



FUNDAMENTAL HUMAN RIGHTS AND THE NIGERIAN STATE IN HISTORICAL PERSPECTIVE

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ABSTRACT

As a signatory to the United Nations Resolution No. 181134 of December, 1993, the Nigeria government set up the National Human Rights Commission (NHRC), a body established by an Act of parliament. The Act which established the (NHRC) provided it with the legal basis to promote, protect, enhance and enforce human rights in Nigeria and made the Commission a forum for public enlightenment and regular dialogue on human rights issues. With this body in operation, one expected that cases of human rights abuses would drastically reduce, instead the democratic administration inaugurated on the 29th May, 1999 has been found on many occasions to be in the same violation of human rights. It is against this background that this paper takes a panoramic view of the relationship between Nigerian State and human rights demands and the incorporation of these demands into the laws and statues of modern-nation- state. The paper also assesses the plights of human rights groups and/or agitators under the despotic military regimes in Nigeria as a basis of comparison with the democratic fourth republic. The study employs the use of secondary sources of data. The study reveals that there is no major or any significant improvement in human rights record in Nigeria. It concludes by making some bold and poignant recommendations on how to sustain social justice in Nigeria and reduce the tendency of power welders to abuse and violate the human rights provisions which have become a central template of civilization and social progress amongst human beings on planet earth. Hence, the need for conscious redress of the structural imbalance in the system and promotion of deeper democratic values through which citizens' rights can be protected and guaranteed.

KEYWORDS: Human Rights, Democracy, Rule of Law, Good Governance, Constitution and Constitutionalism.

INTRODUCTION

It is a common observation that human beings everywhere often demand for the realization of diverse values in order to ensure their individual and collective well-being. It is also a common observation that these demands are often painfully frustrated by social,



economic, cultural and political forces as well as natural forces thereby resulting in exploitation, oppression, persecution and other forms of deprivation. Deeply rooted in these twins observations are the beginning of what today are called fundamental human rights. It was not until the entire world had passed through the tragic events of the First World War (1914 - 1918) and the Second World War (1939 - 1945) and had witnessed the barbarous acts committed by the totalitarian regimes of the period and coupled with fear of domination among other critical issues that the universal organization of the international community, that is, the United Nations, charged with some responsibilities in the matter of human rights and its members which cut across the globe pledged themselves to take action for the achievement of universal respect for and observance of fundamental human rights for all. (Ajayi, Ibitoye & Owolabi, 2007).

Human rights history in Nigeria predates colonialism. Following the mounting agitations for self-government, the need to introduce some elements of human rights into the country's constitution gained prominence. One major factor which prompted this was the rising ethnic tension based on the heterogeneous nature of the country and the fear of the minority groups. In order to allay their fear of possible domination after independence, the minorities demanded from the British colonial government the creation of more states. In response, the minority Commission was set up with a mandate to ascertain the facts about the fear of minorities and suggest means of allaying those fears.

However, the Commission did not recommend the creation of more states but rather the entrenchment of fundamental human rights provision in the constitution largely because they were of great value in preventing a steady deterioration in the standard of freedom and unobtrusive encroachment of a government on individual's rights. It was on this basis that the fundamental human rights provisions were included in the independence constitution of 1960 (CLO, 1997). These rights, from 1960 to 1999 constitutions have generally remained in the same in substance except for minor alteration in arrangement, nomenclature and amplification. For example, the Nigeria Constitution of 1999 in Chapter IV, Sections 33-46, provides a wide range of rights for Nigerians. These rights include: "right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thoughts, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to



freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria and freedom from compulsory acquisition of property” (CFRN, 1999: 34-44).

With the establishment of democratic rule in Nigeria in 1999, various efforts were made to redress the issue of human rights. One of such moves was the establishment of Human Rights Violation Investigation Committee charged with the responsibilities of looking into cases of human rights violations with a view of making some recommendations on how to address these violations. However, it has also been observed that with the civilian administration in power, major success has not been recorded by this body charged with such responsibility. Therefore, this paper raises the questions: To what extent has the fundamental human rights of Nigerians been violated during the period under review? And what can be done to address the situation? It is in the light of the above that this paper sets out to fill the gap.

