

Corporations and Human Rights Law: An Examination of the Rights of Corporate Bodies and the Enforcement thereof - Abolade Akinkunmi Saheed

Introduction

Within the past decade and now, human rights law and litigation has substantially evolved. In the past, the general notion was that human rights claims could only be enforced against governments. However, modern jurisprudence and case laws reveal that human rights suits could be instituted and enforced against individuals,¹ as well as corporate organizations. However, as much as it is apparent that individuals have human rights and can enforce them, it still remains unclear whether corporate entities have rights and whether a corporate entity can successfully seek to enforce a human rights claim. Indeed, it is without doubt that a corporation can successfully rely on their right to fair hearing in a trial and some other rights. However, under Nigerian law, it seems obscure as to whether a corporation can enforce their right to life, freedom of association, freedom of expression, freedom from torture among others. This discourse shall examine the practice of human rights litigation and argue that corporations should be able to enjoy human rights and enforce them against others – be it individuals or governments or other corporate entities - as much as it can be enforced against them. This essay argues that it is unfair that corporations are bound to respect the rights of others, while others are not bound to reciprocate such. This essay shall examine various rights with a view to examining how a corporate entity can benefit from those rights. This essay shall also examine likely objections that could be raised and counter them. While it is conceded that a corporation might not be able to enjoy some categories of rights for practical reasons and even humans do not enjoy all rights, the essay argues that corporate entities should be able to enjoy a lot of rights.

Human Rights Litigation at a Glance

Human rights law, uninvited now seems to intrude into many other areas of law, even areas of law that are unimaginably remote. Many international treaties, including trade agreements, are now geared towards securing compliance with human rights law.² Compliance with human rights law is one of the cardinal agendas of international organisations. In fact, concern for human rights protection is one of the major factors that birthed the existence of the United Nations.³ The judicial organ of the Council of Europe is known as ‘The European Court of Human Rights’ and known for its role for interpreting human rights law.⁴ Other 2 regional courts also have the appellation, human rights, attached to their name: The Inter-American Court of Human Rights and The African Court of Human Rights. Human rights law now secures a section or chapter in a lot of European, especially British, textbooks on any area of law and many more literatures has been devoted to the subject-matter. In fact, a lot of causes of action can now be substituted with a human rights suit. For instance, a civil suit of assault and battery can be substituted with a human rights claim of right to human dignity as the tort of false imprisonment can be replaced with a claim of right to freedom of movement. So also can the tort of wrongful death be substituted with an enforcement of right to life action.⁵

Under Nigerian law, substituting those civil causes of actions with a human rights claim is not without its benefit. It should be known that human rights proceedings are sui generis and are

different from civil suits under Nigerian law.⁶ Human rights proceedings are governed by a separate set of rules: The Fundamental Rights (Enforcement Procedure) Rules. The advantage that comes with instituting a human rights claim in place of a civil suit is that human rights suits must be speedily dispensed⁷ by the court and the case cannot be struck out for want of *locus standi*⁸ as stipulated by the rules. Also, human rights claims cannot be caught up by any statute of limitation.⁹

Corporate entities and Human Rights

Human rights advantages are to be enjoyed by everyone without any discrimination whatsoever. The burning question which this discourse seeks to answer is whether corporations fall within the class of persons that human rights laws seek to protect or such protection is to be exclusively enjoyed by humans. This problem is further compounded by the fact that virtually all human rights legislations and treaties are silent on this issue. No legislation or treaty actually defines who or what a person is. The Universal Declaration of Human Rights seems to be specific on whom it applies to as the use of the word 'human' is dominant in the declaration. However, the UDHR – though happens to be the most important treaty on human rights - shall not be of much discussion as it is non-binding and not enforceable before courts.¹⁰ Hence, it shall not be of much relevance to this essay.

