



Intersection of Rule of Law and Human Rights in Nigeria: Unlocking Opportunities for a Democratic Future

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Abstract

The intersection of the rule of law and human rights is a critical issue in Nigeria, which has a complex history that includes periods of colonial rule, military dictatorship, and democratic transitions. The rule of law is essential for protecting human rights and promoting democracy. However, Nigeria's history of military rule has left a legacy of human rights abuses and a weak rule of law. This has led to many challenges, including corruption, impunity, and a lack of access to justice. Despite these challenges, there are opportunities for Nigeria to strengthen the rule of law and human rights through leveraging political will, implementing legal and institutional reforms, and fostering a culture of human rights. This paper examines the intersection of the rule of law and human rights in Nigeria, exploring the legal frameworks, historical evolution, and the challenges posed by the legacy of military rule. It also highlights the opportunities for building a democratic future, drawing on comparative lessons from Australia's experience in upholding the rule of law and protecting human rights.

Subject Areas

Public Policy

Keywords

Rule of Law, Human Rights, Nigeria, Democracy, Military Rule, Legal and Institutional Reforms, Human Rights Culture

1. Introduction

The rule of law and the protection of human rights are foundational elements of any democratic society. In Nigeria, these concepts have been shaped by a complex

history, including periods of colonial rule, military dictatorship, and recent democratic transitions. The intersection of the rule of law and human rights is particularly crucial as the country continues to navigate its path toward a more inclusive and just society. However, Nigeria's journey has been marked by persistent challenges, including human rights violations by duty bearers and abuses by non-state actors, as well as weak compliance with the law and/or a lack of access to justice. These issues are rooted in Nigeria's history of military rule, which undermines democratic institutions and fosters a culture of impunity. The legacy of military rule over the years continues to affect the nation, as the culture of human rights remains underdeveloped and inconsistently applied [1].

While Nigeria has made strides in establishing the rule of law and protecting human rights since the return to civilian rule in 1999, much work remains to be done. Following the transition of power in 2023, the current political climate offers a renewed opportunity to address these challenges and strengthen the rule of law and human rights in Nigeria. The new administration has signaled its intention to reform or repeal various statutes that violate civil and political rights, and there is growing debate over the justiciability of the socio-economic rights enshrined in Chapter 2 of the 1999 Constitution.

To this extent, this paper argues that there is a need, in a democratic system, always to uphold the rule of law and to mainstream human rights norms and tenets in all aspects of governance, ensuring that they become an integral part of Nigeria's political and social fabric. The paper further argues that Nigerians can learn valuable lessons from Australia's experience in upholding the rule of law and protecting human rights. Despite the geographical distance and cultural differences, both countries share common law traditions and have faced similar challenges in their democratic development. By examining Australia's best practices in areas such as legal and institutional reforms, fostering a human rights culture, and empowering civil society, Nigeria can gain insights and adapt these lessons to its own context.

Flowing from the foregoing, the paper examines the intersection of the rule of law and human rights in Nigeria, starting with clarifying key concepts and exploring the legal frameworks, historical evolution, and the challenges posed by the legacy of military rule. It also highlights the opportunities for building a democratic future by leveraging, amongst others, political will, implementing legal and institutional reforms, and fostering a culture of human rights. By drawing on Australia's experiences and adapting them to the Nigerian context, this paper aims to contribute to the ongoing efforts to strengthen the rule of law and promote human rights in Nigeria.

2. Clarification of Concepts

2.1. Rule of Law

The phrase "rule of law", which is generally believed to have been coined by Professor A. V. Dicey¹, has been subjected to diverse scholarly definitions, perspec-

¹Attorney General of Abia State (2006) Attorney General of the Federation 33 Others, SC 99/2005, SC 121/2005, SC 216/2005 CONSOLIDATED [2006] NGSC 4 (6 July 2006).

tives, or interpretations. According to A.V. Dicey, the rule of law is founded on three core concepts, namely; the supremacy of the law over arbitrariness or wide discretion by governments, equality of all persons before the law, which means that no one, regardless of status, is above the law and that the rights of individuals are established by case law and developed over centuries through judicial decisions [2].