Conceptual Clarification: Fundamental Human Rights

To say that there is widespread acceptance of the principle of human rights on the domestic and international planes is not to say there is complete agreement about the nature of such rights or their substantive scope, that is, the definition. There are some questions that beg for answers which have not been answered at all. For example, whether human rights are to be viewed as divine, moral or legal entitlement, whether they are to be validated by intuition, custom, social contract theory, principles or distributive justice, or as prerequisites for happiness; whether they are to be understood as irrevocable or partially revocable; whether they are to be broad or limited in number and content – these and other kindred issues are matters that demand for explanation which of course cannot be answered now and may likely remain so as long as the world keeps functioning, because there exist contending approaches to public order to scarcities among resources. However, despite this lack of consensus, a number of widely and interrelated postulations will be considered in order to reduce the problem of definition if not totality but partially.

First, human rights can be defined as the claims enjoyed by the citizens of a given state/country irrespective of sex, tribe or creed. The claims are usually defined and enjoyed within the bounds of the law of the country (Akinlade & Ibitoye, 2004).



Second, human rights are rights that belong to an individual as a consequence of being human. They refer to a wide continuum of values that are universal in character and in some sense equally claimed for human beings. In other word, human rights are understood to represent both individual and group demands for the shaping and sharing respect, tolerance and forbearance in the pursuit of others values (Ajayi et al, 2007).

Third, human rights can be defined as the legal entitlement of every citizen in a state. In other word, rights are seen as the benefits the individual extracts from the state. These rights are also seen as the essential provisions to be guaranteed by the law for the protection of the individual needs (Ake, 1989).

Finally, the Oshorn's Concise Law Dictionary, Ninth Edition at page 338 defines right as "an interest recognized and protected by the law, respect for which is a duty and disregard of which is wrong".

The Nexus between Democracy and Human Rights

Democracy and human rights are related in a very fundamental sense. Indeed, they are both mutually reinforcing elements in which one is the precondition for the realization of the other. In other words, both democracy and human rights share certain core features and values. This, therefore, suggests that human rights are best practiced and promoted in a democratic setting than in a military regime. The reason being that democratic structures allow for an independent and impartial judiciary to guide and promote the rights of citizens. A written constitution defining these rights, the application of rule of law and of course the press to write and express issues constructively and objectively are put in place in order to ensure that human rights are guaranteed and protected. The nexus between democracy and human rights being the rule of law, the rule of law permits both democracy and human rights to flourish without hindrances. The Rule of law can therefore be seen as the "Guardian ad litem" for both democracy and human rights. Where the rule of law is well observed, democratic structures, culture and values flourish well and allow for an independent and impartial judiciary to safeguard and promote the rights of citizens.



Human Rights and the Nigerian State

Shortly after Nigeria became independent in 1960, she became the 99th member of the United Nations as a sovereign nation, hence, the need to comply with the basic principles of human rights obligations under the United Nations Charter (Ajayi et al, 2007). However, barely six (6) years after independence, the military struck. Throughout the military era in Nigeria, promotion and safeguarding of the rights of man had no place or content as the system was dictatorial in all respect. Similarly, suspension of the constitution and issuing of decrees and edicts were pointers to the fact that Nigerians during the military regimes did not have their rights promoted but abused. For example, the proscription of some media houses and the killing of journalists became the order of the day; notable amongst such was the killing of Dele Giwa who was assassinated through a letter bomb. This was a great violation of the most basic right to life and the right to freedom of expression and the press as laid down in the constitution. Ordinarily, the press is a formidable instrument to checkmate the nefarious activities of any government be it military or civilian, instead, the government had its own media houses like radio and television stations to be proclaiming its good image. In most cases, journalists were clamped into detention for criticizing the government of the day without being tried at all. The establishment of tribunals to try both civil and criminal cases was among the numerous cases of human rights abuse under the military government. This was the situation Nigeria found herself until 29th May, 1999 when a new democratic government was ushered in.