The drafters of the ICCPR seem to be indifferent about this subject matter. The ICCPR is riddled with several provisions which confer rights on human beings, persons, men and women. For instance, the wording of Article 6 shows that the right to life is to be enjoyed exclusively by humans within the purview of the treaty. However, there are many provisions in the treaty that leave room for their interpretation to include other classes of persons to enjoy the right. Such provisions include Article 14 which provides that everyone shall be equal before the court. The Article further provides that every person charged with a crime shall be presumed innocent until proved guilty before a court. Even in the absence of authorities, it is rational that corporations enjoy the right to a fair trial and presumption of innocence as a corporation can be sued and prosecuted. From this, it can be gleaned that corporations definitely can enjoy some rights. The question that then begs for answer is whether corporations can enjoy only a class of rights and cannot benefit from other class of rights. This essay contends that, while that argument is rational, it is unfair. The next section shall proceed to address various rights and how corporations can benefit from them.

Right to Fair hearing

The right to fair hearing is one of the most important rights in the constitution. In fact, in a number of cases, the courts have held that any trial devoid of fair hearing is null and void. In the case of **Chitra Knitting and Weaving Manufacturing Company Limited V. G. O. Akingbade**,¹¹ the court held that the right to fair hearing of both parties was breached and ordered a retrial as the whole proceeding was rendered a nullity. It should be noted that a corporate entity was a party to the suit and the court enforced their right to a fair hearing.

Under the Nigerian constitution, the right to fair trial extends to right to choose a counsel, right to presumption of innocence and the right against retroactive laws in criminal prosecutions among others.¹² In the case of **Al-Dulimi and Montana Management Inc. v. Switzerland**, the European

Court of Human Rights held that there was a breach of the right to access to court of the applicants which included a company. In the case of **G.I.E.M. S.R.L. and Others v. Italy G.I.E.M. S.R.L. AND OTHERS v. ITALY**,¹³ the European Court of Human Rights held that the confiscation of property in the absence of a criminal conviction was a breach of the rights against retroactivity of the applicant companies. In the case of **Sud Fondi S.r.l. and Others**, the ECHR held that there was a breach of the right of the applicant company. Several other cases abound in this regard. It is doubtful that anybody would argue that corporate entities should not enjoy this right. Hence, having an extensive discussion of these rights would not be of much importance.

Right to freedom of thoughts, conscience and religion

Another section that seems to confer rights on bodies or group of people under the Nigerian Constitution is **Section 38(3)** which provides that no religious community or denomination shall be prevented from providing religious instructions to pupils. This provision certainly does not confer rights on a single person but a group of people of which corporate entities are part. This is further proof that the Nigerian constitution envisages the enforcement of rights by a group of people or corporate entities. Furthermore, in the Canadian case of **Law Society of British Columbia v. Trinity Western University**¹⁴ and **Trinity Western University v. Law Society of Upper Canada**,¹⁵ universities sought to enforce their right to freedom of religion. While the universities lost the suit, it should not be noted that it was not because they were corporate bodies but because the court ruled there was no breach of any rights whatsoever. This is proof that the right to freedom of religion is one that can be enforced by a corporate entity. It could be argued by opponents of this view that this right applies only to religious bodies and not all corporations. However, this essay argues that that argument is irrelevant as the argument being advanced in this essay is that corporate entities can enforce rights, be they religious or not. Religious institutions being able to enforce the right to freedom of religion is a pointer to the fact that corporate entities can enforce rights. It could be further argued by opponents of this view that that religious institutions are not corporations as most religious institutions in Nigeria are registered as incorporated trustees. However, this argument is also bound to fail. Once a body has been incorporated, be it a trusteeship or business organization or a religious organisation, it becomes a body corporate or corporate entity. In fact, sections 823(2) and 831(1) of the Companies and Allied Matters, 2020 provide that the effect of registration of trustees is that they become a corporate body. Hence, this essay submits that religious institutions that are registered as trusteeships are corporate bodies and can enforce their rights.

Right to privacy, non-interference with correspondence and the right to possess property

The right to privacy and non-interference is one that protects persons from harassments and disturbance. Article 17 of the ICCPR provides that no one shall be subjected to arbitrary interference with their privacy or shall have their reputation or honour attacked. On many occasions, especially in military regimes, corporations – usually activist organizations and media houses – are victims of raid and interference with their correspondences.¹⁶ It is contended such practice constitutes a breach of the corporation's right to privacy and the corporation should be able to enforce it as such. Furthermore, if a security agency or a private individual wiretaps the computer facilities of a corporation without their consent, it would not be out of place for the

