Outcomes:

- Officers will be guided on how to safeguard the fundamental rights of persons suspected to have committed offences, especially those in custody
- Identify the element of human rights in law enforcement
- Understand the significance of human rights in law enforcement

Outline:

- Introduction of Human Rights and Law Enforcement
- Definition of Terms
- Fundamental Human Rights
- Implications of human rights on law enforcement
- Human rights issues in TIP
- Victimology
- Victim control by traffickers
- Roles and obligations of Law Enforcement Agents in the protection of human rights in TIP

INTRODUCTION OF HUMAN RIGHTS AND LAW ENFORCEMENT

The violation of human rights is at the core of any law enforcement operation. In most cases, law enforcement officers in particular and the public in general, are ignorant of these rights. Even, when the law enforcement officers are knowledgeable about the rights, they most often than not care less in ensuring such rights are observed and upheld in the conduct of their operations. The understanding of these rights and their proper application in the arrest and prosecution of suspects as well as in the treatment of victims are important components of any successful prosecution of cases.

Since the evolution of legal systems across the globe, one common denominator has run across the various countries, laws and it is a concept or principle which has been a subject of great discuss and controversy.

Fundamental human rights have been in the front burner and socio-cultural groups, civil rights organisations and attorneys, have yearned for the enforcement of the human rights of people.

The place or essence of fundamental human rights in nation building and in human existence cannot be over-emphasised.

A human being/individual naturally imbued with some rights which inure to the individual.

Therefore, these rights are rights which the individual is entitled to by the fact of the existence of the individual.

The essence of fundamental rights to humans was succinctly espoused in the philosophical basis of the **US Declaration of Independence** which states thus:

***“We hold these truths to be self-evident, that
All men are created equal that they are
Endowed by their creator with certain
Inalienable rights, that among these are life,
Liberty and the pursuit of independence”.***

This Paper seeks to succinctly examine fundamental human rights vis-a-vis law enforcement, since implementation of the duties of law enforcement agents or agencies have in one way or the other impinged on these rights.

Definition of Terms

According to the Wikipedia Free Encyclopaedia,

“Fundamental Human Rights are generally regarded set of legal protections in the context of a legal system, where in such system is itself based upon his same set of basic, fundamental or inalienable rights. Such rights thus belong without presumption or cost of privilege to all human beings under such jurisdiction”.

“Human Rights” refers to ***those rights that are considered universal to humanity, regardless of citizenship, residence status, ethnicity, gender or their considerations”.***

This phrase first gained wide usage in English due to **the abolitionist movement**, which drew on the common humanity of slaves and free persons.

International Instruments

In the decade following the Second World War, national governments co-operated in the establishment of the United Nations (UN), Organization of American States (OAS) and the Council of Europe (COE) each including among its purposes the advancement of human rights.

These inter-governmental organizations then prepared **non-binding declarations** or **binding treaties** which spelled out the specific liberties understood to be human rights including the **Universal Declaration of Human Rights, (1948) American Declaration of the Rights and Duties of Man (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).**

By the end of 1950's, these three systems had each established mechanisms for the protection of human rights which included the (former) **UN Commission on Human Rights, the Inter-American Commission on Human Rights, the European Court of Human Rights.**

More recently, other intergovernmental organizations have established regional human rights treaties and monitoring mechanisms.

In Africa – “**The African Commission on Human and Peoples’ Rights**” which monitor state compliance with the **African Charter on Human and People’s Rights**.

These Human Rights bodies have different functions and jurisdiction. In general, these mechanisms’ responsibilities may include:

- I. Deciding complaints against states.
- II. Engaging in independent monitoring through country visits and reporting.
- III. Reviewing States reports on their own compliance with human rights standards

It is important to note that other international bodies outside of what is traditionally referred to as the “International human rights framework” also play a role in addressing human rights violations, for example; states may bring complaints against each other before the **International Criminal Court of Justice** which from time to time decides cases involving individual’s human rights from the standpoint of one state’s allegation that another violated the terms of an international agreement.

The International Labour Organization (ILO) also oversees States’ compliance with international labour standards including by receiving Inter-State Complaints concerning alleged violations of ILO Conventions.

Furthermore, national or domestic bodies also play an important role in implementing and enforcing international human rights laws and standards, for example National Human Rights institutions.

Its equivalent in Nigeria is the **National Human Rights Commission (NHRC)**.

Some countries by their laws set up **Truth and Reconciliation Commissions** to investigate cases of human rights violations, and recommend compensations or restitution thereto.

