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Appraising Respect for Human Rights, an Exercise in Fulfillment and Despair Depending on the Choices and Climes.

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Abstract

Human rights have become a globally recognized and jealously protected standard of human relations. Nevertheless, the actual extent of respect for human rights has remained a subject of controversy. The aim of this paper was to appraise respect for human rights in the context of it being an exercise in fulfillment or despair depending on the choices and climes. The doctrinal method of research was adopted using the case studies of Nigeria and South Africa. The research found that both States have strong constitutional commitments to human rights with binding obligations to respect the said human rights. Furthermore, in both States, while there is evidence to support a culture of respect for human rights, there are equally several cases of violations of human rights. The researcher therefore argued that appraising respect for human rights will be an exercise in fulfillment where the choice is to focus on cases of respect of the rights. Conversely, it will be an exercise in despair where the choice is a focus on the cases of violations of the rights. However, the paper concluded that because critical appraisal must necessarily cover both cases of respect and cases of abuse of human rights, appraising respect for human rights will therefore be an exercise of fulfillment and despair simultaneously irrespective of the clime since all climes have cases of respect for the rights and cases of abuse.

1. Introduction

The naturalist law theory insists on the existence of rights which occur in nature and inhere in all members of the human family.[52]The rights form the basis of civilised human existence, justice, rule of law as well as protect individuals against arbitrary exercise of power by arms of government.[53]Human rights are not the creation of political authority although the State maintains the crucial substantive, institutional and procedural frameworks for the protection of the rights.[54]Human rights have become a universally accepted humanistic standard at least in principle. At the international level, the Universal Declaration of Human Rights 1948 forms the basic rights framework. At the African level, the African Charter on Human and Peoples' Rights 1981 constitutes the regional framework of rights. Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 restates human rights which are considered fundamental in Nigeria.

While the above represents widespread legislative recognition of human rights, there seems to be a wide gap between the flowery language of statutory recognition of the rights and actual respect for the rights. Yet, it is in the respect for the rights that the society is able to take full benefit of the rights. It becomes therefore necessary to appraise the extent of respect for human rights. More

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[52] E Jonathan, *Legal Method Plus* (TBNET House Ltd 2008) 36.
[53] L W Sumner, *Moral Foundations of Rights* (Clarendon Press 1987) 1.
[54] J Tasioulas, 'The Moral Reality of Human Rights' in P T W Menko (ed), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford University Press 2007) 75

particular, this particular focuses on two possible outcomes of such appraisal: fulfillment and despair. The paper demonstrates how each outcome is directly derivable and dependent on choices and climes.

2. Conceptual Clarification

2.1 Right

For the purpose of this paper, a right may be defined as an enforceable entitlement under the law as distinct from privilege. Such entitlement may be social, economic or political. What matters however is that it can be enforced under the legal system.[55] In this regard, right is the totality of interests, immunities or powers which a person has a legal claim to.[56] The right is secured through binding duties on the State or other persons to do or refrain from doing particular actions with regards to the right holder.[57]

2.2 Human Right

Human right is a naturally occurring entitlement which vests in all members of the human family.[58] The entitlements, interests or powers are considered fundamental to maintaining a human existence. Thus, every human is entitled to them by the reason of their humanity.[59] Human right is a normative framework of standards of treatments which human are entitled to enjoy without discrimination.[60] In *Uzoukwu II v Ezeonu II*,[10]the Court explained 'they are rights which every civilized society must accept as belonging to each person as a human being.'[11]

2.3 Respect for Human Rights

Respect for human rights incorporates the totality of attitudes, institutions and procedures which guarantee the enjoyment of human rights. It is both the public and private disposition and actions consciously committed to upholding human rights by ensuring that those rights are not violated. It also includes the obligation that in the enjoyment of human rights, the rights holder does not infringe on the rights of others.[61]

3. Fulfillment or Despair in Appraising Respect for Human Rights: A Function of Choices and Climes

In the appraisal of respect for human rights, it is important to refer to specific examples from different climes. In this regard, this section appraises respect for human rights in Nigeria and South

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[55] C Nwagbara, 'The Concept of Rights – To Be or Not to Be?' (2015) 3(3) *International Journal of Business & Law Research* 66.