corporation to ask the court for a restraining order on the basis that there is a breach of their right to privacy. In the case of **Chrome Insurance Brokers Limited & Ors V. The Economic And Financial Crimes Commission & Ors**,¹⁷ the appellant company alongside other appellants sought to enforce their rights to privacy and possession of properties. While the court held that there was no infringement of the rights of the appellant, the court did not contradict the fact that the appellant company could competently institute a human rights action. In fact, one of the objections of the respondents is that the 5th and 6th respondents - The Comptroller-General of Customs and the Nigerian Customs Service - could not be competently sued. But the competence of the 1st applicant, a corporate entity was not challenged and the decision of the court tended towards permitting corporate entities to enforce their rights to privacy and possession of properties in appropriate situations, even though the application was refused in this case.

The Right to Freedom of Expression and the Press

The right to freedom of expression and the press is probably one of the most important rights in a modern democracy. It is the backbone on which the state stands and the wheel on which accountability is propelled. Supporting this assertion is the fact many countries of the world now have a legislation that guarantees access to public records for the purpose of dissemination or whatever purpose the seeker of the information intends. **Section 1 of the Nigerian Freedom of Information Act** provides that every person has the right to demand to access or request information from a public institution or agency or official without demonstrating any interest in the information being sought and can institute an action in court in that regard. The question which is sought to be answered in this section is whether a corporate entity can enforce the rights contained in the legislation. It is submitted that it is irrational to deny corporate entities such as news organizations the enforcement of such rights on the basis that they are not humans. In the case of **Financial Times Ltd and Others V. The United Kingdom**,¹⁸ the court held that the application was admissible and there was a breach of the right to freedom of expression of the 4 applicants: Financial Times Ltd (“FT”); Independent News & Media Ltd; Guardian Newspapers Ltd; Times Newspapers Ltd; and Reuters Group plc. It should be noted that all applicants in this suit are incorporated news organisations. This is proof that a corporate entity can enforce their right to freedom of expression.

Furthermore, in the case of **A (Respondent) v British Broadcasting Corporation (Appellant)**,¹⁹ while the court denied the BBC its application to enforce a claim of right to freedom of expression, the court decided the case on its merit and never contradicted the fact that the BBC or a corporation can enforce their right to freedom of expression. Many similar cases of the United Kingdom Supreme Court abound.²⁰

Also, in the case of **Mgn Limited V. The United Kingdom**,²¹ while the European Court of Human Rights held that there was no violation of right to freedom of expression of the applicant broadcasting company, the court held that the case was admissible. This is further proof of the enforceability of the right to freedom of expression by corporate entities.

Moreover, section 39 of the Nigerian Constitution guarantees that every person shall have the right to hold opinions and disseminate information. In a suit of defamation against a person, the defence

of freedom of expression has been held by the courts on several occasions to avail defendants. In the case of **Miljević v. Croatia**,²² the European Court of Human Rights ruled that the conviction of the applicant for defamation constituted a breach of the applicant's right to freedom of expression. It is submitted that it is unfair to deny a corporation such defence on the basis that human rights claim can only be enforced by humans. In the case of **Times Newspapers Limited (Nos. 1 and 2) v. the United Kingdom**,²³ the European Court of Human Right admitted the case but held that the right to freedom of expression of the Newspaper had not being breached, a decision which connotes the fact that a Newspaper can enforce their right to freedom of speech. In fact, in the case of case **Editorial Board of Pravoye Delo and Shtekel v. Ukraine**,²⁴ the court held that there was a violation of the right to freedom of expression of the applicants. What more can be said to be evidence of a corporation enforcing their rights to freedom of expression.

In addition, in the popular case of **Inspector General of Police V. All Nigeria Peoples Party & Ors**,²⁵ the court upheld the claim of 12 political parties that requiring them to obtain a police permit before protesting constitutes a breach of freedom of expression. Also, in the case of **Magyar Kétfarkú Kutya Párt v. Hungary**,²⁶ the European Court of Human Rights held that the right of the applicant political party to freedom of expression was breached. All these cases all point to the fact that the right to freedom of expression is not to be exclusively enjoyed by humans but applicable to corporate entities.

