

## **The Scar that Has Resisted Erasal: The Discrimination of Osu of Igboland, Nigeria- Assessing the Human Rights Implications**

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### ***Introduction***

Discrimination is a rock bottom attack on the personality of the victim. It is a virus that afflicts every other emblem of human rights as it seeks to separate, even alienate the victim from the membership of the human community. This virus is directed at removing the shield that binds humanity together. Discrimination erodes the innermost sensibilities of the victim, even when outwardly the victim's pain remains shrouded in fake resilience. This paper seeks to appraise the domestic, regional and international instruments protecting the right to freedom from discrimination. It will highlight the history, nature, and practice of Osu caste system, emphasizing the human rights of the Osu's that are violated, and finally proffer feasible solutions to the menace.

### ***The Osu of Igboland-Their History in Context***

The Igbo people, geographically, are predominantly found across the east of the River Niger of Nigeria, occupying the forest belt area between the Cross River, east of the Niger and Benin, west of the Niger and also between the Igala to the North and the Niger Delta region to the South.<sup>1</sup>

The Igbos are amongst the three major tribes of Nigeria. Presently, the majority of them are Christians, but some still practice the indigenous traditional religion. Traditionally, they worship the earth goddess, several deities and ancestral spirits and a supreme being called Chukwu, Obasi, or Chi (God). Both the origin of the Igbos and of Osu caste system are shrouded in controversy. Before now, in most indigenous Igbo communities, families and clans maintained shrines where it is believed ancestral spirits reside and communed with the living. These deities are treated as institutions and were attended to by highly respected priests and assistants who ministered to the spiritual needs of visitors seeking communion with the shrines.<sup>2</sup>

These shrine attendants, 'indigenous monks' are variously referred to as 'Osu', 'Ume', or 'Ohu', Arusi (slave of the deities/gods or shrines).

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<sup>1</sup> According to Professor T. Shaw, in his archaeological findings in Igbo-Ukwu, a town in the present Anambra State of Nigeria, some ancient Igbos settled in the area earlier than 9<sup>th</sup> century AD.

<sup>2</sup> See, G. I. Nwaka, "The Civil Rights Movement in Colonial Igboland," *International Journal of African Historical Studies* (1985), 18 (3), 473-485.

In Nzam, Onitsha of Anambra State, they are referred to as 'Achi-Ebo', while in some areas of Nsukka of Enugu State, they are known as 'Oruma' and in Agwu area of Enugu State, it is Nwani or Ohualusi. These names: 'Osu', 'Ume', 'Ohu', 'Oru', 'Ohu Ume', 'Omoni' (Okpu Aja) convey the same impression, though with insignificant variations in meaning. Because these persons serve the deities that are revered, the natives related with them with caution to avoid any negative implications and consequences that may follow with such interactions. The other members of these communities are known as 'Diala' or 'Nwadiala', literally meaning 'son of the soil', freeborn. The Osu status however may be acquired through the ritual transformation of Diala or Nwadiala ('freeborn') as a punishment for his offences, by entering the shrine (whether under duress or voluntary), by contact with an Osu, or by birth to Osu parents, intermarriage, commensality ("inter-dinning") and any other direct contact with an Osu. It is also forbidden for a Diala to spill the blood of an Osu. And so, any violator of these rules becomes an Osu.

Traditionally, the status of 'Osu' may have resulted from the position they occupied as servants of the gods or deities. This position demanded and had special mode of dealing with them, different from the 'freeborns'. The class they occupy now is definitely because of the advent of the Europeans and the Church. The consequence of Christianity relegated the traditional worship to the level of inferiority and this compounded the status of the Osu. A new god, a new form of worship, weakened the stronghold of the traditional gods and deities. This weakening of the revered position of the deities is greatly manifested in class differences, such as the Osu's the slaves, the strangers, the outcasts, the untouchables, and the Nwadiala or Diala the master, the freeborn.

Chinua Achebe in his book, *No Longer at Ease*, asks:

What is this thing called Osu? Our fathers in their darkness and ignorance called an innocent man Osu, a thing given to the idols, and thereafter he became an outcast, and his children, and his children's children forever.<sup>3</sup>

By the aforesaid, "their darkness", represented the era before the entrance of the Europeans and Christianity and the light represented the advent of Christianity. Before the advent of Christianity, the *status quo*, was peacefully maintained and the derogations associated with today's reality was not manifested as the fear of the potency of the gods prevailed. It must be noted that the magnitude of this discrimination is basically an imprint of modernity, civilization and Christianity.

