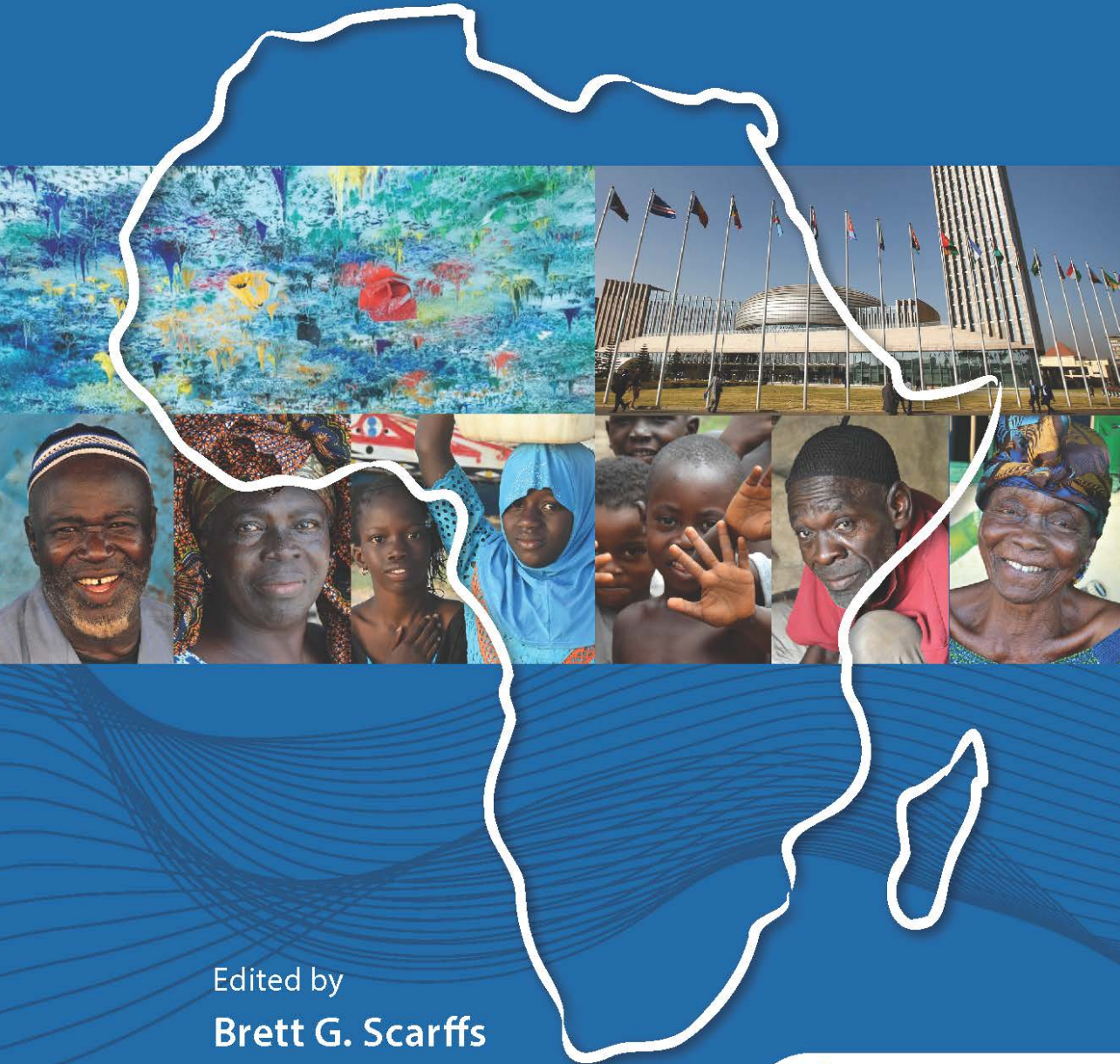


African Conceptions of Human Dignity



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7 STATE OBLIGATIONS AND HUMAN DIGNITY

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INTRODUCTION

On 15 April 2014, Nigeria and the world woke up to read the terrible news of how over 270 teenage girls of the Government Secondary School, Chibok, in the Borno State of Nigeria were abducted by the Islamic Terrorist Group – Boko Haram. The terrorists pretended to be members of the Nigerian Army and were dressed in military uniforms. It was reported that a few weeks before the incident, the school had been shut due to the worsening security conditions in the region, but the victims, who were final-year students, were in school to write their final examinations before their graduation. About fifty of the girls escaped from their abductors and the federal government negotiated with the terrorist group to release some of the others. A number of them were reportedly dead, while the remaining girls are still in custody of their abductors today. The abductees were sexually assaulted and forced to marry members of the terrorist group. The victims, who were mostly of Christian faith, were also forced to renounce their faith and to embrace Islam.²

The above story is one of the many instances of how the dignity of Nigerians is abused. The discourse of human dignity and its protection is topical to Africans, because it forms a critical part of their cultural, social, economic and religious values. Accordingly, every state is expected to recognise and protect it. Over the years, human dignity has been recognised as a fundamental human right and it forms part of the legal and constitutional framework of most sovereign states. However, the conception of human dignity as used by Nigerians and by extension many other Africans, varies from one tradition to another; the meaning cannot be not easily compartmentalised. Further, in spite of the broad constitutional recognition of the concept in virtually all African states, there are areas where human dignity is undermined and not taken seriously, where states do not do enough to protect it or where states use legal instruments as the basis or pretext for undermining human dignity. There are reports of recurrent genocide and other atrocities, forced migrations and displacements, religious and communal wars and extreme poverty, among other ills facing the continent. Thus, the primary question this article seeks to answer is: to what extent do states and in this context, Nigeria, fulfil their obligations in protecting the right to human dignity? An assessment of the laws and practices relating to the protection and observance of the right to

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2 For further details, see generally, Zeen J. 2014. "Boko Haram and the Kidnapping of the Chibok Schoolgirls" *CTC Sentinel* 7(5):1-25; Peters MA. 2014. "Western Education is Sinful: Boko Haram and the Abduction of Chibok Schoolgirls", *Policy Futures in Education* 12(2):186-190.

human dignity is crucial not only to determine if the citizens are enjoying the right in practice, but also because the failure of a state to effectively protect and enhance human dignity fundamentally undermines the state's obligations to its citizens. In other words, the degree to which citizens enjoy their dignity is contingent upon the state's obligations to observe same. Accordingly, an assessment of this nature will reveal the areas where there are gaps to which the state needs to pay attention to in order to enhance the observance and enjoyment of the rights associated with human dignity.