Notwithstanding this position, some scholars view the rule of law from legal, human rights, political, philosophical, and sociological perspectives. For instance, Brian Tamanaha traced the idea back to Aristotle, who posits that “It is better for the law to rule than one of the citizens and that even the guardians of the laws are obeying the laws”. Also, Tom Bingham (Master of Rolls), while acknowledging that the expression “the rule of law” was coined by Professor A. V. Dicey, posits that it emanates from the Magna Carta of 1215 to the Universal Declaration of Human Rights. Thus, his perspective is predicated on issues such as accessibility of the law, human rights, dispute resolution, and the role of parliament [3].

Modern interpretations often include additional elements, such as accountability, due process, separation of powers, and access to justice. According to the United Nations, the rule of law is the implementation mechanism for human rights, turning them from a principle into a reality; it requires that legal processes, institutions, and substantive norms are consistent with human rights, including the core principles of equality under the law, accountability before the law, and fairness in the protection and vindication of rights. Thus, there is no rule of law within societies if human rights are not protected and vice versa; human rights cannot be protected in societies without a strong rule of law [4].

From this, we can conclude that the rule of law is strengthened by upholding human rights. Therefore, for the purpose of this paper, we can define the rule of law as a system of governance where established laws, applied fairly and consistently, create a predictable environment that protects individual rights, fosters accountability, and gives citizens and communities opportunities to make use of institutions and mechanisms to protect their fundamental rights and promote a just society.

The 1999 Constitution of Nigeria provides a framework for establishing strong institutions to ensure maximum welfare, freedom, and happiness for all citizens, grounded in social justice, equality, and the rule of law. These institutions are essential for fair redistribution of resources, equal access to opportunities, and the protection of human rights. This framework aligns with global efforts, such as those outlined in Goal 16 of the Sustainable Development Goals, which seeks to promote effective, accountable, and inclusive institutions at all levels.

Moreover, Goal 16’s indicators aim to eliminate corruption, ensure transparency, and foster participatory decision-making processes, all of which are crucial to upholding the rule of law, promoting and protecting human rights, and achieving social justice and national development.

Understanding both the historical framework and these broader elements of the

rule of law is crucial for analysing its relationship with human rights in Nigeria.

2.2. Human Rights

Human rights are rights inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. They comprise moral principles or norms that describe certain standards of human behaviour and are regularly protected as natural and legal rights in local and international law.

These rights are universal, indivisible, interrelated, and interdependent, and they include the right to life, freedom of association and assembly, dignity of the human person, food, basic health care, security, and development.

The United Nations Fact Sheet 32 [5] defines human rights as universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements, and human dignity. The full spectrum of human rights involves respect for, and protection and fulfillment of civil, cultural, economic, political, and social rights, as well as the right to development.

It is to be noted that in recent times, there has been a commonly accepted approach to classifying human rights into generations. This classification comprised three tiers of human rights, namely: first generation—civil and political rights, second generation—economic, social, and cultural rights, while the third generation comprised rights to peace, development, a safe and healthy environment, sufficient and safe food for all, as well as the use of natural resources. There is also an emerging proposition to have a fourth generation right pertaining to the rights to information technology. This classification is not provided in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, or the International Covenant on Economic, Social and Cultural Rights.

In *Uzoukwu v Ezeanu*², the Court of Appeal stated that Fundamental Rights remain in the realm of domestic law because they have been guaranteed by the fundamental law of the country, which is the Constitution, whereby each right is spelled out. The preeminence of the definition of human rights was captured by the Supreme Court of Nigeria in *Ransome Kuti & ors. v Attorney General of the Federation*³ where the Apex Court emphasized that the idea behind the concept of Fundamental Rights derives from “the premise of the inalienable rights of man; life, liberty and the pursuit of happiness”. Thus, in Nigeria, human rights are protected and guaranteed under Chapters 2 and 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as Economic, Social and Cultural Rights and Civil and Political Rights, respectively.

These rights are also contained in several international and regional human rights treaties to which Nigeria is a party. Some of these treaties include the Uni-

²*Uzoukwu v Ezeanu* (1991) 6 NWLR (PT 200) 708 at 761.