Selected International Human Rights Instruments Relevant To Law Enforcement

- a. Universal Declaration of Human Rights
- b. International Convention on Civil and Political Rights
- c. Code of Conduct for Law Enforcement Officials
- d. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- e. Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment
- f. Declaration of Basic Principles for Justice for Victims of Crime and Abuse of Power
- g. Declaration on the Protection of All Persons from Enforced Disappearance
- h. Principles on the Effective Prevention and Investigation of Extra Legal, Arbitrary and summary Executions
- i. United Nations Standard Minimum Rules for Non-Custodial Measures
- j. Declaration on the Elimination of Violence against Women
- k. United Nations Standard Minimum Rules for the Administration fo Juvenile Justice.

- I. United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

HUMAN RIGHTS ISSUES IN TIP

Human Rights are the non-negotiable elements which are necessary in order that life may be life. They are the embodiment of human aspirations: Individuals everywhere want the same essential things such as to have food, shelter and clothing, to be free and allowed to live a life of dignity, to be assured of justice, to live free of want and disease, to be able to speak freely; to practice their own religion or abstain from religious belief, etc. Human Rights accrue to persons because they are human beings

2.1 Human Rights Principles: The four cardinal principles of human rights are as follows:

- Indivisibility
- Universality
- Interrelatedness and interdependence
- Inalienability

2.2 Human Rights Violated: Trafficking in Persons is a gross human rights violation.

Among others, Human Trafficking has the following Human Rights implications.

- Threat to Life
- Freedom of Movement
- Forced labour, slavery and servitude
- Freedom of Speech

- Freedom of worship
- Right of education
- Right to health
- Freedom of association
- Right to liberty

2.3 Rights of Victims: Some of the right of victims of TIP includes:

- Should not be arrested, handcuffed or detained
- Should not be assaulted physically or emotionally
- Victims to be provided with adequate information on the rights
- Victims to be interviewed in a conducive environment
- Victims not to be put in the same place with traffickers
- Victims not to be charged with any offence committed in the process of being trafficked
- Victims' testimony to be taken in camera (privacy)
- Victims to be given protection as witnesses

2,4 Rights of Suspects: Though, they have been suspected to be involved in a crime, despite that status, they are equally entitled to some rights as human being. These include:

- Right to defense counsel of choice
- Right to fair trial
- Right to medical treatment, feeding and conducive detention environment
- Seizure of their properties to be done by court's order
- Searches to be conducted with warrant
- Not to be detained indefinitely without trial

3.0 Implications of Human Rights on Law Enforcement

- Respect for human rights by Law Enforcement Agencies actually enhances their effectiveness. Where human rights are systematically respected, Law Enforcement Agents have craved to develop professionalism in their approaches to solving and preventing crime and maintaining order.
- In this sense, respect for human rights by Law Enforcement Agents is, in addition to being a moral, legal and ethical imperative, a practical requirement for Law Enforcement.
- When Law Enforcement Agents are seen to respect, uphold and defend human rights:
 - Public confidence is built and community cooperation fostered.
 - Legal Prosecutions are successful in Court.
 - Law Enforcement Agents are seen as part of the community; performing a valuable social function.
 - The fair administration of justice and hence confidence in the system is served;
 - An example is set for respect for the law by others in society.
 - Law Enforcement Agencies are able to be closer to the community and therefore in a position to prevent and solve crimes through pro-active measures.
 - Support is elicited from the media, from the international community and from higher authorities.
 - A contribution is made to the peaceful resolution of conflicts and complaints.

- An effective Law Enforcement system is one that serves as the first line of defence in the protection of human rights.
- **Types of Human Rights Abuse Peculiar to Law Enforcement Agents in Nigeria**
- Brutality
- Verbal Abuse
- Extortion
- Intimidation
- Abuse of Power – Used to gain undue advantage
- Torture – Crimes in different forms – Hanging, etc
- Unlawful detention
- Extra – Judicial Killings
- **Effects of Human Rights Abuse**
- Consequences of human rights violations are very obvious to see and this includes untimely taking of lives of citizens and the attendant misery occasioned on members of the victim's family and the society at large.
- There is the decapitation of suspects and untold human suffering and generally, the violation of the dignity and liberties of citizens.
- Some of the suspects who after their harrowing experience with law enforcement agents, especially the Police, were later found to be innocent and because of such experience, some have turned to criminality seeking vengeance on the society.
- Also, there is the devastating effect on the economy as some of these suspects that have been killed or maimed in the process of investigation have turned out to be economically

productive and liabilities to their families and the society at large.

VICTIMIZATION

Victimology: is the study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system that is, the police and courts, and corrections officials. Victimology is however not restricted to the study of victims of crime alone but may include other forms of human rights violations

Who is a Victim: In [criminology](#) and [criminal law](#), a victim of a crime is an identifiable person who has been harmed individually and directly by the [perpetrator](#), rather than by [society](#) as a whole.