[56] F Kamm, 'Rights' in J Coleman and S Scott Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford University Press 2002) 476-513.

[57] C C Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers 2011) 400.

[58] B Tierney, 'Origins of Natural Rights Language: Texts and Contexts, 1150-1250' [1989] (1) *History of Political Thought* 615.

[59] J M Coicaud, M Doyle and A Marie (eds), The Globalization of Human Rights (United Nations University Press 2003) 25.

[60] S P Marks, *Human Rights: A Brief Introduction* (Harvard University 2016)

1. [10] (1991) 6 NWLR (Pt. 200) 708 [11] Underline supplied for emphasis.

[61] R Mares, 'A Gap in the Corporate Responsibility to Respect Human Rights' [2010] (36)(3) *Monash University Law Review* 33, 33-36.

Africa. The findings of the appraisal are then used to analyze how appraisal of human rights is an exercise in fulfillment and despair depending on the choice and clime.

3.1 The Case of Nigeria

3.1.1 Human Rights in Nigeria

Nigeria has a strong constitutional commitment to human rights. This is by virtue of Chapter IV of the Constitution of the Federal Republic of Nigeria 1990 which provides for fundamental human rights. In *Ransome-Kuti v Attorney General of the Federation*,[62] the Supreme Court stated that human rights which have received constitutional flavour as 'fundamental rights, stand above ordinary laws of the land and are in fact antecedent to political society itself. This underscores the fundamentality of the rights. By implication, 'ordinary laws' such as Acts of the National Assembly or Laws of a State cannot operate to extinguish or diminish fundamental rights except as provided in the Constitution.

Human rights under the Nigerian Constitution include the right to life, dignity, personal liberty, fair hearing, private and family life, freedom of expression, freedom of association and freedom of movement.[63]The human rights contained in the Constitution are complemented by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983. By the Act, the provisions of the African Charter on Human and Peoples' Rights 1981 have acquired the full force of law as an Act of the National Assembly pursuant to section 12 of the Constitution. Thus in *Fawehinmi v Abacha*,[64]the Charter was given full effect and force of law. This constitutional flavour to human rights provides a fulfilling experience in the appraisal of human rights.

3.1.2 Duty to Respect Human Rights in Nigeria

A positive duty to respect human rights is most fundamental legal strategy to guarantee and protect human rights.[65]It needs to be pointed out that Nigeria operates a presidential system wherein executive powers are vested in the president as Head of State, Head of Government and Commander-in-Chief of the Armed Forces of Nigeria.[66] Accordingly, the executive powers of Nigeria which are vested in the President extend to the execution and maintenance of the Constitution.[18] The president therefore has the primary duty to execute and maintain respect for human rights as contained in the Constitution.

Section 24(c) of the Constitution imposes a duty on all citizens of Nigeria to respect the dignity, rights and interests of other citizens and live in unity, harmony and in the spirit of common brotherhood. Similarly, article 27(2) of the African Charter on Human and Peoples' Rights 1981 provides that the rights and freedoms of each individual shall be exercised with due regard to the

[62] (1985) 2 NWLR (Pt 6) 211.
[63] Constitution of the Federal Republic of Nigeria 1990, ss 33-41.
[64] (1996) 9 NWLR (Pt. 475) 710
[65] R Mares, '"Respect" Human Rights: Concept and Governance' in R C Bird and Others (eds), *Business and Human Rights: Bridging the Gap* (Elgar Publishing Ltd 2014) 3-48.
[66] CFRN (n 14), s 130. [18]*Ibid*,
s 5(1)(b).

rights of others, collective security, morality and common interest. All Nigerians therefore have the duty to respect human rights.