Against this backdrop, this chapter will explore different approaches that inform Africans perspectives on human dignity. It will also evaluate the constitutional and legislative roles of states to protect human dignity and the extent to which African states either protect human dignity or have become complicit in its abuse, using Nigeria as a case study. The findings of this exploration may help states and state actors to identify existing vacuums that require attention in order to enhance respect for human dignity.

The remainder of this chapter is divided into four parts. The second section briefly provides the conceptual meanings and three grounds for recognising and protecting human dignity as a right. The third section examines how the protection of human dignity as a right has been deployed in the Nigerian constitution and other legal framework. This is followed by an evaluation, in the fourth section, of how Nigeria has either aided or avoided violations of human dignity over the years including the pre-colonial, colonial and post-colonial era. The final section provides a summary and makes some concluding observations. The argument of the chapter is that although human dignity is recognised and highly esteemed in Nigerian cultures and constitutions, its violation is also endemic. Unless states and their apparatuses at all levels fulfil state obligations in terms of the social contract to protect human dignity, conflicts and civil unrest will persist. Thus, the only pathway to peace in Nigeria and the African continent is for states to have effective structures and mechanisms to protect human dignity.

CONCEPTIONS OF HUMAN DIGNITY AND ITS PROTECTION

Human dignity as a conception means different thing to different people.³ It is variously described as "self-respect", "self-worth", "the goodness in a person", "reputation and honour", "human ideal", "integrity", "justice and freedom of the human person".⁴ It also denotes a sense of being fully human and equal with

3 McCrudden C. 2008. "Human Dignity and Judicial Interpretation of Human Rights" *The European Journal of International Law* 19(4):655-724.

4 Molefe M. 2022. *Human Dignity in African Philosophy: A Very Short Introduction*. New York: Springer; Gelaye TA. 2019. "The Role and Migration of Human Dignity in African Constitutional Orders: A Comparative Study of South Africa, Kenya and Uganda", PhD Thesis, Central European University.

other humans irrespective of age, gender, class or tribal differences.⁵ It extends to the right to be self-reliant without unnecessary restrictions, such as the freedom to live and enjoy essential basic needs of life, such as access to job opportunities, healthcare, good education, public services, family life and so on.⁶ Human dignity touches virtually all-important relationships, including family, community, people, ethnic groups and nations.⁷ It involves both the external and inner ideas, because it involves the understandings of human obligations and relationships to one another.

There are many criteria and determinants of human dignity in African socio-cultural and economic contexts. Within the Nigerian jurisprudential context, however, the courts appear to have streamlined the constitutional interpretation of human dignity to mean a person's societal status or the basic respect to which a person is entitled. Thus, an action or treatment that degrades or reduces one's societal status will amount to an infraction of a right to human dignity and it will be actionable as such. Justice Niki Tobi, a former justice of the Supreme Court of Nigeria, notes in the case of in *Uzoukwu v Ezeonu II*:

The word "dignity" under the subsection [of the Constitutional provision] does not mean the state of being dignified. It does not also mean an elevation in rank or place of work. It does not even mean a grandeur of mien. On the contrary, it conveys the meaning or connotation of being degraded at least in one's exalted estimation of his societal status or societal standing ... A degrading treatment has the element of lowering the societal status, character, value or position of a person. It makes the victim have some form of complex which is not dignifying at all. In the same vein, when words are used that strip a person of respect and value as a human, or that bring a person to public ridicule, disgrace, dishonour or contempt, then the right to respect for his dignity has been violated.⁸

Several grounds and bases for the recognition and protection of human dignity as a human right have evolved. Under the headings below, I identify and briefly discuss three viewpoints that are relevant to the discourse of state obligations to protect human dignity.

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- 5 Olomojobi Y. 2016. "Violation of Women's Right to Dignity in Nigeria", SSRN, 16 January. Available at: <https://ssrn.com/abstract=2716917> or <http://dx.doi.org/10.2139/ssrn.2716917>.
 - 6 Kure KU. 2020. "Leadership, Corruption and the Dignity of Humans: Some Reflections from the Nigerian Context", *HTS Teologiese Studies* 76(2):1-7; Alike GU and Amaechina OU. 2019. "Violation of Right to the Dignity of Human Person in Anambra Basic Schools: Challenges to Quality Universal Basic Education", *UNIZIK Journal of Educational Management and Policy* 3(1):243-255; Bamgbose OJ. 2020. "Advancing the Frontiers of Justice to the Under-Represented in Nigeria through Public Law Library Legal Clinics: Issues for Consideration", *Library Management* 41(6-7):607-616.
 - 7 Chengeta T. 2016. "Dignity, Ubuntu, Humanity and Autonomous Weapon Systems (AWS) Debate: An African Perspective", *Brazilian Journal of International Law* 13(2):461-501.
 - 8 *Uzoukwu v Ezeonu II* (1991) 6 NWLR (PT 200) 778; In *Ogunsade v AG Lagos State* (2022) LPELR-58999 (CA), the Nigerian Court of Appeal noted that human dignity is "anchored on basic respect that one human accords to another or is entitled to expect from another".