Stages of Victimization: Stages of victimization are classified as follows: Primary, secondary and tertiary victimization.

Categories of victims: Most victims fall into one or more of the following categories:

- Children below the age of 18
- Vulnerable and marginalized women due to gender and cultural biases
- Individual from socio-economically stressed background and family
- Children from dysfunctional homes
- Individuals with low level of education, including school dropouts
- The unemployed

Classification of victims: Victims can be classified according to any of the following:

- Age
- Purpose of Trafficking
- Type of Trafficking

Checklist for identifying victims: The following are some of the characteristics to look for in identifying victims:

- The person was sold in exchange for money
- The person was put in debt bondage
- The travel documents of the victims were confiscated by the agents, employers, traffickers.
- The person's freedom of movement was either partially or totally curtailed
- The trafficked person was subjected to violence or threat against his/her family
- The traffickers have obtained economic or other profit through deception, coercion and/or other forms of exploitation
- The person has suffered physical mental and/or sexual abuses
- The trafficked person had no knowledge that the job might include any activity not subjected to his/her free choice, including sexual services.

Behavioral pattern of Victims includes the following:

- Lack of trust
- Low self esteem

- Withdrawal syndrome
- Aggressive behavior
- Increase in the belief of personal [vulnerability](#).
- The perception of the world as meaningless and incomprehensible
- The view of themselves in a negative light
- [Post-traumatic stress disorder](#) (PTSD)

Treatment of victims: The treatment of victims of TIP is a human right issue. Below are some recommended steps to take in the treatment of victims:

- Provide victims with emotional and social support
- Provide medical and legal assistance where necessary
- Provide food, shelter and other basic needs
- Allow access to Embassies or Consulates of countries of victims
- Do not deny them resident visa in the course of legal action
- Protect their identities before, during and after legal action
- Assist in counseling, rehabilitation and reintegration of victims
- Do not prosecute even if the victim has committed an offence in the course of his/her ordeal
- Victims should be removed from the arrest scene as soon as possible and not be taken to the same police venue as the suspects
- Victims ready to provide evidence against the suspects should be properly counselled
- Any evidence provided by the victims should be built into the interrogation of the suspects

Obligations of Victims: In providing services for VPs, certain obligations are expected from the victims.

- A victim that has consented to rehabilitation shall comport himself or herself in a manner that will not jeopardize the objectives of rehabilitation.
- A victim shall make himself or herself available at all times for the purpose of informal/formal education to achieve the purpose of rehabilitation/integration.
- A victim shall comport himself or herself in a manner that will not be detrimental to the well being of other victims and care providers.
- A victim shall subject himself or herself to the rules and regulations, as well as daily routine of the shelter while in residence.
- A victim who has consented to rehabilitation shall complete the rehabilitation programmes designed for him or her.
- A victim shall disclose relevant information concerning his or her health status to counselors to enhance the quality of care.

VICTIM CONTROL BY TRAFFICKER

Traffickers use a range of coercive mechanisms to control victims. Given that the fundamental aim is to profit from exploitation of victims, it is essential that they protect their investment by making sure that the victim will work as instructed and not try to escape. Thus, the trafficker needs to ensure continuous control of victims. Different mechanisms of control are used; each may be used in isolation from others or in combination depending on the type of exploitation involved. The following are the control mechanisms:

- Debt bondage
- Isolation- removal of identity and/or travel documents.
- Isolation – linguistic and social prevented from being able to communicate in the mother tongue or have any form of contact with person from similar background, barred from denial of right of association.
- Use of violence and fear, beating, rape, confinement, deprived of food, drugged, tortured (murdered) in order to maintain obedience as well as to serve as warning to others.
- Oath taking.
- Use and threat of reprisals against victims' families

ROLES AND OBLIGATIONS OF LAW ENFORCEMENT AGENCIES IN THE PROTECTION OF HUMAN RIGHTS IN TIP

Article 24 and 25 of Organized Crime Convention (UNTOC) enjoins state parties to take appropriate measures within their means to provide effective protection as well as assistance to victims and witnesses of crime. Article 6 assistance to and protection of victims of trafficking in persons to prevent, suppress and punish trafficking in persons, especially women and children...made elaborate provisions on this. States therefore have a responsibility to respect the fundamental rights of victims, assist them in accordance with their special needs, and protect them from harm.

