Diplomatic Protection of Human Rights as practised by South Africa and Nigeria

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DEDICATION

To God, my family and friends
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I declare that this thesis, Diplomatic Protection of Human Rights as practised by South Africa and Nigeria is my original work both in conception and execution and that all the sources I have used or quoted have been acknowledged by means of complete reference. I also declare that this thesis has not been previously submitted by me for a degree at any other tertiary institution.

Emmanuel Okon
SUMMARY

The main purpose of this research is to examine and assess the extent to which Nigeria and South Africa are prepared to invoke diplomatic protection in order to safeguard the human rights of their nationals living abroad and to determine whether there are constitutional provisions empowering them to do so. Diplomatic Protection is an institution in international law whereby a state may take diplomatic action to protect its national who has suffered some harm or injury in a foreign land, but, has not been compensated by the government of the responsible state. The practice of diplomatic protection is believed to have originated in 16th century Continental Europe, and that Vattel, a Swiss jurist and diplomat was the father of the concept. In a broad sense however, Diplomatic Protection also includes the functions performed by diplomatic missions and consular officials. It is an important institution in international law in terms of the redress it affords to individuals who suffer from injuries sustained in foreign countries.

Diplomatic protection is examined from the legal and human rights perspectives in this thesis. The method adopted for the research is to identify and critically analyze certain rights which foreigners enjoy outside their countries in order to determine whether these rights can be diplomatically protected in Nigeria and South Africa and the circumstances under which such rights can be denied, derogated or limited by the two states.

The choice of the human rights adopted in this research is determined by their importance to the individual generally, and their utility to any individual living in a foreign land. The categories of rights adopted for the examination include, fundamental rights, which are rights so basic to the individual that they cannot be derogated from even in times of national emergencies. Such rights include the right to life, the right to be free from discrimination and the right to be free from torture and other inhuman treatment or punishment.
The second category of rights examined is the right to own private property in a foreign land, while the third category is procedural rights. These are rights which assist the individual to obtain substantive justice in a court of law – that is to say, due process rights. They include the right to a fair hearing, the right to be presumed innocent until proven guilty and the right to be tried within a reasonable time.

The conclusion is that although diplomatic protection is not constitutionally entrenched in the two states, their provisions are constitutionally contemplated. However, the human rights of both nationals and aliens in Nigeria and South Africa are constitutionally protected. Nevertheless, it is envisaged that the situation will greatly improve through the implementation of the suggestions and recommendations proffered in the thesis. These include the amendment of the Constitutions of the respective states to reflect the desired change, the reorganization of diplomatic and consular missions of the two states and above all, by making human rights the corner-stone of democracy in the respective states.
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