³*Ransome Kuti & Ors. v Attorney General of the Federation* [1985] 8 NWLR (pt. 6) 211.

versal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on the Elimination of all Forms of Racial Discrimination (CERD), and the African Charter on Human and Peoples' Rights ("the Banjul Charter") [6].

These instruments place an obligation on Member States to ensure the protection and enforcement of human rights and enjoin them to adopt appropriate measures, including legislative, judicial, and administrative measures, in order to fulfill their obligations. In so doing, Member States are able to guarantee the fundamental freedoms of the citizenry.

It is instructive that the 2009 Fundamental Rights (Enforcement) Procedure Rules ("the FREP Rules") recognize these international and regional human rights instruments. It states that the overriding principles of the Rules are for the purpose of advancing but never restricting an applicant's rights and freedoms. Thus, the Court shall respect municipal, regional, and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents. Accordingly, the FREP Rules state that any person who alleges that any of the Fundamental Rights provided for in the Constitution or the Banjul Charter and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress.

3. The Evolution of the Rule of Law and Human Rights in Nigeria

Nigeria's journey towards a society governed by the rule of law and respect for human rights has been a complex and often tumultuous one. From pre-colonial times, when traditional legal systems governed local communities, to the imposition of British colonial law, and through the many challenges of military rule, Nigeria's legal and human rights landscape has undergone significant transformation.

Before British colonization, various ethnic groups in Nigeria had their own systems of law and governance, often based on customs and traditions [7]. These systems were effective in resolving disputes within communities, emphasizing reconciliation and social harmony. However, with the arrival of the British, these traditional legal systems were largely supplanted by English common law, which introduced a more formalized and centralized legal structure [8]. This marked the beginning of a new legal order in Nigeria, one that would later evolve into the current system of law under the 1999 Constitution.

The British colonial period laid the foundation for the rule of law in Nigeria, but it also sowed seeds of discontent by disregarding local customs and imposing foreign legal principles. The post-independence period saw these tensions come to the fore, particularly during the era of military rule, which severely undermined the rule of law and human rights.

Military regimes in Nigeria, which ruled the country for a significant portion of its post-independence history, were notorious for their blatant disregard for human rights and the rule of law. These regimes often suspended the Constitution, removing the jurisdiction of the courts to challenge acts done under military decrees. For example, decrees frequently included retroactive provisions, legislative judgments, and the prohibition of judicial appeals. Such actions exemplified the erosion of legal safeguards and the suppression of fundamental rights. The regime of General Sani Abacha, in particular, was marked by widespread human rights abuses, including the arbitrary detention of political opponents and the repression of the press [9].

One of the first points of assault on human rights by military regimes was the argument of cultural relativism, where governments sought to justify their violations by claiming they were indigenizing human rights to fit local contexts. This paternalistic approach often suggested that, in line with African traditions, citizens should show unquestioning respect for authority, thereby suppressing dissent and opposition [10]. This strategy was repeatedly employed to legitimize oppressive actions, further entrenching authoritarian rule.

The Willink Commission, established in 1957 to address concerns of ethnic minorities in the lead-up to Nigeria's independence, played a crucial role in the evolution of human rights in the country. The Commission's report recommended the creation of special safeguards for minority groups, including the establishment of the Niger Delta Development Board to address the economic and social needs of the region. These recommendations were significant as they laid the groundwork for the protection of minority rights within the broader framework of human rights in Nigeria [11].

However, the military regimes that followed independence often ignored such recommendations. Instead, they perpetuated a culture of impunity, where the rule of law was subordinated to the whims of the ruling elite. Corruption became rampant, with the legal system being manipulated to serve the interests of those in power. A notorious example of this was the unilateral revocation of the Metroline contract by the military administration in 1984, which led to Lagos State accruing \$200 million in debt due to damages awarded by arbitrators [9]. This action, driven by the personal interests of public officers, exemplified the instability and unpredictability of the legal environment under military rule, deterring both local and international investment [9].