### ***Disabilities Suffered***

The Osu are treated as inferior human beings in a state of permanent and irreversible disability and are subjected to various forms of abuse and discrimination.<sup>4</sup> They are made to live separately, from the free born. They reside in most cases, very close to shrines and market places. In extreme cases they are not allowed to dance, drink, hold hands, associate or have sexual relations with Nwadiala. Further, they are not allowed to break Kola nuts (an offering of peace) at meetings. At the level of spirituality, an Osu cannot be allowed to pour libation or pray to the gods on behalf of a freeborn at a community gathering. It is believed that such prayers will bring calamity and misfortune. An Osu may find it difficult fulfilling a desire to occupy political position in Igboland particularly, where a Diala has indicated interest.

Evidence of discrimination against the Osu includes: parents administering poison to their children, in a desperate move to perpetually wipe out the stigma; disinheritance (in a situation where a freeborn marries Osu); Ostracism, organized attack, heaping harvest offering separately in churches, denial of membership in social clubs, violent disruption of marriage ceremonies, denial of chieftaincy titles, deprivation of property and expulsion of wives, etc.

The discriminations are more pronounced in the area of marriage<sup>5</sup>. An Osu cannot marry a freeborn. The belief is that any freeborn that marries an Osu defiles the family. Consequently, freeborn families are always prepared against any of their own desiring to marry an Osu. Every available 'arsenal' is assembled to scuttle the arrangement. This scar is so feared that marriages in most Igbo communities are preceded by very thorough and rigorous investigations.

<sup>3</sup> Chinua Achebe, *No Longer at Ease*, Henemann, 1960.

<sup>4</sup> See, NGO submission to CERD thematic discussion (August 2002) on the Osu caste system in Nigeria (available on the website of the International Dalit Solidarity Network: [www.dalitfreedom.org](http://www.dalitfreedom.org)).

<sup>5</sup> See, V. E. Dike, *The Osu Caste System in Igbo Land: A Challenge for Nigerian Democracy*, Kearney NE, Morris Publishing, 2002.

Elders on both sides travel to native villages to establish the social status of the other party. If the investigation reveals that one of them is Osu, the arrangement is immediately abandoned. According to Chinue Achebe, when Okonkwo learns that his son wants to marry Clara, an Osu, he says:

*Osu is like a leprosy in the minds of my people, I beg of you my son not to bring the mark of shame and leprosy into your family. If you do, your children and your children children's will curse you and your memory...you will bring sorrow on your head and on the heads of your children.*<sup>6</sup>

### **The Status of Human Rights in Nigeria**

In the case of *Ransom Kuti v. A. G. of Nigeria*, Kayode Eso JSC (as to then was) succinctly described human rights as:

*A right which stands above the ordinary laws of the land and which infact is antecedent to the political society itself. It is a primary condition to a civilized existence, and what has been done by our (Nigerian) Constitution since independence is to have these rights enshrined in the Constitution so that the rights could be immutable to the extent of the non-immutability of the Constitution itself.*<sup>7</sup>

The definition acknowledges that human right “stands above the ordinary laws of the land.” In hierarchy, the regime of human rights is in the class of front runners. But the definition was short of stating its position among the extra-ordinary set of laws. In *Abacha v. Gani Fawehinmi*<sup>8</sup>, the Supreme Court was reluctant, and indeed refused to accord supremacy to the African Charter on Human and Peoples’ Rights, even when the Charter had been domesticated through an enabling domestic Act.<sup>9</sup> The expectation would have been, according to the learned Supreme Court Judge, since human rights were antecedent to the political society, Nigeria, any other law that contradicts these set of laws, to the extent of the inconsistency, should be declared void. But that court preferred to accord supremacy to a military decree in preference to the African Charter.

Indeed the court declared that “the Decree of the Federal Military Government may override other municipal laws”<sup>10</sup> even in this confusion, the definition secured the status of these rights by situating them as “a primary condition to a civilized existence.” By this, it broadly stated that differentiation exists between states; that is, civilized and uncivilized, with those states who observe the tenets of human rights being classified as civilized. States who aspire to be civilized observe human rights in their domestic and international dealings.