At the inauguration of the new democratic government (Fourth Republic), former President, Chief Olusegun Obasanjo, vowed to look into the issue of human rights abuses across the nation. Consequent upon this, his administration established the Human Rights Violation Investigation Commission headed by Late Justice Chukwudifu Oputa. The Commission was given the mandate to investigate all cases of human rights abuses committed since the first military coup in 1966 to 1999 and to make appropriate recommendations to the government (Ezonbi and Jonah, 2013). While inaugurating the Commission, the former President stated that the greatest benefit of the Commission is that:



“It would serve all of us not only to know the truth but also as a result of knowing the truth, for Nigerians not to have gone through the type of conditions and situations that they have gone through in known distant past” (Obasanjo, 1999:3).

He went further to assure Nigerians of his determination to promote human rights in Nigeria by giving authorization for the release of the bodies of the Ogoni minority right activist and playwright, Ken Saro Wiwa and his eight other kinsmen hanged following a flawed judicial process and buried in secret graves. Further steps were also taken to ensure that those responsible for some of the human rights violation of the past were made to account for their roles in the previous administrations. This singular action saw the likes of General Ishaya Bamaïyi, Mohammed Abacha, Al-Mustapha and a host of others dominating the headlines of most Nigeria’s daily newspapers at that time (Ezonbi and Jonah, 2013).

However, less than six months after the historic inauguration of the Commission, the former President, Chief Olusegun Obasanjo, reneged on his promise of protecting and guaranteeing human rights. First on the list was the Odi tragedy on 20th November, 1999 when the Federal Government of Nigeria in a swift reaction moved to track down some irate youths who had earlier in November, 1999 allegedly to have kidnapped and killed twelve (12) policemen, declared a state of emergency on Odi Community after a fourteen (14) days ultimatum that was yet to expire. Thousands of combined military personnel invaded the community and unleashed a heavy bombardment of artillery, aircraft, grenade, mortar bombs and other sophisticated weapons in replication of a typical invasion of an army territory in real warfare. Another form of human rights violation was the Zaki Biam barbaric incident which took place two years after that of Odi Saga, precisely in 2002. The sad and un-forgetful event was similar to that of Odi, where military personnel that were drafted to intervene in the clash between Tiv/Jukun were murdered in cold blood by the Zaki Biam Community. Following the gruesome murder of these military personnel, the former president, Chief Olusegun Obasanjo, ordered a team of well-trained armed military personnel to ransack the whole community. The aftermath effects was grievous as many people were injured, maimed and killed, and many houses were also raised down, including that of General Victor Malu (Rtd), a prominent Nigeria citizen (Ezonbi and Jonah, 2013).



Other forms of human rights violation are in form of extra-judicial killings by the Police and other security agents. For example, the Joint Task Force (JTF) was alleged to be involved in killings suspects without fair trial as well as random killing of members of communities where they suspected Boko Haram militants resided (Human Rights Watch, 2012). This contravenes section 33 of the constitution of the Federal Republic of Nigeria (1990); and Article 4 of the African Charter on Human and People's Rights and Political Rights. Despite, the protection for human rights provided by the national, regional and international instruments, cases of arbitrary forfeiture, degrading human treatment and arbitrary executions by Police and other law enforcement agents are prevalent in Nigeria (Amnesty Report, 2008).

To buttress the above point, Akor, (2010) posits that the First to Fourth Republics in Nigeria had been characterized by human rights violation sometimes caused by the political intolerance of the politicians and the political manipulation of Police. Consequently, he said that political opponents in order to maintain power by all means. The Police, however, contest this by denouncing the criticisms leveled against them as regards their conduct during 1999, 2003, 2007, 2011, 2014 and 2015 general elections. According to them, they claimed that the Police performed their statutory duties with sufficient sense of professional responsibility.