The absence of a functioning legislature and the erosion of judicial independence during military rule further compounded the challenges to the rule of law. Judicial decisions against the State were often disregarded, with court orders routinely disobeyed by the government. This created an environment where civil and political rights were systematically suppressed, paving the way for widespread corruption and the abuse of power. The Public Officers Protection Against False Accusation Decree No. 4 of 1984, for instance, prohibited the publication of truthful statements about public officers if such statements could bring the government or

the officer into disrepute. This decree was used to silence the press and stifle dissent, illustrating the extent to which the rule of law was compromised during this period [12].

Despite these challenges, Nigeria's return to civilian rule in 1999 marked a turning point in the promotion of the rule of law and human rights in governance⁴. The adoption of the 1999 Constitution re-established the supremacy of the law and provided a framework for the protection of human rights and the fundamental objectives and directive principles of state policy contained in Chapters IV and II, respectively, of the 1999 Constitution of the Federal Republic of Nigeria⁵. However, the legacy of military rule continues to affect the rule of law and human rights in Nigeria. Corruption, weak institutions, and the occasional disregard for judicial authority remain persistent challenges. In addition, the Constitution's non-justiciable nature of socio-economic rights has hindered their enforcement, creating a significant gap in human rights protection and undermining the harmonious integration of the rule of law and human rights by virtue of the exclusion of its provisions from the exercise of judicial powers. This is contained in Section 6(6)(c) of the 1999 Constitution⁵ which provides that:

“The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.”

Notwithstanding this limitation, there are concrete legal strategies through which the enforcement of Chapter II rights may be pursued. Significantly, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004, which domesticates the Banjul Charter, protects socio-economic rights, including the right to education (Article 17), the right to health (Article 16), and the right to property (Article 14), as justiciable rights under Nigerian law. In *Abacha v Fawehinmi* [13], the Supreme Court affirmed that the African Charter, having been domesticated, possesses the force of law in Nigeria and can be enforced by Nigerian courts. Accordingly, litigants may rely on the domesticated African Charter to circumvent the non-justiciability clause in Section 6(6)(c), thereby providing an enforceable legal pathway for the vindication of socio-economic rights. Furthermore, the Fundamental Rights (Enforcement Procedure) Rules 2009, which direct courts to respect regional and international human rights instruments, reinforce this approach. Strategic public interest litigation leveraging these instruments could progressively expand the scope of enforceable socio-economic rights in Nigeria.

In contemporary Nigeria, the rule of law and human rights continue to evolve,

⁴Chapter II of the Nigerian Constitution Addresses Economic, Social, and Cultural Rights, while Chapter 4, Which Is Declared Justiciable, Pertains to Civil and Political Rights.

⁵*Abacha v Fawehinmi* [2000] 6 NWLR (pt. 660) 228.

shaped by the challenges of governance, security, and social justice. While Nigeria has made significant strides in establishing the rule of law and protecting human rights, the journey is far from complete. The influence of military rule, with its attendant human rights abuses and disregard for the law, has left deep scars on the nation's legal landscape. As Nigeria continues to grapple with these challenges, the lessons of the past must inform efforts to build a more just and equitable society where the rule of law is upheld and human rights are fully protected.

4. Opportunities for a Democratic Future

As Nigeria continues to navigate its democratic journey, the intersection of the rule of law and human rights presents a unique opportunity to shape a more inclusive, just, and democratic society. This intersection is not just a cornerstone of democratic governance but also a critical pathway to sustainable development and societal progress. To achieve this, it is essential to leverage political will, implement inclusive legal and institutional reforms, build a robust human rights culture, and empower civil society. These efforts must be rooted in a critical examination of current democratic processes, the role of institutions, and the engagement of the citizenry.

4.1. Leveraging Political Will for Good Governance

Political will is a crucial driver for democratic advancement and a key actor in good governance⁶. However, the effectiveness of political leadership in Nigeria is often hindered by a lack of genuine commitment to the principles of democracy and the rule of law. Genuine commitment requires more than rhetoric; it demands consistent actions that uphold democratic values, as well as transparency, accountability, and responsiveness to the needs of the people. For instance, the Nigerian extant Constitution under Section 14(2)(b) emphasizes the welfare and security of the people as primary objectives of governance. Yet, these objectives are frequently undermined by policies and actions that do not prioritize the human condition. Despite the constitutional guarantee that sovereignty belongs to the people under Section 14(2)(a), the current political landscape often reflects a disconnect between the government and the citizens. In the case of *Ladoja v. INEC* [14], the Supreme Court reiterated the importance of adherence to constitutional provisions, highlighting the need for political leadership that is truly accountable to the people by observing the rule of law and fundamental human rights.