In seeking to entrench the culture of respect for human rights in Nigeria, section 46 of the Constitution provides further that 'any person who alleges that any of his fundamental rights has been, is being or likely to be contravened in any State of Nigeria may apply to a High Court in that State for redress. The mere apprehension of likely violation is sufficient cause of action.[67]the Court in *Peter Nemi v AG of Lagos State & Ano,*[68]stated the obligation to respect human rights thus: *We must move with the rest of the human race in the implementation of those rights. While the Executive may take steps to examine or set in motion ways of improving human rights situations, the Judiciary should actively show its impetuous readiness to complement or indeed surpass the efforts of the Executive by an inspiring judicial approach to, or definition and recognition of, circumstances of human rights where appropriate and feasible.*

Nigeria therefore has a strong commitment to the respect for human rights which is a fulfilling finding in the appraisal of human rights.

3.1.3 Appraisal of the Respect for Human Rights in Nigeria

Beyond the constitutional commitments to human rights, Nigeria has taken several steps to entrench respect for human rights including the establishment of the National Human Rights Commissions by the National Human Rights Commission Act, 1995 (as amended). The commission serves as an extra judicial mechanism which safeguards the human rights of the Nigerian population.[69] It is an establishment geared towards the creation of an environment for human rights. It also provides avenues for enlightenment, research and dialogue in order to create awareness on human rights issues.[70]

Nnamani,[71] submits that 'through a consultative and collaborative process the Commission has developed a National Action Plan for the promotion and protection of human rights in Nigeria. The National Action Plan includes effective complaint mechanism, regular hosting of enlightenment seminars, workshops, rallies and continuous reengineering of its strategies. It is expected to be a benchmark on which Nigeria's human rights records can be judged.[72]

Furthermore, the Nigeria judiciary continues to act as the watchdog of human rights and has demonstrated commendable judicial activism in enhancing respect for human rights. [73] For

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[67] E A Taiwo, 'Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for More Liberal Provision' [2009] (9) *African Human Rights Law Journal* 546.

[68] (1996) 6 NWLR 42 at 58

[69] National Human Rights Commission Act, 1995 (as amended), s 5.

[70] N S Amalu and A M Odusola, 'The Role of the National Human Rights Commission (NHRC) in Post Conflict Situations in Nigeria' [2019] (8)(1) *International Journal of Arts and Humanities* 132, 134.

[71] S O Nnamani, 'Institutional Mechanisms for Human Rights Protection in Nigeria: An appraisal' [2011] (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 128.

[72] *Ibid*.

[73] F O Abimbola and O C Benson. 'Violation of Fundamental Human Rights By Government And Its Agencies In Nigeria: How Effective Is Judicial Intervention?'

instance, in *Joanh Gbemre v SPDC (Nigeria) Limited*, [74] the Court upheld a right to clean environment as inherent in the right to dignity.

In addition, in *Agbaje v COP*,[75] where the accused person was detained for about 10 days and was not informed of the reasons for his arrest, the Court held that his arrest was illegal and a violation of right to personal liberty. Similarly, in the case of *Saidu V State*,[76]the Court stated that Nigerians 'are entitled to walk about in our streets and tread the Nigerian soil and breathe the Nigerian air as innocent men and women'. [77] In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,[30] the Court upheld a right to privacy, freedom of thought, conscience and religion. The above factual instances of respect for human rights are a fulfilling reassurance of respect for human rights.

The above notwithstanding, there are serious concerns of violations and lack of respect for human rights. Ofoegbu,[78] contends that respect for human rights by the Nigerian government exists only in principle and not in practice. In his opinion, the most significant human rights problems in Nigeria are extra-judicial killings and use of excessive force by security forces, impunity for abuses by security forces, arbitrary arrests, prolonged pre-trial detention, judicial corruption, executive lawlessness and influence on the judicial system.[32] This paper submits that abuse of human rights by security agencies is given impetus by judicial attitude that seems to favour executive highhandedness. Example is the case of *Dokubo-Asari v FRN*,[79]where the Supreme Court stated as follows:

> *Where national security is threatened or there is the real likelihood of it being threatened, human rights or the individual rights of those responsible take second place, human rights or individual rights must be suspended until the national security can be protected or well taken care of.*

This is a judicial blessing to abuse of human rights under the camouflage of national security.