Religious perspectives

The argument of the religious and theological perspectives regarding the protection of human dignity is that all humans come from God. In fact, they are created in the image and likeness of God.⁹ If humans are likened to God, then, they are sacred and should be dignified.¹⁰ This postulation resonates with the Biblical idea of the “summary of the law” in Matthew 22:39 – “love your neighbour as yourself”. This idea is also an intrinsic part of the Islamic faith. The Quran provides: “And We have certainly honoured the children of Adam ... and preferred them over much of what We have created.”¹¹ Similarly, a hadith states: “The Prophet Muhammed (peace be upon him) said – Do not belittle any good deed, even meeting your brother with a cheerful face.”¹² These express how God blessed and honoured human beings by creating Adam and his offsprings as *khalifas* of God (God’s vicegerents) and that human beings should reciprocate this by treating other human beings with dignity.¹³

The ideology of most African traditional religions and practices also mirrors the Biblical and Quranic expressions made above. In his study of the Igbo people in the eastern Nigeria, legal scholar Tsega Andualem Gelaye observes that the Igbo traditionally believe is that every human is from God. Gelaye submits:

They believe that every human being is the work of *Chukwu* (God). What makes human beings more valuable than any other creature is the possession of *chi* (soul) which they believe is an imprint of God’s nature. As such, they believe that God is within every human person through his *chi*. This view of human beings and their worth is akin to the Christian conception of *imago dei* that ascribes dignity to human beings because they were made in God’s image.¹⁴

Inference from these religious bases for protecting human dignity presupposes and reinforces equality of all persons, since all humans come from the same source, which is God. The religious viewpoints also place obligations to protect human dignity not only on state, but also on every individual. Given the widely held view

⁹ Holy Bible, Genesis 1:26, 28.

¹⁰ Koopman N. 2010. “Human Dignity in Africa: A Christological Approach”, *Scriptura* 204:240-249; Orji MG and Onyenemerem F. 2020. “Assessing the Respect and Dignity for Human Life in the Nigerian Health Sector”, *Konfrontasi Journal: Culture, Economy and Social Changes* 7(1):20-21.

¹¹ Quran 17:70.

¹² Hadith, Sahih al-Bukhari.

¹³ Kravtsev A. 2013. “The Image of God and Khalifa: The Divergent Concepts of Humanity in Christianity and Islam”, Research Paper, Trinity Evangelical Divinity School 8; Zaman SM. 1986. “Place of man in the Universe in the World – View of Islam”, *Islamic Studies* 25(3):325-331.

¹⁴ Gelaye TA. 2021. “The Role of Human Dignity in the Jurisprudence of the African Commission on Human and Peoples’ Rights”, *African Human Rights Yearbook* 5:120. See also, Emeghara N. 1992-1993. “The Dignity of the Human Person in African Belief”, *Theology Annual* 14:126.

that Africans are notoriously religious, it may be argued that most Africans would likely measure the protection or violation of human dignity using a religious lens.¹⁵

Human rights perspectives

It is postulated that dignity is a distinctive natural attribute inherent in every human. An integral component of human nature is not created by the state, but it is something the state must recognise and affirm.¹⁶ Human nature gives rise to the human needs to live a free and just life and to also enjoy basic needs and essentials of life. Accordingly, every person is worthy of receiving a dignifying treatment. To respect the dignity of a person is to allow him or her to be truly human. A person is not fully alive if his or her dignity is not recognised and respected. Human dignity is seen as not a standalone, but an inter-related and interdependent conception that underlies the basis of protecting other rights. Accordingly, it is widely recognised as the bedrock of other rights. Thus, the South African Constitutional Court in *Christian Education South Africa v Minister of Education*,¹⁷ described the concepts of self-worth and human dignity as forming the cornerstone of human rights. In essence, human rights will be undermined where there is no dignity. In a similar vein, the Nigerian Court of Appeal, in *Okafor v Lagos State Government*,¹⁸ argued that other rights are protected “for the enhancement of human dignity”. The argument can be summarised that humans have rights, because they have dignity. Thus, human dignity appears one of the central objectives established by the bill of rights and national constitution,¹⁹ as well as several international human rights instruments.²⁰

- 15 Akinloye IA. “The Right to Freedom of Religion and Belief: African Perspectives”, in Ferrari S, Hill M, Jamal AA and Bottoni R (eds). 2020. *Routledge Handbook of Freedom of Religion or Belief*, Routledge, Taylor and Francis, 187; Awolalu JO. 1976. “What is African Traditional Religion”, *Studies in Comparative Religion* 10(2):1; Mbiti JS. 1990. *African Religions and Philosophy*. Second Edition. Oxford: Heinemann, 1.
- 16 See also, Spijkers O. 2022. “‘New’ Human Rights and Human Dignity”, *The Cambridge Core Blog* 12 October. Online at: <https://www.cambridge.org/core/blog/2022/10/12/new-human-rights-and-human-dignity> (“In essence, human dignity is the state or quality of being worthy of honor or respect by virtue of being human ... Human beings cannot – voluntarily or involuntarily – lose their dignity. This does not mean that all individuals are in fact being treated with dignity and respect from the moment they are born. Certainly, many people lead a life of abject poverty and indignity. The idea is that no matter how badly they are treated, people never lose the inherent dignity that came with birth. When a person demands respect for his or her human dignity, he or she is essentially demanding to be considered not as a mere object, but as a human being. He or she demands to be treated with respect and not to be humiliated, or dehumanized.”); *Ogunsade v AG Lagos State* (2022) LPELR-58999 (CA).
- 17 *Christian Education South Africa v Minister of Education*, 2000 (4) SA 757 (CC) para 36.
- 18 *Okafor v Lagos State Government*, (2016) LPELR-41066 (CA); See also, *DSS Kano & Anor v Nnadi* (2020) LPELR-52031(CA).
- 19 See for instance, Section 34 of the Constitution of the Federal Republic of Nigeria; Section 15(1) and (2) of the Ghanaian Constitution, 1992; Article 28 of the Kenya Constitution, 2010; Section 10 of the Constitution of the Republic of South Africa, 1996; Article 51 of the Egyptian Constitution 2014; and Article 34 of the Constitution of the People’s Democratic Republic of Algeria, 1989 (amended by the constitutional revision of 1996).
- 20 For instance, see Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), arts 1, 7 and 9; International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999

Social contract perspectives

Social contract theory, which is one of the oldest theories in the Western tradition of political philosophy, is often used to underscore the concept of justice. Social contract, in this context, is a voluntary agreement defining the relationship of individuals with one another and with government and by this process forming a state.²¹ In primordial times, it is argued, individuals were born into an anarchic state of nature. The absence of a government and the body of laws in the state of nature prompted men to enter into two agreements: *pactum unionis* and *pactum subjectionis*.²² Accordingly, there is an inherent agreement between the state and its citizens wherein individuals surrender their freedom to the state and the state in turn commits itself to ensuring that these individuals and their *dignity* are well-protected. The pact between the ruler and the governed forms the basis of the state's legitimacy and authority to set fundamental rules governing subjects within its territory.²³ From its evolution in the prehistoric era,²⁴ it is believed that the social contract transitioned from natural law philosophy into the contemporary concept of fundamental rights.²⁵ Generally, a breach of the terms of this contract on the part of the state may lead to conflicts and disorders, because the governed may result to self-help in an attempt to forcefully regain the liberty and dignity they earlier surrendered to the state to protect. The Nigeria #EndSARS protest, discussed further below, is a perfect example of a resultant conflict that arose due to the state's breach of social contract.