4.2. Rethinking the Electoral Process in Nigeria

The overall quality of democracy can be affected by the engagement and capabilities of individuals within the system [15]. Unfortunately, the fluidity of political entry into public office in Nigeria often results in the elevation of individuals who lack a deep understanding of the theory of jurisprudence. In other words, some

⁶Ladoja v INEC (2007) CLR 7(k) (SC).

lawmakers lack an adequate understanding of the implications of disregarding the ideas of the rule of law and mainstreaming human rights principles in laws being enacted by Parliament. This has led to wrong legal transplants—adopting laws from other jurisdictions without considering Nigeria’s unique social, cultural, and historical contexts. Law should be viewed as a system of social engineering, evolving with society and reflecting its values. Democratic governance must be inclusive and participatory, ensuring that the voices of all stakeholders, including marginalized groups, are heard and considered. A critical aspect of democratic governance is the need to enact laws that transcend ethnic and tribal sentiments, promoting unity and national cohesion. Institutions in a democratic setting, including rules, norms, processes, and systems, must be strengthened to resist the infiltration of ethnic bigotry and ensure that laws serve the collective good. Hence, there is a need for continuous electoral reform through the law to checkmate some unscrupulous individuals with vested personal interests who may want to continue to capture legislative power and governance for their selfish interests or personal aggrandizement.

4.3. Building a Human Rights Culture

A sustainable democratic future requires a culture where the rule of law is upheld, and human rights are not only respected but also deeply ingrained in the everyday lives of citizens [14]. To cultivate such a culture, it is imperative to foster enhanced public awareness and education on human rights, beginning at the grassroots level. A fundamental condition for widespread participation in a good democracy is the broad dissemination of basic education and literacy, along with a comprehensive understanding of government and public affairs [16]. As demonstrated by the recent nationwide protest aimed at drawing the government’s attention to the all-pervasive economic hardship in the country [17], the interconnectedness of socio-economic and civil-political rights is undeniable. The non-justiciability of socio-economic rights can undermine the effective protection of other human rights, emphasizing the need for a more holistic approach to human rights enforcement in Nigeria.

4.4. Participation in Governance

A good political culture should value participation and recognize the equal worth and dignity of all citizens, which includes tolerating political and social differences. This cultural foundation is essential for ensuring that all individuals can effectively exercise their rights and engage in the democratic process. The media plays a significant role in this regard, serving as a platform for disseminating information and promoting dialogue on human rights issues. The recent withdrawal of the controversial Counter Subversion Bill 2024, sponsored by the Speaker of the House of Representatives, Tajudeen Abbas, which, amongst other things, sought to legislate patriotism [18], underscored the need for inclusion and a more organic approach to nation-building. Patriotism cannot be legislated; it is earned

through a just and equitable society where citizens feel valued and protected.

4.5. Strengthening the Judiciary

Strengthening the judiciary and enhancing law enforcement accountability are fundamental to upholding the rule of law. The judiciary must be independent, impartial, and equipped to deliver justice without fear or favor. Law enforcement agencies must be held accountable for their actions, ensuring that they operate within the bounds of the law. This includes addressing issues such as police brutality, unlawful detentions, and other forms of abuse of power that erode public trust in the legal system. Community policing is an important strategy in this regard, as it builds trust between law enforcement and the public, fostering cooperation and mutual respect.

4.6. Promoting Access to Justice

Access to justice is a critical component of a functioning democracy. This involves ensuring that all citizens, regardless of their socio-economic status, have the means to seek redress through the legal system. Legal aid services, pro bono initiatives, and the simplification of legal procedures are essential measures that can help bridge the gap between the law and the people it is meant to serve. Technology also plays a crucial role in improving access to justice, with innovations such as online dispute resolution platforms and legal information portals making legal services more accessible and efficient [19].