Other concerns which have been highlighted is the adoption of Sharia law by some States in the northern part of Nigeria such as Bauchi, Borno, Gombe, Kaduna, Kastina, Kabbi, Jigawa, Niger, Sokoto, yobe, and zamfara. This encourages the persecution of non-Muslims on several issues such as consumption of alcohol and consensual sexual relations outside the circumference of marriage. Mamman,[80] notes that with rising index of multi-dimensional poverty in Nigeria, respect for human rights cannot be attained. Poverty exposes people to different forms of degrading treatments and strips them of the economic capacity to enforce their rights where they are violated.

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[74] Suit No. FHC/B/CS/53/05 unreported, judgement delivered on November 14, 2005
[75] [1969] 1 NMLR 137
[76] (1982) SC 41
[77] Underline supplied for emphasis
[30] (2001) 10 WRN 1 SC, 41.
[78] J U Ofoegbu, 'The Place Of Human Rights In Nigeria's Democracy' [2013] (10)(4) *Journal of African Studies* 60.
[32]*Ibid*.
[79] (2006) 11 NWLR (Pt. 991) 324
[80] M Mamman, *Poverty And Social Exclusion: Obstacle to Human Rights in Africa* (Nigerian forum (Victojo Publishing Ltd 2006) 788.

On the whole, government security forces are the primary perpetrators of human rights abuses in Nigeria and with wholesale impunity.[81] The violations include varieties of methods of torture like hanging, mock execution, beating, punching and kicking, burning with cigarettes, water boarding, near-asphyxiation with plastic bags, forcing detainees to assume stressful bodily positions and sexual violence.[82] There are also the recurring incidents of forced evictions. It is now generally agreed that forced eviction represents a dimension of urban violence.[83] In 2006, Nigeria was ranked third among the worse violators of housing rights by the Geneva-based CORHE.[84] From 2000 to 2011, more than two million people have been forcibly evicted from their homes in slums in different parts of Nigeria. For example, about 19,000 people were forcibly evicted from their homes in August 2009 at the Njemanze waterfront in Port Harcourt. These evictions were carried out without adequate notice.[85]

Two recent instances of disrespect of human rights come to mind: the teargassing and shooting of protesters at the Lekki Toll Gate in 2020 and the continued dehumanization and persecution of members of the Indigenous People of Biafra by the Nigerian government under the militarized Operation Python Dance. The above provide strong support for large scale disregard of human rights in Nigeria.[40] Therefore, when the choices in the appraisal of respect for human rights are cases of abuse of the rights, the appraisal results in despair.

3.3 The Case of South Africa

3.3.1 Human Rights in South Africa

When South Africa became a constitutional democracy in 1994, it enshrined in its Constitution a strong constitutional basis for human rights.[41] The notion of human rights has a deep meaning for South Africa due to its past history of apartheid regime which occasioned dehumanisation of black South Africans.[86]In response, South Africa is hinged on fundamental values at the core of which is human dignity.[87] This was confirmed by the Constitutional Court in *Dawood and Another v Minister of Home Affairs and Others*,[88]where the Court stated:

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[81] M H Adamu, 'An Appraisal of Human Rights Protection And Enforcement in Nigeria' [2019] (3)(16) *International Journal of Social Sciences* 42-55.

[82] Amnesty International, *Nigeria: Submission To The Un Committee Against Torture 72nd Session, 8 November-3 December 2021* (Amnesty International 2021) 5.

[83] T Agbola and A M Jinadu ,'Forced Eviction and Forced Relocation in Nigeria: The Experience of those Evicted from Maroko in 1990' [1997] (9)(2) *Environment and Urbanization*, 271, 272

[84] Centre on Housing Rights and Evictions, Global Forced Evictions Survey – 2007-2008 (Centre on Housing Rights and Evictions, 2009) 1-5.