The social contract perspective, further informed by religious and human rights perspectives, best illustrates our argument in this chapter, because it places obligations on the state to fulfil in terms of the contract. State obligations under the social contract appear to form the basis for the development of the principle of tripartite typology of state obligations in the promotion of human rights. The

U.N.T.S. 171, entered into force Mar. 23, 1976, art 10; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, arts 4 and 5.

- 21 Skeyrms B. 2014. *Evolution of the Social Contract*. Second Edition. Cambridge: Cambridge University Press, XIII-XIV; Rosenfeld M. 1985. "Contract and Justice: The Relation between Classical Contract Law and Social Contract Theory", *IOWA Law Review* 70(4):769.
- 22 Okeke O. 2022. "The Primary Purpose of Government in Nigeria: A Legal Survey", *Nnamdi Azikwe University Journal of International Law and Jurisprudence* 13(2):2.
- 23 See Bekele HK. 2021. "Constitution as Social Contract in Contemporary Ethiopia: The Need to Re-Construct Political Arrangements", *Mizan Law Review* 15(1):42; Baral A. 2021. "Comparing Hobbes's Social Contract Theory with the Indian Constitution", *Nyaayshastra Law Review* 1(3):2.
- 24 Derri DK. 2011. "The Application of Social Contract Theory to Compensation for Oil and Gas Operations", *Nigerian Law Journal* 15(1):139; Baral, "Comparing Hobbes's Social Contract Theory with the Indian Constitution", 1.
- 25 Derri, "The Application of Social Contract Theory", 139; Crawford C. 2020. "Access to Justice for Collective and Diffuse Rights: Theoretical Challenges and Opportunities for Social Contract Theory", *Indiana Journal of Global Legal Studies* 27(1):59.

three obligations require a state to “respect”, “protect” and “fulfil” human rights.²⁶ Accordingly, in the context of human dignity, the state obligation to “respect” human dignity means the state is to refrain from interfering with the enjoyment of human dignity, such as interfering into marital or religious life of citizens. The obligation to “protect” requires the state to stop others from undermining the enjoyment of the human dignity of its citizens. The third obligation also requires the state to take necessary measures, including legislative, judicial, administrative, budgetary and other measures towards the realisation and the observance of the right to human dignity. The idea of social contract and state obligations can be inferred from Sections 14(1) and (2)b of the Constitution of Federal Republic of Nigeria, 1999, which provides that “the Federal Republic of Nigeria shall be a State based on the *principles of democracy and social justice*” and that “the *security and welfare of the people* shall be the primary purpose of government”.²⁷

LEGAL AND CONSTITUTIONAL PROTECTION OF HUMAN DIGNITY

The importance of protecting human dignity as a fundamental human right is widely acknowledged as critical for the development of an individual’s self-definition and the promotion of democratic pluralism within a society. This acknowledgment underscores the protection of the right in several international treaties and conventions, such as the Universal Declaration of Human Rights (UDHR),²⁸ the International Covenant on Civil and Political Rights (ICCPR),²⁹ and the African Charter on Human and Peoples’ Rights.³⁰ Although the wording of these instruments varies, they fundamentally convey similar meanings. Nigeria and many other African countries are signatories to these treaties. The instruments underscore human dignity as a right that is universal, transcending the limits of national constitutional dimensions. In the same vein, at the national level, Nigeria has entrenched the protection of human dignity in its national constitution. Section 34 of the Constitution of the Federal Republic of Nigeria, 1999, states:

26 Frederic Megret, “Nature of Obligations”, in Moeckli D, Shah S and Sivakumaran S (eds). 2022. *International Human Rights Law*. Fourth Edition. Oxford: Oxford University Press, 130-134; Eide A. 1987. “The Right to Adequate Food as a Human Right”, UN Doc. E/CN.4/Sub.2/1987/23; Donders Y. 2011. “The Right to Enjoy the Benefits of Scientific Progress: In Search of State Obligations in Relation to Health”, *Medical Health Care and Philosophy* 14:376.

27 Emphasis added.

28 UDHR, arts 1, 7 and 9.

29 ICCPR, art 10 (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”)

30 African Charter on Human and Peoples’ Rights, arts 4 and 5 (“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right. Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”)

“Every individual is entitled to the dignity of his person. No person shall be subject to torture, slavery or be required to perform forced labour.”³¹

Some facts and observations can be decrypted from the provisions of the Nigerian Constitution and the international instruments referenced above. Firstly, most of the provisions emphasise the inviolability and immutability of human dignity. Also, most the provisions adopt inclusive terminology, with references to “every individual”, “all persons”, “human beings”, “every human”, “every person”, “everyone” and “human entity”. These emphasise both the universality of the right and its inherent nature. Secondly, the provisions protect both the physiological part of a human and the inward humanity that makes every human a person.

Ironically, despite these legal frameworks for the enjoyment of the right to human dignity in Nigeria, there is a growing concern that most of the legal provisions do not translate into practice. There are reports of abuse of human dignity with less effort by the state to redress them. In some instances, the states or state actors become accomplices or culprits in the abuse. But this is not to conclude that states generally have not carried out their role of protecting human dignity at all. With these concerns in mind, the next section will examine how human dignity has been protected or violated within the Nigerian context.