The 1999 Constitution of Nigeria in section 42(1) guarantees the right to freedom from discrimination. By virtue of its incorporation into Nigeria law, the African Charter on Human and Peoples’ Rights has become part of our laws, though its exact legal status and application remains a matter of speculation. Since it was incorporated *holus bolus* and not selectively, some of its provisions like the economic, social and cultural rights are experiencing enforcement challenges. Chapter 2 of the 1999 Constitution of Nigeria labels the ESC rights with respects to its realization as “Fundamental Objectives and Directive Principles of State Policy.” These regime rights are unlike the Chapter 4 rights which are enforceable and enjoy a special enforcement regime.<sup>11</sup>

Nigeria as an active member of the international community maintains effective representation at the United Nations and other similar international organizations. She has equally contributed immensely in treaty making at the international and regional levels.<sup>12</sup>

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<sup>6</sup> Chinue Achebe, *op.cit*

<sup>7</sup> (1985) 2 NWLR (Pt.6), 211, 229-230.

<sup>8</sup> (2001) CHR 20

<sup>9</sup> It was incorporated into Nigerian law as African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap. 10 of 1990.

<sup>10</sup> *Supra*, p. 110, Paras. D-E.

<sup>11</sup> In Pursuance of section 42(3) of the 1999 Constitution, the then Chief Justice of Nigeria, Justice Fatai Williams, on the 5<sup>th</sup> of December, 1979 in a supplement to Official Gazette No.64 volume 66 made what is today known as the Fundamental Rights (Enforcement Procedure) Rules. In its nature, the said Rules will qualify as existing law under section 315 of the 1999 Constitution. Idris Legbo Kutigi, the former Chief Justice of Nigeria on the 11<sup>th</sup> of November 2009, in a supplement to Official Gazette No. 74 Volume 96, made the fundamental Rights Enforcement Procedure) Rules, 2009.

<sup>12</sup> Nigeria has modestly ratified about 35 international human rights instruments: See Human Rights Law Journal (HRLJ), vol.28, No. 1-4 (2007), pp 139-160

Some of the international instruments she has signed, ratified and domesticated include the following: the International Covenant on Civil and Political Rights (ICCPR)<sup>13</sup> the International Convention on the Elimination of all forms of Racial Discrimination; (ICERD); the Convention on the Elimination of All Forms of Racial Discrimination against Women (CEDAW)<sup>14</sup>; the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT);<sup>15</sup> The Convention on the Rights of the Child (CRC);<sup>16</sup> The African Charter on Human and Peoples' Rights;<sup>17</sup> Optional Protocol to the convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>18</sup> The Optional Protocol on the Rights of the Child (CRC-OP-AC) on the involvement of Children in Armed Conflicts;<sup>19</sup> etc. Observance of human rights in Nigeria though with great constraints, has become a legal culture. She has allied herself with accepted tenets of human rights internationally. At the regional level, Nigeria has outstanding records of active participation and development of human rights.

### ***The Legal Protection of the Right to Freedom from Discrimination***

By virtue of section 42(1) of the 1999 Constitution of Nigeria:

1. A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion, or political opinion, shall not, by reason only that he is such a person:
  - (a) *be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religion, or political opinion are not made subject, or*
  - (b) *be accorded either expressly by, or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria or other communities, ethnic group, place of origin, sex or political opinion.*
2. *No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.*

The Nigerian Constitution<sup>20</sup> should be the Supreme Law of the land, legally meaning that any other norm, rule or even precedent to the contrary, to such extent is null.<sup>21</sup> The aforesaid section 42(1) and (2) prohibits all forms of discrimination in its entirety. It further goes in dept to forbid any “practical application of any law in force in Nigeria in relation thereto. These provisions put any policy or rule, be it executive or administration at a great legal difficulty. Legally, the real intendment of the Constitution is to abolish any shed of discrimination in accordance with norms of international law, permitting of no exception that is not in the living spirit of the law. The section 42 provision is doubly padded. On the one pad, it prohibits “disabilities or restrictions” that any citizen may be subjected to. It proactively protects any disadvantage a citizen may suffer on grounds of ethnic groups, place of origin, sex, religion, or political opinion. On the other pad, it abhors “any privilege or advantage” that may unduly accrue to a citizen that is not spread across board to other Nigerians, but are rather based on ethnic groups, place of origin, sex or political opinion.

Any gain that is unjustly awarded and any deprivation that is unjustly suffered are abhorred by the supreme law of the land.