[85] Amnesty International, Just move them: Forced Evictions in Port Harcourt, Nigeria (Amnesty International Publications, 2010) 8. [40] K D Maza and Others, 'Democratic Governance and Human Rights Violations in Nigeria's Fourth Republic: Its Implication on International Human Rights Law' [2021] (8)(18) *International Journal of Humanities and Education* 467, 477-478. [41] M Pieterse, 'Killing It Softly: Customary Law in the New Constitutional Order' [2000] *De Jure* 35 at 39

[86] F Kaganas, 'The Contest Between Culture and Gender Equality Under South Africa's Interim Constitution' [1994] (21) *Journal of Law and Society,* 409, 411.

[87] Constitution for the Republic of South Africa (CRSA) 1996, s 1(1)(a).

[88] 2000 (3) SA 936 (CC).

> *The Value of dignity in our constitutional framework cannot be therefore doubted. The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied.*

Chapter 2 Bill of the Constitution of South Africa 1996 contains the Bill of Rights. Under the chapter, human rights are the cornerstone of democracy in South Africa. Human rights encapsulate the rights of all people of South Africa to democratic values of human dignity, equality and freedom.[89] Human rights in South Africa are very broad including political, economic, social, educational and cultural rights.[90] This is a very fulfilling guarantee and experience in the appraisal of respect for human rights in South Africa.

3.3.2 Duty to Respect Human Rights in South Africa

The South African Constitution provides a direct and express obligation to respect human rights. Under it, 'the state must respect, protect, promote and fulfill the rights in the Bill of Rights.[91] By 'State', the obligation vests in the legislature, executive and the judiciary, natural persons and corporate entities.[92] The obligation is commendably broad: respect, protect, promote and fulfil the rights. This is further secured by the entitlement of everyone to equal protection under the law of South Africa.[49] To this extent, there is strong constitutional commitment to respect of human rights in South Africa which is very fulfilling in the appraisal of respect for human rights.

3.3.3 Appraisal of the Respect for Human Rights in South Africa

The basic framework for securing respect for human rights in South Africa is through the Constitutional Court. Section 38 of the Constitution entitles everyone to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. *Locus standi* under the section is broadened to include the following persons:

i. anyone acting in their own interest;
ii. anyone acting on behalf of another person who cannot act in their own name;
iii. anyone acting as a member of, or in the interest of, a group or class of persons; iv. anyone acting in the public interest; and
v. an association acting in the interest of its members.

[89] CRSA (n 43), s 7(1).
[90] CRSA (n 43) , chapter 2.
[91] *Ibid*, s 7(2).
[92] *Ibid*, s 8.
[49] *Ibid*, s 9.

The South African Court has taken active role in the protection of human rights.[93]The South African Constitutional Court has been active in advancing the frontiers of human rights in South Africa.[94]One area that has remained of particular importance is the right to equality which is a specific response to the apartheid history of South Africa. The South African Constitutional Court has therefore consistently maintained in a long line of decisions such as *Fraser v Children's Court, Pretoria North and Others*,[95] that 'There can be no doubt that the guarantee of equality lies at the very heart of the Constitution. It permeates and defines the very ethos upon which the Constitution is premised.'

In *Harsken v Lane*,[96] the South African Constitutional Court stated the justification for this approach to discrimination thus:

> *The prohibition of unfair discrimination in the interim Constitution seeks not only to avoid discrimination against people who are members of disadvantaged groups. It seeks more than that. At the heart of the prohibition of unfair discrimination lies recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups.*

It has to be emphasized that the prohibition of unfair discrimination alone is to allow for 'fair discrimination' targeted at helping disadvantaged groups such as blacks and women to catch-up in all fields.[97] The above provides fulfilling assurance of respect for human rights in South Africa.

Despite the constitutional and judicial efforts, human rights abuses remain endemic in South Africa. The problem of racial and gender inequalities/discrimination appear intractable. This has continued to fan the embers of racial based violence in South Africa.[55]There is also the recurring problem of Xenophobia which occasions abuse of the human rights of foreigners in South Africa mostly blacks. Xenophobic violence results in killings, massive destruction and looting of properties and dehumanising brutality.[98]

Another popular incidence of human rights abuse in South Africa is gender based violence. According to Colppits,[99] gender based violence in South Africa takes various form such as rape, femicide, sexual assault and battering by intimate partners. It is so widespread that over one in every five South African woman has been a victim of gender based violence while at least three

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[93] P N Linga, 'The Protection of Human Rights by the Judiciary and Other Structures in South Africa' [1999] (52)(4) *SMU Law Review* 1530.