Right to Freedom of Association

The right to freedom of association refers to the right of a person to associate themselves with people they desire or disassociate themselves from anybody without interference or coercion. It should be known that the right to freedom of association extends to not forcing a person to join an association. The relevant question to this essay is whether corporate entities can seek to benefit from this right. Simpler put, can a corporate entity pursue a human rights action not to be merged or broken up against its own will. The case of **Geotech Kancev GmbH v. Germany**²⁷ concerned the alleged breach of the applicant company's right not to be forced to join an association (negative right to freedom of association). While the court held that there was no breach of the applicant's right to freedom of association, the fact that a corporate entity can enforce their right to freedom of association was not contradicted by the court.

Section 831 of the Companies and Allied Matters Act, 2020 empowers the Corporate Affairs Commission to treat two associations as one if the association has the same trustees. The main argument being canvassed by opponents of this statute against this provision is that it constitutes a breach of the right to freedom of association. This essay also argues in the same direction. It is submitted that forcing the merger of 2 corporate entities is a breach of the right to freedom of association as it would force people to work together against their will. However, it is further argued that the provision does necessarily violate the rights of the individual trustees but violates the right of the incorporation. The provision would apply only if the trustees are the same. Having the establishments of a particular person(s) treated as one does not violate the rights of the person to freedom of association as it is their belongings that are being treated as one. However, the right to freedom of association of the corporate bodies is breached as they are being forced to be treated as one merely because they were established by the same set of people. If any of the rights of the

trustees or members have been breached, it would be their right to property as their properties or establishments are being treated as one and handled in a way contrary to their will. This argument shows that the rights of the corporation are not necessarily the same as the rights of the constituent members as the liability of the corporation is different from the liability of the corporation.

However, as much as this essay contends that corporate entities should enjoy the right to freedom of association, this essay does not contend that anti-trust laws constitute a breach of the right thereof. Anti-trust laws also known as competition law refers to the set of laws that seek to promote fair competition in the market and business operation.²⁸ Principally, anti-trust laws seek to make monopoly impossible.²⁹ A business organization or a designated government agency can sue another business if the other business engages in unfair trade practices such as lowering prices (predatory pricing)³⁰ or buying off competitors. Anti-trust laws could also prohibit the merger of 2 organizations if it would reduce competition. For instance, the court would most likely not permit MTN and Globacom to merge as that would be unfair. In the case of **Société Coopérative de Production SeaFrance SA (Respondent) v The Competition and Markets Authority and another**,³¹ the United Kingdom Supreme Court upheld the restriction of the operations of the appellant company on the basis that the company acquired an enterprise contrary to the UK Enterprise Act. In fact, Corporate entities that are too big can be broken up under anti-trust laws. For instance, John De'Rockerfeller had his oil empire, Standard Oil, broken up in a suit brought against it by the US government under the Sherman Antitrust Act.³² In addition, one of the cardinal agendas of Elizabeth Warren, when she was still in the race for the US presidency, was to break up big corporations such as Google, Facebook among others.³³ This essay opines that anti-trust laws do not violate freedom of association as the end goal is to protect other rights: economic rights and welfare of the citizenry. Permitting big corporations to operate as they wish without curbing monopoly is dangerous to the economy of a nation. It is contended that anti-trust laws do not violate the right to freedom of association as national development and economic freedom of the populace should override the personal rights of corporate entities.

The Right to Life

This essay shall now proceed to address a very contentious and controversial sphere of human rights enforcement claims by companies. The right to life is probably the most important right in every state, be it a democracy or a dictatorship. Traditionally, the right to life is defined to mean that the state would ensure that a person is not unjustly killed. However, modern jurisprudence has extended the scope of the right to life. The right to life has been held by the courts not to be limited to being alive, but extending to quality of life. The courts have held that government policies that tend to diminish quality of life or shun the protection of quality of life constitute a breach of the right to life. In the Indian Supreme Court case of **Ahmedabad Municipal Corporation vs Nawab Khan Gulab Khan & Ors**,³⁴ the court held that the right to life extends to the right to shelter, food, clothing, housing among others. The court had previously held in the case of **Chameli Singh & Ors. v. State of U.P. & Anr.**³⁵ that right to life included the right to shelter and other rights that make life meaningful. This essay contends that government policies that tend to make the operation of a company difficult in the country should be struck down by the court at the instance of any

company that institutes such a suit on the basis that it constitutes a breach of the right to life of the corporation that institutes the suit.