Also, Article 2 of the African Charter on Human and Peoples' Rights provides:

<sup>13</sup> This instrument is monitored by the Human Rights Committee

<sup>14</sup> Nigeria signed it on 23 April, 1984 but ratified same on 13 June, 1985.

<sup>15</sup> Nigeria ratified CAT on 28 July, 2011.

<sup>16</sup> Nigeria signed CRC on 26 January 1990, but ratified same on 19 April, 1991.

<sup>17</sup> See footnote 4.

<sup>18</sup> 18 December, 2002 (United Nations, G.A.Res.A/57/199); entry into force:22 June 2006, 30 ratifications (excluding Nigeria).

<sup>19</sup> 25 May 2000 (United Nations, A/RES/54/263); entry into force: 12 February 2002; III (excluding Nigeria).

<sup>20</sup> The 1999 Constitution of Nigeria is merely an addendum to Decree 24 of 1999 of a departing dictatorial military regime and is not a product of “We the People of Nigeria”.

<sup>21</sup> *Abacha v. Gani Fawehinmi*, supra

*Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status.*

This provision has a wider reach, it includes “fortune”, “language”, “any other opinion,” and “other status.” Since Nigeria has domesticated this instrument, it has become part of its laws though its status in the hierarchy of laws is yet to be firmly determined. But the combined effect of s.42 of the 1999 Constitution of Nigeria and Article 2 of the African Charter is to exclusively prohibit without exception any form of discrimination on any citizen of Nigeria...

It is a pivotal principle of international human rights law that no one shall be subjected to undue discrimination i.e., a right must not be vouchsafed or denied by reference to distinction “of any kind such as race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status.” This provision which prohibits “property” as a ground of discrimination is found in Article 2 of the Universal Declaration on Human Rights, 1948. Same prohibition is found in Article 7 of the instrument when it provides that “all are equal before the law and are entitled without any discrimination to equal protection of the law.” Though the Universal Declaration of Human Rights, a declaration, was not initially a binding human rights instrument, the continuous representation of its provisions in almost all international, regional, and domestic human rights instruments has elevated it to customary international law, *jus cogens* of international law.

Again, the principle is endorsed in the Covenant on Civil and Political Rights. Article 3 binds states parties “to ensure the equal rights of men and women” to the enjoyment of all its civil and political rights. Most importantly, this provision is found enacted in the UN Charter, the third purpose of the organization being defined to include “promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

The foregoing means that international law is breached whenever rights of universal application are denied through racism or on religious or any other “status” grounds. Essentially, this is because the UN Charter, just like many other human rights instruments both regional and international bind every state, and thus, the rule cannot be vitiated by state practice to the contrary. From the perspective of international law, where the discrimination is so widespread and consistent as to amount to either apartheid or genocide or have like consequences, the conventions make it clear that the international community may intervene either in concert or even individually.<sup>22</sup> The rule against discrimination may come into play to determine whether other entrenched rights have been breached-as it did to characterize racially discriminatory treatment of Asians holding British passports who were denied entry into Britain when they exodused from Kenya and Uganda in 1973.<sup>23</sup>

### ***Staggered Attempts through Legislation to Abolish Osu Caste System***

The late Premier of Nigeria Dr. Nnamdi Azikiwe fought vehemently against the Osu caste system, as he told members of the defunct Eastern House of Assembly on March, 20 1956<sup>24</sup> that: “it is devilish and most uncharitable to brand any human being with a label of inferiority, due to the accidents of history”, while seconding the motion for the second reading of the abolition of the Osu caste system, he said:

*The objects and reasons for the bill are humanitarian and altruistic. The bill seeks to abolish the Osu system and its allied practices including the Oru, or Ohu system; to prescribe punishment for their continued practice, and to remove certain social disabilities caused by the enforcement of the Osu and its allied system. I will not join in the encouragement of a system of society where one stratum can superciliously claim to be descended from the best brain and would therefore consign the others to a scrap heap of their own invention and ostracise them socially.*

<sup>22</sup> The Convention on the Elimination of All Forms of Discrimination against Women, entered into force in 1981. It has been ratified by most states including Nigeria. Some states ratified with reservations which preserved for muslim countries the indelibly sexist legal regime of Sharia Law, and for the United States, the power to deny any women either an abortion or paid maternity leave. This position must be compared to the equivalent Convention on the Elimination of All Forms of Racial Discrimination which has been universally and deservedly ratified, thus, establishing an international law against systematic racism.