4.7. Empowering Civil Society

Civil Society Organizations (CSOs) also present an opportunity for a democratic future as they play a pivotal role in the democratic process. They are considered the watchdogs of democracy, playing an essential role in holding the government accountable and advocating for the rights of the people [20]. In Nigeria, CSOs must be empowered to challenge unjust laws and policies and to participate actively in the legislative process. This includes providing them with the resources, legal protections, and platforms necessary to amplify their voices and influence public policy effectively. Supporting the development of grassroots organisations and community-based initiatives is equally important, as these groups often have the most direct impact on the lives of ordinary citizens.

Moreover, the grave consequences of official corruption for rights and economic development call for new thinking, especially from civil society. The strategy should be premised on widening the human rights advocacy mandate by properly situating corruption as a violation of the socio-economic rights of the people⁷. This may open new opportunities for fighting corruption and possibly improve the practical likelihood of realizing socio-economic rights.

⁷Cybercrimes (Prohibition, Prevention, etc.) Act 2015 (Nigeria) (as Amended 2024); Nigeria Data Protection Act 2023.

4.8. Protecting Digital Rights

In the digital age, social media has become a powerful tool for advocacy, mobilization, and the dissemination of information [21]. However, it also presents challenges, including the spread of misinformation, hate speech, and cyberbullying. The law must evolve to address these challenges, ensuring that the rule of law is upheld in the digital space. Regulating social media while protecting freedom of expression is a delicate balance that requires thoughtful legislation and robust enforcement mechanisms. Moreover, it is essential to recognize digital rights as fundamental human rights, ensuring that all citizens can participate in the digital economy and society.

In Nigeria, the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 (as amended in 2024) represents the primary legislative framework governing digital conduct⁸. While the Act addresses legitimate concerns such as cyberstalking, identity theft, and cyber terrorism, certain provisions have raised concerns regarding their potential impact on freedom of expression and digital rights. In particular, Section 24 of the Act, which criminalizes the sending of messages that are “grossly offensive, pornographic or of an indecent, obscene or menacing character,” has been criticized for its broad and ambiguous language, which may be susceptible to abuse as a tool for suppressing legitimate online expression and dissent. Similarly, the Nigeria Data Protection Act 2023 (NDPA), while establishing important data protection standards, must be implemented in a manner that balances the protection of personal data with the right to access information and the freedoms of expression and the press. Strengthening digital rights in Nigeria, therefore, requires a careful review of existing legislation to ensure that regulatory measures do not inadvertently curtail the very freedoms they ought to protect.

5. Lessons from Australia and Applicability to Nigeria

While Nigeria and Australia are geographically distant and have distinct cultural and historical backgrounds, they share some similarities that make Australia’s experience relevant to Nigeria. Both countries are former British colonies with common law legal systems⁸. They are also both diverse societies with a history of colonialism and its attendant challenges, such as ethnic and religious tensions.

The choice of Australia as a comparator in this paper is deliberate and grounded in several considerations. First, both countries share a common law heritage derived from British colonial rule, which means their legal systems, judicial reasoning, and institutional structures share foundational similarities. Second, both nations are federations that must navigate the complexities of multi-level governance, including the distribution of powers between federal and state authorities. Third, Australia’s democratic journey—including its treatment of indigenous peoples, evolving human rights jurisprudence, and institutional reforms—provides a useful reference point for a developing democracy like Nigeria. It is acknowledged,

⁸Independent Commission Against Corruption (2024) About ICAC.
<https://www.icac.nsw.gov.au/about-the-nsw-icac/overview/the-role-of-the-icac>

however, that significant differences exist between the two countries in terms of economic development, population size, ethnic and religious diversity, and institutional capacity. Australia is a developed nation with a relatively homogenous population and a stable democratic system, whereas Nigeria is a developing country of over 200 million people with over 250 ethnic groups and a history of political instability. These differences necessarily limit the direct transplantation of Australian legal models. Nevertheless, the comparative exercise remains valuable not as a prescription for wholesale adoption, but as a source of institutional inspiration and adapted best practices that can be contextualized within Nigeria's unique socio-political realities.