THE NIGERIAN EXPERIENCE WITH HUMAN DIGNITY AND CHALLENGES TO STATE PROTECTION OF HUMAN DIGNITY IN NIGERIA

Nigeria is located in West Africa and is the most populous country in Africa. The country is a federal republic comprising 36 states and the Federal Capital Territory. It gained independence on 1 October 1960. The country is inhabited by over 250 ethnic groups speaking about 500 distinct languages. The country operates a constitutional democracy that guarantees the protection of human rights including human dignity.³² However, despite the constitutional provisions protecting human dignity, there are accounts of violations of the right to human dignity in the country. For a comprehensive evaluation, some of these accounts are discussed below under three subheadings – pre-colonial, colonial and post-colonial era.

Negative manifestations of human dignity in Nigeria

Pre-colonial era

The current geography of Nigeria is mostly the creation of the colonialists. There are accounts that pre-colonial Nigeria comprised “highly developed kingdoms and empires” that had “established and settled systems of government” that equate to modern sovereign states.³³ Examples include the Ife kingdom and the

31 Constitution of the Federal Republic of Nigeria, 1999, s 34.

32 See the Constitution of the Federal Republic of Nigeria, 1999, ch IV.

33 Emiola A. 2011. *Principles of African Customary Law*. Fourth Edition. Ogbomoso: Emiola Publishers. 2; Meredith M. 2006. *The Fate of Africa – A Survey of Fifty Years of Independence*.

Oyo and Benin empires in the present western Nigeria, as well as the Nupe and Bornu empires in the present northern Nigeria. These kingdoms were independent and autonomous and were led by kings who exercised both political and religious powers. They also had formalised legal systems. The legal systems were premised on customary laws that evolved from the customs and traditions of the people. The kings and community heads implemented and enforced these laws.

There are reports that some of the customary practices and customary laws in these kingdoms undermined human dignity. For instance, the practice of the Osu caste system in the eastern Nigeria comes to mind. The Osu caste system is a traditional practice in some parts of Igboland that discourages social interaction and marriage with caste persons called Osu. Osu people are assumed to be enslaved by the deities of the Igbo people; they are considered inferior beings and are separated from the Nwadiana (or *diala* i.e., the Igbo real born). Another obnoxious custom practised among the Yorubas of western Nigeria is *Abobaku*. In this practice, a person is designated to die and be buried with the king when the king dies. The philosophy of the practice is premised on the assumption that the king needs servants to run errands for him as he is still a king even in death.³⁴ Although many of these practices have been jettisoned and are no longer in vogue, they undoubtedly abused human dignity in that era.

Colonial era

The British and other Europeans originally came to Nigeria to trade.³⁵ They later proceeded to colonise and Christianise Nigerians. Their first point of business was the slave trade. Slavery is one of the highest forms of abuse of human dignity. Curiously, the European traders generally *relied on a network of traditional rulers* to capture and bring enslaved Africans from various coastal and interior. The trade was so economically beneficial that when the British later legislated to ban it, some traditional rulers reportedly resisted the ban.³⁶ Thus, the rulers who represented the state and who were expected to protect the dignity of the members of their communities were found at the forefront of the obnoxious human trading.

Generally, able-bodied young men were the favourite objects of slave trade. This resulted in economic and gender problems during the era. As more working-class young men were exported, the economy of the region and the people declined. This affected the dignity of the people who equate economic strength with human's

New York: Public Affairs.

34 Yerima A. 2015. *Abobaku: Drama*. Ibadan: Kraft Books Limited; Aremu MA. 2023. "Practs of Deliberate Conceptual Mappings in Ahmed Yerima's *Abobaku*", *European Journal of English Language and Literature Studies* 11(2):20-40.

35 However, there are some historical accounts that slave trading on the African continent predated the European arrival. Slave trade was reported to have started in Africa at about the 8th century by the Arabs.

36 Nwanze C. 2014. "A Short History of the Slave Trade in Nigeria", *Africasacountry.com*, 15 April.

worth.³⁷ Also, the exportation of men resulted in gender imbalance by increasing the numbers of unmarried women. Since marriage formed one of the parameters for being dignified as a woman, many women who ordinarily did not want polygamy had to go into it to meet societal standards and be accorded dignity. These facts prompted some authors to conclude that Africa's history of slave trade is the primary explanation for why polygamy is much more prevalent in West Africa than in East Africa, because in East Africa, both men and women were the objects of slave trade.³⁸

Besides slave trade, there were accounts of discrimination between the colonialists and the colonised during the colonial era. The British kept their control over Nigeria through indirect rule, which meant that traditional rulers would govern their domain under the orders of the British. This arrangement limited a rule according to cultural orientations of the people and in certain instances resulted in civil unrest, such the Aba Riot of 1929, which was pioneered by women.³⁹ Furthermore, some customs, religious practices and values of the colonised were jettisoned thanks to the legislative and judicial policies of the colonialists, such as the deployment of validity and enforceability tests.⁴⁰ Lastly, the reorganisation of the geography of Nigeria, wherein existing sovereign states with different social-cultural orientations were annexed together and governed under a legal rule alien to them, further

37 Nunn N. 2017. "Understanding the Long-run effects of Africa's slave trades", VoxEU/ECPR.com, 27 February.

38 Dalton JT and Leung TC. 2014. "Why is Polygyny More Prevalent in Western Africa? An African Slave Trade Perspective", *Economic Development and Cultural Change* 63:599-632; Edlund L and Ku H. 2011. "The African Slave Trade and the Curious Case of General Polygyny", MPRA Paper No. 52735.

39 Afigbo AE. 1966. "Revolution and Reaction in Eastern Nigeria: 1900-1929: (The Background to the Women's Riot of 1929)", *Journal of the Historical Society of Nigeria* 3(3):539-557. The Aba Riot was a protest led by thousands of women of Igbo tribe in the Provinces of Calabar between November and December 1929 through January 1930. The policies imposed by the British colonial administrators in southeastern Nigeria prompted the revolt. The British colonial administration through their indirect rule policies governed Nigerians through "warrant chiefs" who were themselves Nigerians, appointed by the British Colonial Governor. The warrant chiefs, relying on powers conferred by the colonial administrators, became increasingly oppressive and operated draconian policies considered by the women as contrary to their cultures and traditions. This provoked the revolt. See, further, Obienusi IA. 2019. "Aba Women Protest and the Aftermath 1929 till 1960", *International Journal of Humanities* 131; Uchendu E and Okonkwo U. "The Aba Women's War of 1929 in Eastern Nigeria as Anti-colonial Protest", in Hobson J (ed). 2021. *The Routledge Companion to Black Women's Cultural Histories*. London and New York: Routledge, 245.