<sup>23</sup> *East African Asians Case*, 3 EHRR 76(1973).

<sup>24</sup> See, Abolition of Osu System Law, by the Eastern Regional House of Assembly, 1956.

Also during the late Dr. Sam Mbakwe's Nigeria Peoples Party (NPP) civilian regime in Imo-State, the Osu caste system was banned through legislation. The late Air Commodore Emeka Omeruala military government of the old Anambra State moved against the Efurú deities in Ukehe, Igbo-Etiti Local Government Area, destroying the shrines with bulldozer.

But despite these efforts, though, not sustained, this practice still continues. This is because it is not a practice that regularly occurs by the concerted positive efforts of the people.

It is more or less a psychological war. It is a silent warfare within the sub-consciousness of the people. Very few persons openly support the practice, but who will bail the cat? This war of discrimination is so deeply rooted that the victim already nurses a private scar he may never desire to be further exposed. This is because this scar is only visible to those who know it exists. And so, the less the publicity, the better for the victim. Those who sympathize with this deep infraction, would nonetheless prefer to remain clean and voice their dissent from the camp of the Diala, rather, as part of the victim, the Osu. Most parents and their families know that this stigma is now a historical nonsense, yet no one wishes to bear this paint of nonsense.

Unfortunately, the victims cannot associate as a group and fight this scourge under any kind of platform, whether, social, religious or cultural. Moreso, it is deeply demanding for the victim who is rejected to plead to be accepted, e.g., a girl whose marriage plans has been aborted is handicapped. She cannot bring herself to plead or beg to be married. Rather, what is left of her dignity and self worth is much more paramount and feasible than seeking to regain that which has been lost. She will prefer to marry a fellow Osu from the comfort zone of non-disclosure of the previous unfortunate incident. No victim will advertise the reason for the rejection or denial. This is the kind of pain that creeps deep inside of the victim.

### ***The Human Rights of the Osu That are Violated***

There is no better example of expressing the interrelatedness of human rights than the human rights violation consequent upon the discrimination of the Osu. The starting point is that the Osu is discriminated against with a stigma of an outcast, a dreaded untouchable. As noted earlier, section 42 of the 1999 Constitution of Nigeria guarantees the right to freedom from discrimination. But this type of discrimination against the Osu touches on his dignity and self-worth. He is perceived as someone of a status less than that of a slave. A slave can liberate himself through financial, political and even religious effort, but not an Osu. His wealth or societal status cannot avail him. The fact that he is wealthy and is holding a revered political, judicial or intellectual office cannot erase the scar he bears as an Osu. This is a glaring abuse of the right to dignity of human person that is guaranteed by the provisions of section 34 of the 1999 Constitution, Articles 4 and 5 of the African Charter in Human and Peoples' Rights and a host of other regional and international human rights instruments.

By the provisions of section 35(1) of the 1999 Nigerian Constitution, the right to personal liberty is guaranteed as follows: "every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law." Does the discrimination against Osu amount to depravity of his personal liberty? What is essentially personal liberty in the context of section 35 provision? Article 5 of the European Convention on Human Rights seeks to protect "the right to liberty and security of person", while Article 6 of the African Charter on Human and Peoples' Rights seeks to protect "the right to liberty and to security of persons." The Universal Declaration on Human Rights, UDHR, provides for "life, liberty and security of person."

The level of discrimination an Osu suffers constitutes a breach of his liberty. He cannot interact freely with the "freeborn", meaning that there is always a limitation placed on what he can do. Since for instance, a freeborn is prohibited from entering or visiting his house, an attack on a lonely isolated member of the society. Liberty connotes in practice an amalgam of free enterprise, freedom to engage in any activity that avails other members of the community. The Osu lacks access to engage in this free enterprise of activities. This boils down to the fact that whatever he encounters as a member of his community is entirely his own. Liberty essentially is freedom but on Osu is not free but is always in chains. His pains are not shared by all as he cannot access the warmth of his neighbors. The chains he bears are heavier than physical chains. Physical chains are for a time, but an Osu's chains are engraved permanently on his sensibilities, his honour, worth and personality. Publicly and privately, outwardly and inwardly, everywhere, there are inhibitions around him.