Furthermore, this essay has explained above that an anti-trust law suit can be instituted by a business organisation against another business organisation if the defendant business engages in unfair trade practices. If the trade practices of the defendant company are capable of running the plaintiff company out of business, the suit may succeed. This essay submits that such cause of action can be substituted by breach of right to life action. It should be permissible within our laws for a company to institute an action of breach of right to life if its existence is being threatened by the actions of another corporation. This is already permissible within our law. What is being advocated is that the suit should bear a different name: enforcement of the right to life.

Furthermore, **Section 46(1) of the Nigerian Constitution** provides that every **person** whose right is being breached can institute an action before the court. It thus can be interpreted to mean that not only humans can institute human rights claims under the Nigerian constitution. Furthermore, Paragraph 3(e)(v) of the Fundamental Right (Enforcement Procedure) Rules permit associations acting in the interest of its members or other individuals or groups to institute human rights claims before the court. Corporate entities such as trusteeships are associations within the meaning of our laws. It thus means that a corporate entity should be able to enforce their rights by virtue of these provisions.

It seems clear that corporations can institute human rights proceedings before the ECOWAS Court. Article 10(c) of the Protocol Relating to the Community Court of Justice³⁶ clearly lists corporate bodies among parties that can competently institute an action before the court if their rights are breached. The relevant sections are reproduced below:

‘Access to the Court is open to the following:

(c) Individuals and corporate bodies in proceedings from the determination of an act or inaction of a Community official which violates the rights of the individuals or corporate bodies

(d) Individuals on application for relief for violation of their human rights...’

However, as clear as it seems that corporate bodies can enforce human rights claim before the court, case law seems to portray the contrary. In fact, in the case of **Ocean King Nigeria Ltd Vs Republic of Senegal**,³⁷ one of the preliminary objections that was raised before the court was that a corporation could not be a victim of a human right abuse. The court sustained the objection on the basis that the actions of the official of the respondent state are not subject to Article 10(c) and Article 10(d) applies only to individuals. It is submitted this decision clearly erodes the principle of justice. In fact, the court held that the national court erred in law and ought to have its judgment set aside. However, the court held that it could grant such an order as an appellate court ought to have been approached in that regard. This decision is confusing especially in light of the fact that exhaustion of local remedies is not required as a condition precedent to approach the court, a position which has been affirmed by the court in that case itself and several other cases.³⁸

Opponents of the propositions advanced in this essay could argue that permitting corporate bodies to enforce rights would stretch the application of human rights law beyond what is normal. It could be argued that it is **human** rights and it is supposed to apply to humans exclusively. They could argue that once companies are permitted to enforce human rights, other classes of beings such as animals and robots would also seek to enforce those rights. However, this essay argues that such an argument is flawed as corporate entities are radically different from those beings. This is because robots and animals are not treated as humans within our law. Animals and robots cannot enter into agreements and own properties. Robots and animals cannot be taxed nor prosecuted like companies. Hence, while it is argued that corporations should enjoy rights, animals and robots should not enjoy rights. The main argument being canvassed by this essay is that since corporations are treated like humans in almost all ramifications within our law, enforcement of rights should not be an exception in that regard.

Conclusion

This essay has argued that corporate entities have rights and they should not be restricted from enjoying and enforcing human rights claims merely because they are not humans. European and English case law reveals that corporate entities can enforce a lot of rights enjoyable by humans as much as it can be enforced against them. It is in doubt whether a corporate entity can apply for the enforcement of human rights before the African Courts of Human Rights as the parties that can competently bring an action before the court are clearly listed in the rules of the court and corporate entities are not included. While the Nigerian Fundamental Right (Enforcement Procedure) Rules permit organisations to institute human rights claims, that provision only permits them to institute claims on behalf of someone else. It is advocated that the rules of the African Court and the FREP rules should be amended to clearly permit corporate entities to enforce human rights claims. Alternatively, it is advocated that Nigerian courts and the African Court should follow the path of the European Court of Human Rights and the United Kingdom Supreme Court if called upon to adjudicate on the subject matter. It is advised that our court should relax the technical rules that may hinder corporate entities from enforcing human rights claims and follow the global trend which permits corporate entities to enforce human rights claims.