All criminal justice systems have a duty to put in place procedures to provide measures for the protection of persons whose cooperation with the criminal justice system in an investigation and prosecution puts

them, or persons closely associated with them at risk of serious physical or emotional harm. Such measures include;

- Assistance before, during and after trial to cope with the psychological and practical obstacles of testifying
- Protective measures before, during and after hearing or trial for “at risk” witnesses,
- Court procedures to ensure the witnesses safety while testifying
- A covert witness protection programme

Three major enforcement practitioners are involved in the measures above viz;

1. Investigators
2. Care-givers
3. Prosecutors

Each of these practitioners plays a key role in this process and must ensure that the rights of victims are protected from identification, rescue, care and support, during investigation, trial and after. The bill of rights for victims of trafficking enumerates these rights;

- The right to safety
- The right to privacy
- The right to information
- The right to legal representation
- The right to be heard in court
- The right to compensation for damages
- The right to medical assistance
- The right to social assistance
- The right to seek residence
- The right to return

3.0 Fundamental Human Rights

Fundamental Human Rights have been defined earlier in this paper. However, it will be necessary to outline those Rights which have been universally accepted to be fundamental to the existence of the human person.

There are no clear cut categorizations of these Rights, but there are generally accepted rights.

In the Nigerian context, fundamental human rights are enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended) and they are as follows:

Right to life

Right to dignity of the human person

Right to personal liberty

Right to fair hearing

Right to private and family life

Right to freedom of thought, conscience and religion

Right to freedom of expression and the press

Right to peaceful assembly and association

Right to freedom of movement

Right to freedom from discrimination

Right to acquire and own immovable property anywhere in Nigeria.

Having enumerated these rights, it is important to state that the enjoyment of these rights is not absolute, hence the time honoured saying that **“where there is a right, there is a duty”**.

The limitations to the enjoyment of these rights will now be examined in seriatim.

- a. **Right to life:** A person has a right to life except the person is convicted and sentenced to death for an offence by a court of competent jurisdiction.
- b. **Right to dignity of the human person:** This right cannot be infringed on, except a person elects to conduct himself in a manner as to debase his person.
- c. **Right to personal liberty:** An individual loses this right, if he is convicted for an offence by a court of competent jurisdiction for an offence under the law, when after conviction, the person is imprisoned,
- d. Akin to the above is a situation whereby a person is suspected to have committed an offence and is undergoing investigation. He may be detained for not more than 24 hours, but in some cases 48 hours if there is not Court of competent jurisdiction within 40 kilometers radius from where the offence was committed.
- e. **Right to fair hearing:** This right stipulates that a person should be given ample opportunity to defend himself or answer to an inquiry from a judicial or quasi – judicial authority or administrative body. This right could be lost when it is manifestly waived by the individual concerned.

- f. **Right to private and family life:** This right is enjoyed to the extent of keeping one's privacy to the exclusion of others.
- g. **Right to freedom of thought, conscience and religion:**
Inasmuch as a person has these rights, he is not expected to engage in fundamentalism and thereby causing chaos in the society in the name of religion, which is against the law.
- h. **Right to freedom of expression and the press:** This right does not permit an individual to publish libelous materials, articles that could incite the public or materials that could trigger off civil unrest.

It also does not permit a person to defame another by making statements that amount to slander.

- i. **Right to peaceful assembly and association:** A person is not permitted to instigate a group or groups of people to form unlawful assemblies which can disrupt public peace and safety.
- j. **Right to freedom of movement:** A person is not permitted to go to restricted areas of which he has no lawful permission or business to be in.
- k. **Right to freedom from discrimination:** A person cannot claim to have been discriminated against if he does not fall within a class of individuals who have special rights they enjoy by virtue of their socio-political class, status or other leanings.
- l. **Right to acquire and own immovable property anywhere in Nigeria:** This right is subject to land use laws of Nigeria and the necessary applications to the relevant authority for acquisition of property.

Enforcement of Fundamental Human Rights

It is instructive to note that any person whose rights enumerated above have been infringed or about to be infringed can apply to a High Court for the enforcement of his fundamental human rights by virtue of Section 46 of the 1999 Constitution of Federal Republic of Nigeria (as amended)

SUMMARY

In the every law enforcement operations, effort must be made to ensure the protection of rights of both the victim and suspect. This is so fundamental because even the suspect is presumed innocent until proven guilty by a court of competent jurisdiction. Therefore, in order not to put the organization and the state in huge financial burden and claims, law enforcement officer must always ensure right of individual is upheld as required at every point in time.

ACTIVITY

Role play: You are an investigating officer, and on your duty post, you see a middle aged woman travelling with about 10 girls within the same age range. What would you do without infringing on their human rights?

REFERENCES

- Constitution of Federal Republic of Nigeria – 1999 as Amended
- Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (UNTOC)
- African Development Bank: Handbook on Stakeholders Consultative and Participation in ADB Operation
- Commonwealth Foundation: Framework for Action on Maximizing Civil Society's Contribution to Development and Democracy 2004-2008