Section 36(1) of the 1999 Constitution of Nigeria provides for the protection of the right to fair hearing. Article 10 of the UDHR provides that: “everyone is entitled in full to a fair and public hearing by an independent and impartial tribunal.” And in Article 7, the African Charter provides that: “Every individual shall have the right to have his cause heard.” The Osu may not have any vestage of discrimination openly against him in the regular Courts of the land since beyond the shores of his immediate community the scar is not automatically identifiable. But the point to note is that most of the disputes are brought before native panels made up essentially of the Diala where the Osu are usually in the minority. This disability becomes more pronounced in cases between the Osu and Diala. It is like, come for your pre-determined condemnation. The Osu in such instance cannot get justice from the panel of those who ostracize him, and believe that he is a low caste, a sub-human. His remedy may lie in taking up the matter to superior courts or law enforcement agencies. But this option is fraught with challenges. The first hurdle of course is finance. Can the concerned Osu sustain the process? Secondly, if he succeeds, into which community does he return? The level of hostility that his victory will attract will make his life better without the victory.

The 1999 Constitution, in section 37 provides that: “the privacy of citizens, that homes, correspondence, telephone conversations, and telegraphic communication is hereby guaranteed and protected” Article 12 of the UDHR is more generous when it provides that:

*No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attack, upon his honour and reputation.*

*Everyone has the right to the protection of the law against such interference or attacks (emphasis supplied).*

The International Covenant on Civil and Political Rights (ICCPR) in Article 9 enacts: “everyone has the right to liberty and security of person.” Restriction of movement may entail, control of movement, restriction of movement and outright detention. In the case of *Enhorn v. Sweden*,<sup>25</sup> the European Court of Human Rights held that to justify restriction under domestic law, it must be clearly defined and that the law itself be foreseeable in its application. The greatest violation of the Osu in this regard is his “honour and reputation.” The direct emblem of discrimination is the damage on the victims honour and self esteem, his personality and psych which are the distinguishing traits of an Igbo man. In the local expression it is said that “the disgrace wrought upon a big man is worse than that the act of killing him. Properly appreciated in this context, it is the living only that bears the mark of shame. An Igboman whose honour and reputation is violated, essentially, has nothing to live for.

The Osu’s greatest challenge is his honour and integrity which is destroyed by the mere accident of history of his ancestry. In Igboland, a persons root is his ultimate heritage and this cannot be washed away. It is not an option to the victim to relocate and seek residue elsewhere. The Igbo believes that there is something much more to ancestry than the bare land.

The land possesses ancestral ritualism, a myth so powerfully overbearing that it magnates reverence. And this feeling is not satisfied by relocation to a foreign land.

Section 31 (1) of the 1999 Constitution provides that:

*Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either above or in community with others, and in public or in private) to manifest and propagate his religion or belief or worship, teaching, practice and observance.*

This provision raises some concerns, as it may be read to encourage exercise of some beliefs, thoughts and conscience that supports the ancestral Osu institution. In the face of it after all, since it is ancestral in nature, it compels obedience from the present practitioners who may claim freedom of belief or religion.

The real purport of the aforesaid section is well brought out by Article 9(2) which subjects the exercise of this right to “such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.” The reading of this provision reveals that the proper exercise of the freedoms must be in the context of other persons rights in the same directions, and above all, in the overall intendment of the law. Freedom properly so called must be freedom exercised in restraint of other freedoms in a just and equitable manner.

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<sup>25</sup> Judgment of the ECCHR, 25 January 2005, cited in *Interights Bulletin*, 2006, Vol. 15 No. 2, pp. 71-72.

A Nigerian citizen has the right to freedom of worship, the right to worship in an atmosphere that induces self-expression. This is not availed an Osu in most Igbo communities. In the extreme cases, the Osu's are discriminated upon even as they give offering in the Church. Painfully and supposedly before God, offerings of the Diala and Osu are kept separately in the glare of worshippers. This is an affliction directed at the core of spirituality of the Osu. Indeed, there is greater fulfilment in spirituality if a worshipper serves his God in the serenity of self-expression devoid of any hindrance.

By the provisions of section 39 of the 1999 Constitution, "every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference" The African Charter in its Article 10 guarantees the right to freedom of expression in the following terms:

1. Every individual shall have the right to receive information;
2. Every individual shall have the right to express and disseminate his opinion within the law.