About the Author :

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¹ABDULHAMID V. AKAR & ANOR. (2006) LPELR-SC.240/2001

²Emilie M. Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression" [2005] 59 International Organization 593

³Article 1(2) & (3) of the United Nations Charter

⁴John G. Merrills, 'European Court of Human Rights' (Encyclopaedia Britannica, 14 March 2016) <<https://www.britannica.com/topic/European-Court-of-Human-Rights>> Accessed 7 October 2020

⁵OMONYAHUY & ORS v. IGP & ORS (2015) LPELR-CA/L/493/13

⁶SKYE BANK v. NJOKU & ORS (2016) LPELR-CA/OW/163/2013

⁷Paragraph 3(f) & (g) of the Preamble of the Fundamental Rights (Enforcement Procedure) Rules (FREP Rules).

⁸Paragraph 3(e) of the FREP Rules

⁹Order 3 of the FREP Rules

¹⁰'What is the Universal Declaration of Human Rights and why was it created?' (Amnesty International) <<https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>> Accessed 7 October 2020

¹¹(2016) LPELR-SC 113/2006

¹²See generally section 36 of the Nigerian Constitution.

¹³Applications nos. 1828/06

¹⁴2018 SCC 32

¹⁵2018 SCC 33

¹⁶'Nigerian army raids newspaper depots' (BBC News, 7 June 2014)

<<https://www.bbc.com/news/world-africa-27749024>> Accessed 7 October, 2020

¹⁷(2018) LPELR-CA/L/1429C/2016

¹⁸Application no. 821/03

¹⁹[2014] UKSC 25

²⁰PJS (Appellant) v News Group Newspapers Ltd (Respondent) [2016] UKSC 26; Application by Guardian News and Media Ltd and others in Her Majesty's Treasury (Respondent) v Mohammed Jabar Ahmed and others (FC) (Appellants); Her Majesty's Treasury (Respondent) v Mohammed al-Ghabra (FC) (Appellant); R (on the application of Hani El Sayed Sabaei Youssef) (Respondent) v Her Majesty's Treasury (Appellant) [2010] UKSC 1.

²¹Application No. 39401/04

²²No. 68317/13

²³Applications no. 3002/03 and no. 23676/03

²⁴Application no. 33014/05

²⁵(2007) LPELR-CA/A/193/M/05

²⁶[GC], no. 201/17

²⁷Application no. 23646/09

²⁸James Chen, 'Understanding Antitrust Laws' (Investopedia, 31 July 2020)

<<https://www.investopedia.com/ask/answers/09/antitrust-law.asp>> Accessed 7 October, 2020.

²⁹Ibid.

³⁰Will Kenton, 'What is Predatory Pricing?' (Investopedia, 13 February 2020)

<<https://www.investopedia.com/terms/p/predatory-pricing.asp>> Accessed 7 October 2020

³¹(Appellants) [2015] UKSC 75

³²The Editors of Encyclopaedia Britannica, 'Standard Oil' (Encyclopaedia Britannica, 24 March 2020) <<https://www.britannica.com/topic/Standard-Oil>> Accessed 7 October 2020

³³Astead W. Herndon, 'Elizabeth Warren Proposes Breaking Up Tech Giants Like Amazon and Facebook' (The New York Times, 8 March 2019)

<<https://www.nytimes.com/2019/03/08/us/politics/elizabeth-warren-amazon.html>> Accessed 7 October 2020

³⁴Delivered on 11 October, 1996

³⁵[(1996) 2 SCC 549]

³⁶SUPPLEMENTARY PROTOCOL A/SP.1/01/05 AMENDING THE PREAMBLE AND ARTICLES 1, 2, 9 AND 30 OF PROTOCOL A/P.1/7/91 RELATING TO THE COMMUNITY COURT OF JUSTICE AND ARTICLE 4 PARAGRAPH 1 OF THE ENGLISH VERSION OF THE SAID PROTOCOL

³⁷SUIT NO. ECJ/CCJ/AJP/05/08

³⁸Prof Etim Moses Essien v. Republic of The Gambia & Anor (Suit No. ECW/CCJ/APP/05/05); Musa Sadykhan v. Republic of The Gambia (Suit No. ECW/CCJ/APP/11/07)