5.1. Anti-Corruption and Institutional Oversight

Australia's experience in establishing independent oversight bodies to combat corruption and promote police accountability provides valuable insights for Nigeria⁹. The establishment of the Independent Commission Against Corruption (ICAC) in New South Wales, with its broad powers to investigate and expose corruption, has been instrumental in fostering transparency and accountability in public administration¹⁰. Similarly, the establishment of the Law Enforcement Conduct Commission (LECC) in New South Wales provides an independent mechanism for oversight of police conduct, helping to build public trust and ensure that law enforcement agencies operate within the bounds of the law¹¹. These examples demonstrate the importance of strong, independent institutions. Going by Nigeria's military past, promoting accountability by law enforcement would be crucial in fostering a culture of respect for human rights and strengthening the public's trust in law enforcement agencies¹². Nigeria has taken steps in this direction with the establishment of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Police Service Commission (PSC) [22]. The establishment of the National Human Rights Commission, mandated to promote, protect, and enforce human rights in the country, is also another crucial step Nigeria has taken [23]. However, there have been outcries of human rights violations by way of police brutality and acts of impunity¹³ resulting in the #EndSars protests¹⁴ in 2020. However, these institutions face challenges in terms of their independence, capacity, and resources. Learning from Australia's experience, Nigeria could further strengthen these institutions by enhancing their inde-

⁹Independent Commission against Corruption Act 1988 (NSW).

¹⁰Law Enforcement Conduct Commission Act 2016 (NSW).

¹¹National Human Rights Commission Act 2010 (Nigeria).

¹²Independent Corrupt Practices and Other Related Offences Commission Act 2000 (Nigeria); Police Service Commission Act 2001 (Nigeria).

¹³The Federal Government of Nigeria Directed the National Human Rights Commission to Set up the Presidential Panel on the Reform of the Special Anti-Robbery Squad (SARS) of the Nigerian Police Force. See National Human Rights Commission Report (2018-2019).

¹⁴Section 33 of the 1999 Constitution of the Federal Republic of Nigeria; Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004; Penal Code Act, Cap P3, Laws of the Federation of Nigeria 2004.

pendence, providing them with adequate resources, and broadening their mandates to include robust oversight mechanisms.

5.2. Capital Punishment

The death penalty is a controversial topic in Nigeria, which retains capital punishment for certain offenses [24]. However, Australia's abolition of the death penalty for all crimes serves as a valuable lesson in upholding human rights and promoting good governance [25]. Australia's abolition aligns with the growing international trend towards recognizing the death penalty as a violation of the right to life and a form of cruel, inhuman, and degrading punishment [26]. Amnesty International reported that Nigeria had a record of over 240 death sentences in 2023, the highest in sub-Saharan Africa [27]. The Nigerian Correctional Service currently reports over three thousand (3,000) inmates on death row across custodial centres [28]. Even though no executions have been carried out since 2016, the continued sentencing raises concerns about Nigeria's commitment to human rights and the rule of law [28].

A critical dimension of the death penalty discourse in Nigeria that warrants attention is the jurisdictional split between federal and state powers regarding the signing of execution warrants. Under Nigerian law, the power to sign execution warrants is vested in the state governors, not the federal government. This means that even where courts impose death sentences under federal legislation such as the Criminal Code Act or the Penal Code Act, the actual execution of such sentences depends on the consent and action of the governor of the relevant state. In practice, this has resulted in significant variation across the federation, with some governors showing a clear reluctance to sign execution warrants—effectively imposing *de facto* moratoria—while others have historically been more willing to do so. This jurisdictional fragmentation complicates any national policy on the abolition or retention of the death penalty and highlights the need for coordinated advocacy at both state and federal levels. Any meaningful reform must therefore engage with this federal structure and recognize that the pathway to abolition in Nigeria requires state-level as well as national legislative action.