40 Taiwo EA. 2009. "Repugnancy Clause and Its Impact on Customary Law: Comparing the South African and Nigerian Positions – Some Lessons for Nigeria", *Journal for Juridical Science* 34(1):89-115; Enabulele AO and Bazuaye B. 2019. "Validity and Enforceability of Customary Law in Nigeria: Towards a Correct Delimitation of the Province of the Courts", *Journal of African Law* 63(1):79-104.

undermined the dignity of the people. These facts prompted the allegation that the West underdeveloped Nigeria.⁴¹

Post-colonial era

Nigeria attained independence in 1960 and began a civilian rule. However, this did not last. In 1966, there was a military coup that overthrew the civilian rule. From 1966-1979 and from 1983-1999, a period of thirty years, Nigeria experienced recurrent military coups, some of which were bloody. A prominent feature associated with military rule in Nigeria was the abuse of human rights, including human dignity. It was common for the military rulers, upon assumption of powers, to promulgate a decree suspending the provisions of the Constitution that protect human rights.⁴² Secondly, decrees were made to oust the jurisdiction of the courts to adjudicate abuses perpetuated by the military rulers.⁴³ Armed with these decrees, successive military government successfully abused the dignity of many Nigerians.⁴⁴ Human rights law scholar Babafemi Akinrinade's description of the regime is also fitting.

A heavy clampdown on critics coupled with the earlier ban on party politics, left no group to challenge the autocracy of the military regime. No forum existed to articulate alternative ideas, nor were there any institutional process to check the excesses of the dictatorship. Harassment and detentions were joined by the loss of many lives due to the excess of the Nigerian police force and other security agencies. The latter engaged in illegal detention, torture, extra-judicial killings and public harassment of citizens, amongst others. The security forces demonstrated rampant lawlessness, but the government showed no interest in curbing these excesses. There seemed to have been a convergence of interests between the government and the police in the matter of human rights violations. Not many citizens were interested in holding the police accountable for its actions and not many could, anyway. While some cases were reported by the press, many were not and in most cases, there were no official sanctions against erring members of the force. Even when internal police panels were set up due to public pressure, they usually covered up serious abuses of human rights.⁴⁵

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- 41 Rodney W. 1972. *How Europe Underdeveloped Africa*. London. Bogle-L'Ouverture Publications; Cookey SJS. 1979. "Colonialism and the Process of Underdevelopment in Nigeria", *Journal of Asian and African Studies* 14(1-2):19-31.
 - 42 See Decree No. 1, the Constitution (Suspension and Modification) Decree, 1966.; Emiola A and Akinloye IA. 2021. "Nigeria and the Riddle of Two Constitutions", *Africa Journal of Comparative Constitutional Law* 1:122-141.
 - 43 Oba AA. 2004. "The African Charter on Human and Peoples' Rights and ouster clauses under the military regimes in Nigeria: Before and after Nigeria: Before and after September 11", *African Human Rights Law Journal* 4:275-302; Akanbi MM and Shehu AT. 2012. "Rule of Law", *Journal of Law, Policy and Globalization* 3:1-8.
 - 44 The facts of the case of *Beko Ransome Kuti v. AGF* (1985) NWLR (Pt.6) 211 come to mind in the discussion of the obnoxious rule of the military in Nigeria.
 - 45 Akinrinade B. 2002. "Human Rights NGO in Nigeria: Emergence, Governmental Reactions and the Future", *African Human Rights Law Journal* 2:110.

In 1999, there was a bloodless and successful transition from military rule to a democratic government. Twenty-four years after, Nigerians still grapple with the experiences of infraction of their right to human dignity. Nigeria is caught in a web due to activities of Boko Haram insurgency, herdsmen killings and banditry, among others.⁴⁶ The insurgency has resulted in death, abduction, kidnapping, torturing and sexual abuse of several thousands of innocent citizens. Millions of people are also displaced. The worry is that the government appears helpless in curbing the menace. This is a clear case of breach of the government's obligations in the social contract to protect the lives and the rights of the people.

Also, in October 2020, Nigerian youth from different parts of the country, came out *en masse* to protest police brutality.⁴⁷ Perhaps there is no demonstration in Nigeria's history where youth from all over the federating states of the country (and even abroad) ever participated and got involved as much as in the protest. The youth effectively deployed the social media resources to disseminate information and coordinate protest. The protest was tagged #EndSARS as a slogan calling for the disbanding of the Special Anti-Robbery Squad (SARS) – a unit of the Nigeria Police Force. The disclosures of abuses being perpetuated by the unit provoked the protest. Officers of the unit were alleged to have publicly harassed many young Nigerians on their dressing choices, to have mounted roadblocks and carried out unwarranted checks and arrests, to have detained people and extorted money from them and their relatives and to have raped and assaulted women, among other abuses.⁴⁸ The protest shook the country to its very foundation. A few days into the protest, the government disbanded SARS. The protest afforded Nigerians the opportunity to express their displeasure at the infraction of their human dignity by members of the state security agencies.

As at the time of this writing, Indigenous People of Biafra (IPOB), a social-political group seeking the secession of the South-East and some part of South-South regions of Nigeria are causing civil unrest in the region. The group is practically running a parallel government with the constituted authorities in the region, declaring a sit-at-home order for the residents of the region.⁴⁹ The members of the group assault, brutalise and, in some instances, kill residents who violate their orders. Relevant

46 Akinyetun TS, Ebonine VC and Ambrose IO. 2023. "Unknown Gunmen and Insecurity in Nigeria: Dancing on the Brink of State Fragility" *Security and Defence Quarterly* 42(2):16-34; Akinola O. 2015. "Boko Haram Insurgency in Nigeria: Between Islamic Fundamentalism, Politics and Poverty" *African Security* 8:1-29; Salihu HB. 2018. "The Armed-Fulani-Herdsmen and Violent Attacks Against Farmers and Farming Communities in Nigeria: An Overview", *Kampala International University* 3(3):169-184.