[94] H J Richardson, 'Patrolling the Resource Transfer Frontier: Economic Rights and the South African Constitutional Court's Contributions to International Justice' [2007] (9)(7) *African Studies Quarterly* 81.

[95] 1997 (2) SA 261 (CC) para. 20 at 272A.

[96] Harksen v Lane and Others 1999(1) SA 300(CC).

[97] *President of Republic of South Africa and others v Hugo* 1997 (3) SA 1012. Para 727–728.

[55] N Makgetla, *Inequality in South Africa: AN Overview* (TIPS 2020) 1.

[98] K Hitomi and K Hitomi, 'Xenophobia in South Africa: Reflections, Narratives and Recommendations' [2022] *Peace and Security Studies* 5.

[99] E Colpitts, 'Engaging Men and Boys to Prevent Gender-based vVolence in South Africa: Possibilities, Tensions and Debates' [2019] (40)(3) *Canadian Journal of Development Studies* 423-439.

women die in South Africa every day from gender based violence. The problem has become so notorious that South Africa has acquired the uncomplimentary status of 'rape capital of the world'. It results to unwanted pregnancies, depression, suicide, unsafe abortions and transmission of diseases such as HIV/AIDS.

In 2022, there was a report of South African woman who was a victim of domestic violence perpetrated by her boyfriend. Despite several reports to the police, no action was taken against the boyfriend. On one occasion while she went to report, one of the police officers offered to drive her to her friends place for safety. At a lonely point, he pulled the car over and raped her severally.[100]Enaifoghe and Others,[101] observe that police officers in South Africa are very reluctant to respond to distress calls by victims of gender based violence and often undermine or compromise investigations while actively aiding other forms of human rights abuses.[102] Such cases of abuse undermine respect for human rights and encourage despair in the analysis of human rights in South Africa.

4. Conclusion

There is a strong global commitment to the recognition and protection of human rights at national, regional and international levels. However, respect for human rights does not enjoy practical reality at the above levels. This is because although States commit to respecting human rights and provide institutional and procedural mechanisms for enhancing respect of the rights, appraisal of actual respect for the rights reveals two opposite sides of a coin. On one hand is clear evidence of respect for the rights and at the other are equal evidence of abuse of human rights as demonstrated from the examples of Nigeria and South Africa.

If one focuses on the cases of respect for human rights, the appraisal will be very fulfilling. Conversely, if one focuses on cases of abuse of human rights, the appraisal will occasion despair. Relatedly, respect for human rights differs across climes/States. While all States seem to share similar constitutionalisation of human rights, areas of commendable performance and areas of violations differ among States. For instance, while human rights abuses in Nigeria relate largely to excessive use of force by military agencies, abuses in South Africa relate more to racial and gender based issues. Therefore the appraisal of respect for human rights will result in fulfillment on despair depending on the choices of focusing on cases of respect or abuse of the rights and the climes in question. Nevertheless, because a proper appraisal must necessarily cover both sides of the coin, this paper submits that appraisal of respect for human rights is a simultaneous experience of fulfillment and despair.

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[100] N Tshuma, 'Woman Shares how Seeking help after GBV Assault resulted in her being Raped by a COP' <https://www.iol.co.za/capeargus/news/woman-shares-how-seeking-help-after-gbv-assault-resulted-in-her-beingraped-by-a-cop-aecc413c-2ac6-4554-bede-608f4c7dc043> Accessed 24 August 2023.

[101] A Enaifoghe and Others, 'The Prevalence of Gender-Based Violence against Women in South Africa : A Call for Action' [2021] (10)(1) *Journal of Gender, Information and Development in Africa* 121-150.

[102] Z F Zondi and W I Ukpere, 'Police Brutality in Post-Apartheid South Africa Reviewed.' [2014] (5)(3) *Mediterranean Journal of Social Sciences* 574.