The continued use of the death penalty poses several challenges for Nigeria, including a potential for miscarriage of justice, discrimination and inequality, and a negative impact on prison conditions¹⁵. The death penalty is irreversible, and there is always a risk of executing innocent people, especially in countries with weak judicial systems. Also, the death penalty is often applied disproportionately to marginalized groups, including the poor and those without access to adequate legal representation. Additionally, the presence of death row inmates puts a strain on prison resources and can contribute to overcrowding and other human rights concerns within prisons.

By abolishing the death penalty, Nigeria would not only learn lessons from Australia but also align itself with international human rights standards and further

¹⁵https://www.icnl.org/wp-content/uploads/Nigeria_marriageact.pdf

demonstrate a commitment to upholding the right to life and promoting a more just and humane society. This would further strengthen Nigeria's rule of law credentials and enhance its image on the global stage.

5.3. Protection of Marginalised and Criminalised Populations

Finally, Australia's commitment to protecting the rights of individuals whose personal identities or conduct are criminalised or stigmatised under domestic law stands in contrast to Nigeria's approach. Australia has enacted comprehensive anti-discrimination laws that protect individuals from discrimination on the basis of personal characteristics, including in areas of employment, housing and public services¹⁶. In contrast, Nigeria retains legislation that criminalises certain forms of personal association and imposes harsh penalties on individuals involved in such relationships [29]. This legislative framework not only restricts the fundamental rights of affected individuals but also contributes to a climate of fear, social exclusion and discrimination [30].

It is important, however, to acknowledge the significant cultural and religious context that shapes public attitudes toward these issues in Nigeria. The country's deeply conservative social fabric, informed by both Christian and Islamic traditions, means that there is widespread public opposition to legislative reform in this area. The relevant legislation enjoyed broad popular support at the time of its enactment, and many religious and traditional leaders continue to advocate strongly against any change. This cultural context presents a formidable obstacle to reform and distinguishes Nigeria's situation markedly from Australia's, where decades of social advocacy, shifting public attitudes, and evolving jurisprudence preceded significant legislative changes in 2017. Any pathway toward reform in Nigeria must therefore take account of these deeply held beliefs and adopt a gradualist, dialogue-based approach that engages religious leaders, traditional institutions, and communities. Immediate legislative repeal, while desirable from a human rights perspective, may prove counterproductive without the necessary groundwork of public education, sustained civil society advocacy, and incremental attitudinal change. The experience of other African nations that have initiated such dialogues, even where legal reform remains elusive, offers useful models for Nigeria.

By reviewing discriminatory legislation and actively promoting tolerance and the equal protection of all citizens, Nigeria can take a significant step towards upholding human rights and strengthening the rule of law [28]. This would align Nigeria with international human rights standards and demonstrate a commitment to creating a more inclusive and just society for all its citizens.

By adopting the lessons highlighted above from Australia and other successful democracies, Nigeria can refine its democratic processes, strengthen its institutions, and create a more inclusive and equitable society. As the nation continues to evolve, it is imperative to ensure that the rule of law and human rights remain

¹⁶Marriage Act 1961 (Cth) (as Amended); Sex Discrimination Act 1984 (Cth).

at the heart of transformation, guiding the way towards a more just, equitable, and prosperous future.

6. Conclusions

The intersection of the rule of law and human rights is a cornerstone of a democratic society. In Nigeria, the legacy of military rule has left a deep imprint on the nation's legal and human rights landscape. However, the current political climate presents a unique opportunity to address these challenges and build a more inclusive and just future.

Leveraging political will, implementing comprehensive legal and institutional reforms, fostering a human rights culture, and empowering civil society are essential for achieving a sustainable democracy. By prioritizing these principles, Nigeria can create a society where the rights of all citizens are protected, justice prevails, and democracy flourishes. A democratic Nigeria, grounded in the rule of law and human rights, will not only benefit its citizens but also contribute to regional stability and global development. By embracing these principles, Nigeria can be an example for other countries striving for democratic progress.

In conclusion, the rule of law and human rights are inextricably linked to Nigeria's pursuit of a democratic future. By prioritizing these principles and taking decisive action, Nigeria can create a society where the rights of all citizens are protected, justice prevails, and democracy flourishes.

Conflicts of Interest

The authors declare no conflicts of interest.

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