47 Uwazuruike AR. 2020. "#EndSARS: The Movement Against Police Brutality in Nigeria", Online at: <https://clck.uclan.ac.uk/35527/3/35527%20EndSars%20%281%29.pdf>.

48 Ojedokun UA, Ogunleye YO and Aderinto AA. 2021. "Mass Mobilization for Police Accountability: The Case of Nigeria's #EndSARS Protest", *Policing: A Journal of Policy and Practice* 15(3):1894-1903.

49 Osita FC, Anoke AF and Eze SU. 2022. "Mandatory Sit-at-home Order by the Indigenous People of Biafra (IPOB) and Economic Activities in South East, Nigeria" *International Journal of Economics, Business and Management Research* 6(7):1-12.

for the present inquiry into human dignity, IPOB has consistently criticised poor governance on the part of the federal government in terms of lack of access to basic amenities, inequitable distribution of national resources, ethnic marginalisation and discrimination, breach of human rights, among others.⁵⁰ That the failure of the government to protect the victims of IPOB activities is a breach of the state obligations to guarantee human dignity. At the moment, the activities of IPOB have significant negative impact on the economic and social life of the residents of the region.

Another common abuse of human dignity in the modern-day Nigeria is human trafficking. This is the unlawful transportation and coercion of people in order to benefit from their services in the form of forced labour or sexual exploitation. It is described as “a high profit, low risk business which allows traffickers to generally operate with impunity”.⁵¹ It is widely reported that “Nigeria remains a source, transit and destination country when it comes to human trafficking”.⁵² According to the 2023 Global Slavery Index Report, Nigeria ranked 38/160 of the countries with the highest number of slaves – 1.6 million.⁵³ National Agency for the Prohibition of Trafficking in Persons (NAPTIP) the Country’s national regulatory body, further confirmed that women who are 18 years and above are the highest number of trafficked persons in the country. Findings reveal that extreme poverty, conflict and insecurity, lack of access to economic opportunities, corruption, climate change and resulting migration and Western consumerism⁵⁴ increase the vulnerability of Nigerians to trafficking.⁵⁵ This finding resonates with the argument that restricted access or enjoyment to essential basic needs of life, such as access to job opportunities, healthcare, family life and so on, tantamount to violation of human dignity.

50 Nimfel CE and Anjide ST. 2022. “Framing, Separatist Agitation and the Nigerian State: A Study of the Indigenous People of Biafra (IPOB)”, *Socialscientia* 7(4):16-29.

51 Pathfinders Justice Initiative. 2020. “Nigeria: Human Trafficking Factsheet”. Online at: <https://pathfindersji.org/nigeria-human-trafficking-factsheet>.

52 Pathfinders Justice Initiative “Nigeria: Human Trafficking Factsheet”; U.S. State Department, 2020. “Trafficking in Persons Report” Online at: <https://www.state.gov/reports/2022-trafficking-in-persons-report>.

53 Global Slavery Index Report. 2020. “Understanding the Scale of Modern Slavery” Online at: <https://www.walkfree.org/global-slavery-index/>

54 This is an economic theory that argues that consumer spending is the most important factor driving a country’s economic development. It is argued that consumerist cultures assess their economic performance by their GDP and consumer spending successfully boosts that figure. Further, capitalist economies, like the U.S., rely on consumer spending and encourage their populations to spend above their fundamental requirements to maintain the economy’s continued growth. See Bourdeau JD. 2022. “Why Consumerism is Ingrained into Western Society”, *TheMomentum.com*.

55 Pathfinders Justice Initiative, “Nigeria: Human Trafficking Factsheet”.

Positive manifestations of human dignity in Nigeria

Now and for the sake of balance, it is apposite to point out that notwithstanding the above accounts, there are also some positive manifestations of recognition of human dignity in the three eras. A few of these positive accounts are briefly discussed below.

Pre-colonial era

During the pre-colonial era, not all the practices of the time were detestable. Many of their laws and practices promoted a public morality that guaranteed enhancement of human dignity.⁵⁶ First of all, the laws that governed the people during the era were not imposed by external actors. Their laws evolved from the customs and practices of the people themselves. Accordingly, there is a sense of inclusiveness in the development of laws. This, in itself, is respect and recognition of people's value and worth. It echoes the central idea of the historical school of jurisprudence that laws should reflect the general consciousness of the people and manifestation of their spirit.⁵⁷ Furthermore, during the pre-colonial era, besides the lesser formality and easier access to justice, traditional justice systems promoted reconciliation and maintaining harmony in dispute resolution in order to maintain respect for the dignity of the parties.⁵⁸

What might perhaps appear to be the most intriguing in pre-colonial era is respect and promotion of religious pluralism and freedom of religion. There are reliable accounts that traditional religions and communities peacefully co-existed during the era. A scholar of African religions studies, Danoye Oguntola-Laguda, for instance, notes: "It is rather difficult to determine the number of divinities and spirits recognised by the people most of who have their own priests and priestess as well as devotees. Each of these divinities have their own rules, doctrines, taboos, totems, symbols."⁵⁹ Regarding respect for freedom of religion in the pre-colonial era, the present author has observed in past writing:

Since religion can be exclusive to a family or community and several families form a kingdom, it thus indicates that religious pluralism existed in pre-colonial African societies. And indeed, there are accounts of coexistence and accommodation of religions during this era ... For example, in the Oyo Empire among the Yoruba people in Nigeria, there was coexistence of various traditional religions, such as worshippers of Ogun the god of iron, Sango the god of thunder and Yemoja the sea goddess, among others.

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- 56 Molefe M and Maraganedzha M. 2023. "African Traditional Religion and Moral Philosophy", *Religious Studies* 59:355-370.
 - 57 Kantorowicz H. 1937. "Savigny and the Historical School of Law", *Law Quarterly Review* 53(3):326-343; Rodes R. 2004. "On the Historical School of Jurisprudence", *American Journal of Jurisprudence* 49:165-184.
 - 58 United Nations Human Right. 2016. "Human Rights and Traditional Justice Systems", HR/PUB/16/2.
 - 59 Oguntola-Laguda D. 2005. *Divinities in West African Religion*. Lagos: Free Enterprise Publishers, 31.