Like the right to a remedy, freedom of expression should be regarded as a pivotal right in international law. This perception is based upon the fact that international action and attention against human rights abuses cannot be aroused without it.<sup>26</sup> Article 19 of the UDHR provides that "everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" Article 19 of the UDHR is reproduced as Article 19 of the ICCPR. The latter spells out the standard qualifications which allow the right to be overridden by considerations of reputation, national security, public order or morals.

Understood from the point of simplicity, the Osu's inability to enjoy the freedom of expression may not be easily appreciated. This may be due to the fact that no formidable physical structures are mounted against such venture. But the Osu's discrimination is the silent type with complex implications. The challenge is-who does he make representation to? Who are his audience? What remedies is he expecting? In a typical village setting in Igboland, if an Osu for instance is refused access to marry a girl, how does his right to expression avail him? Will there be a majestic order compelling the family in question to hand over the girl to him? This is one area where simple legalism may not be of much assistance. The persistence of the violation is not because of absence of laws or expressions of sympathy.

It has more to do with a demonic psych inserted into a heritage that has refused to be wished away. The disturbing factor in all these is that the Diala are one of the greatest sympathizers of the Osu, who incidentally they cannot offer any respite.

The provisions of section 40 of the 1999 Constitution seek to protect the right to peaceful assembly and association. In clear terms, it enacts that: "every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests" Article 11 of the European Convention provides: "everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interest." The UDHR in Article 20(1), affirms the right to peaceful assembly and association, while paragraph (2) adds that no one may be compelled to belong to an association. Also, the C.P.R Covenant, Article 22, is identical with Article 11 of the Convention, save that "public order" appears in place of "the prevention of disorder or crime, and the reference to " the administration of the state" at the end of Article 11 is omitted.

These guarantees presented by these instruments are worthwhile in other cases but strangely inapplicable in the case of the Osu. These laws do not compel the Diala to accept the Osu in the dealings. The differentiation is an endemic segregation that targets the Osu. This is a caste system that incurs exclusion. Take the conferment of a title to occupy a traditional tool, for instance, the sole qualification is that the occupant must be a Diala. The practice is rooted in ancestral practice. In most cases, it is complicated by its exclusive rotation among certain identifiable families.

<sup>26</sup> See *Tony Momoh v. Senate* (1981) INCLR 21 (Hc); (1984) 4 NCLR 269 (CA). A consideration of Richard Dimbleby's broadcast from Belsen, the sound of gunfire in Tiananmen Square, the television pictures of Omarska prison camp, the agonies of the Kosover Albanians and the documentary of CNN's Jeff Koinange on Nigeria's Niger Delta region, simply shows that reports of atrocities compel people throughout the world to put pressure on governments to react accordingly.

The Osu cannot aspire to such traditional offices because he lacks the mandatory requirement. It is like a woman seeking to belong to an exclusive male association or a lawyer seeking to join a medical association. It is unlike a prohibition of people of like interest seeking to join an association.

The Osu's right to acquire and own immovable property anywhere in Nigeria is guaranteed by the provisions of section 43 of the 1999 Constitution in very clear terms. Notwithstanding this constitutional position, the settlement arrangement in those areas where there is discrimination against the Osu is that they leave near shrines or such other places that mark them out for identification. The Osu settle separately from the Diala. This is the hallmark. Their identity in some cases may be inferred from their settlement in the community. They cannot leave together with the Diala. It is a punishable abomination for a Diala to sell land to an Osu as the vendor risks bearing the Osu mark.

### ***Conclusion***

The Igbo society is egalitarian, with the silver linings of respect for self worth and expresses but the Osu has no voice. The average Igbo man expresses himself and resists any factor or influence that detracts from this hallmark. This perception is deep rooted, the concept of equality that sustains the enterprise spirit is the receptor of the strong personality of an Igbo man. This underscores the special sensibilities in the Osu's discrimination. It accounts for why he cannot ordinarily, publicly fight this scourge. This cause must be fought on their behalf. Some approach much more than bare legal instruments, both national and international need to be incorporated in the quest to realize respect for the right to their freedom from discrimination.

The international community should firstly further internationalize through vigorous sensitization, the deep rooted consequence of this infraction. As a soothing balm, efforts should be directed towards integrating the iron cast dividing line between the Osu and the Diala. This may be achieved through sustained reward or economic inducement of some sort. Something materially special must be evolved that will seal irreversibly the great divide. A concerted effort through a special international scheme will present a fulfilling platform that will directly address this silent violation that has become consistent, systematic, massive and endemic.