The coexistence of religions, even if not formally called, is indicative of protection of group religious freedom as well as religious tolerance among the various religious groups.⁶⁰

Judge Daniel Nsereko of Uganda has similarly observed: “Most traditional African societies were pluralistic in the matter of religion and boasted a number of deities that were worshipped by Africans. The devotees of a given deity recognised the right of others to worship their own deities in their own way without hindrance.”⁶¹

Colonial era

With regard to the colonial era, the period provided a platform for Africans to interact with the colonialists, which ultimately enhanced international relations among countries. It further promoted convergence of ideas, which benefited the development of human dignity as enshrined in several international instruments today. Most African countries are now signatories to many of these instruments. The colonial era further paved the way for the promotion of international trade and economic development of Africans. Since economic empowerment is also associated with dignity, it is logical to argue that the improved economy ultimately increased human dignity.

Post-colonial era

What will be regarded as the greatest benefit of the post-colonial era in the promotion of human dignity is the recognition and protection of the conception in the national constitutional frameworks. The establishment of formalised court systems further affords citizens the opportunity to challenge infractions of their constitutional right to dignity. Indeed, the Nigerian judiciary has risen to the task and effectively intervened in several cases to invoke the constitutional provision against infraction to human dignity.⁶² The courts have also variously affirmed that substantial damages should be awarded in favour of a victim of abuse of human dignity.⁶³

Thus, in *Odiong v. Assistant Inspector General of Police*,⁶⁴ upon receipt of an anonymous petition alleging that the appellant stole two electric transformers, the police arrested

⁶⁰ Akinloye “The Right to Freedom of Religion and Belief: African Perspectives” 190.

⁶¹ Nsereko DD. 1986. “Religion, the State and the Law in Africa”, *Journal of Church and State* 28(2):269.

⁶² *Odiong v. Assistant Inspector General of Police* (2013) LPELR-20698(CA); *Okafor v. Lagos State Government* (Supra); *Idisi v. Aakoo* (2021) LPELR-55954; *COP Ekiti State & Ors v. Aregbesola & Ors* (2020) LPELR-50177(CA); *EFCC v. Morakinyo* (2021) LPELR-55832(CA); *NSCDC & Ors v. Ogbe* (2019) LPELR-48346 (CA); *NSCDC & Ors v. Oko* (2019) LPELR-48347 (CA); *Okonkwo v. Ezeonu & Ors* (2017) LPELR-42785 (CA); *Mogaji v. Board of Customs & Excise* (1982). 3 S.C. 552.

⁶³ *Okonkwo v. Ogbogu* (1996) 5 NWLR (Pt. 449) 420 at 435; *Odiong v. Assistant Inspector General of Police*; *Idisi v. Aako* (Supra).

⁶⁴ *Odiong v. Assistant Inspector General of Police* (2013) LPELR-20698(CA).

the appellant, tortured him and detained him for 26 days before he was charged to court. The appellant sued for the violation of his right to human dignity. The Court of Appeal held that the actions of the police constituted “degrading treatment” and violation of the appellant’s human dignity. Similarly, in *Ogunsade v. AG Lagos State*, the court held that the degrading words used by a judge against a litigant undermined the litigant’s right to human dignity. An assessment of most of the decisions that the cases that come before the courts involve unlawful arrest, torture, inhuman treatment and detention by police and other state security agencies.

CONCLUSION

Like governments on other continents, most African states have recognised the right to human dignity in their constitutional and legal frameworks. However, the recognition of a right may necessarily not translate to the fulfilment and observance of the same. It is with this in mind that this chapter has explored the Nigerian experience with regards to the state obligations in observing and promoting the right to human dignity from three eras – pre-colonial, colonial and post-colonial.

The right to human dignity forms an integral part of constitutional and legal framework of Nigeria. These legal frameworks place obligations on the state to respect, protect and fulfil the right to human dignity of all citizens – the failure of which may result in a state of anarchy. However, all Nigerians cannot be said to effectively enjoy this right. The current state of events in the country, such as the cases of police brutality, the rise in insurgency and insurrections and extra-judicial killings are examples of worsening insecurity that undermine enjoyment of human dignity. Similarly, economic and social problems like high rate of unemployment,⁶⁵ high rate of inflation,⁶⁶ human trafficking, religious conflicts, religious violence and mass migration of professionals and young Nigerians to the West for greener pastures,⁶⁷ among other factors, are pointers to the failure of the state to fulfil her contractual obligations to the citizens in this regard. Unless the Nigerian government takes proactive steps to address these breaches, the recurrence of #EndSARS and other similar undemocratic approaches, like IPOB case, will remain inevitable. There is therefore a need for the government to bear responsibility, identify existing vacuums in national governance, engage relevant institutions to address some of the problems and undertake a rigorous overhaul of government policies that will

65 Ego A. 2023. “Nigerian Unemployment Rate to Hit 41% in 2023 – KPMG”, *Punch*, 11 April.

66 Trading Economics. 2023. “Nigeria Inflation Rate”. Online at: <https://tradingeconomics.com/nigeria/inflation-cpi>. Trade Economics reported that the annual inflation rate in Nigeria accelerated for a sixth month to 22.79% in June 2023, the highest since September of 2005.

67 Liu JJ. 2023. “Japa, or To Flee or To Run: Nigerian Youth and the Urgency of Departure” *MoLab Inventory of Mobilities and Socioeconomic Changes* 1-9; Onyekwere J and Egenuka N. 2019. “Nigeria Groans as Medical Professionals’ Emigration Worsens”, *The Guardian*, 29 March.

promote human dignity. The government must be visible to be proactive in its bid to ensure the welfare and security of the citizens.

The contribution of Nigerian courts towards ensuring justice to those rights are undermined is noted and commendable. However, it is worrisome that, after a review of judicial decisions, it is glaring that most of the infractions against human dignity in Nigeria were perpetuated by state actors, particularly state security agencies, such as the Nigeria Police Force, Nigeria Security and Civil Defence Corps, Economic and Financial Crime Commission, Nigeria Customs Service, among others. Paradoxically, the citizens that the security agencies are supposed to protect are now victims of abuse in the hands of the same agencies. It behoves the Nigerian government to show concern and find answers to the questions of why there is a prevalence of infractions of human dignity by state actors and what can be done to remedy the same.