A good number of Nigeria citizens were also detained by the Economic and Financial Crime Commission (EFCC) and the Independent Corrupt Practice Commission (ICPC), all in the name of war against corrupt practices. Consequent upon this, Osula (2006) lamented that "we are aware of numerous instances of abuse of office by the President... I personally wrote twenty-eight (28) impeachment offences against him... and that there are twenty-eight impeachment offences committed by the president".(Osula, 2006:24).

The worrisome cases of human rights abuse during this administration informed the succeeding government of President Musa Yar'Adua to declare upon its inauguration that his administration would be anchored on the rule of law and due process. However, his professed commitment turned out to be mere rhetoric as cases of human rights' abuse under the administration were isolated but systemic. The National Human Rights Commission's Report during the 9th session of the United Nations Human Rights Council held in Geneva, Switzerland in 2008, bears eloquent testimony to the massive violation of human



rights under the administration. In the Report, the Commission which ironically is a government institution categorically stated that notwithstanding the constitutional guarantees on the right to freedom from torture, cruel, inhuman and degrading treatment or punishment, the Commission continued to receive complaints on daily basis of the use of cruel, inhuman and degrading treatment meant to extract "confessions" from suspects. Furthermore, the Commission reported that forty (40) per cent of complaints received by it related to torture and extra-judicial killings by the Nigerian Police. (TELL, 2009).

In apparent confirmation and endorsement of the Report of the National Human Rights Commission, the United States Human Rights Report for 2008 expressed worry about the human rights record of the administration which is described as being "poor". According to the Report, most significant human rights problems included the abridgement of citizens' rights to change their government...

....abuse of power by the Police deprivation of life and infringement on individual freedom... extra-judicial killings by the security forces, the use of lethal and excessive force by the security forces, vigilante killing, impunity for abuses by the security forces, torture, rape, and other cruel, inhuman or degrading treatment of prisoner, detainees and criminal suspects, harsh and life threatening prison and detention centre-conditions (Tell, 2009).

In isolating security forces for condemnation, the Report noted that national Police, army and other security forces committed extra-judicial killings and used lethal and excessive force to apprehend criminals and disperse demonstration during the year citing the carnage of February 25th, 2008 in Ogaminana, Kogi state, and Jos, Plateau State respectively as examples.(TELL, 2009).

Following the death of President Musa Yar'Adua in 2010, the then Vice-President, Goodluck Jonathan took over the mantle of leadership. Human rights protection under his administration was also lamentably appalling as horrendous cases of human rights were prevalent especially as the government had demonstrated lack of capacity to deal with the menace of Boko Haram, a violent and murderous Islamic sect which has mindlessly killed thousands of people in unprovoked attacks. Places of worship, especially churches have become hunting ground for the sect which has killed many worshippers in cold-blood. Adding to the challenges posed by the Boko Haram sect is the malaise of kidnapping which



has grown exponentially and in sophistication. Just like in other regimes, cases of extra-judicial killings and unjustifiable arrests and detention have not abated. Amnesty International in its 2012 Report on Nigeria noted that the country's human rights situation in the year deteriorated. (AI, 2012).

On his assumption of office on the 29th May, 2015, many Nigerians began to look up to the new regime led by President Muhammadu Buhari to redress the issue of human rights violation in Nigeria. Funny enough, no major breakthrough has been recorded in this area as many Nigerians continue to be victims of human rights violation on daily basis. For example,

the unlawful killing and mass cover up by Nigerian Army at Zaria in December, 2015. It is also on record that on the 12th December, 2015, hundred Islamic Movement of Nigeria (IMN) supporters blocked a section of the road in front of the IMN headquarters in Zaria, Kaduna state, and refused to clear the road for the convoy of the Chief of Army Staff to pass. According to Amnesty International (AI) report:

“After failed attempts by Army Officers to convince IMN protesters to clear the road, soldiers opened fire with live ammunition, killing at least seven protesters and injuring several other people. As if this not enough, later, soldiers were deployed to other locations within the city where the IMN members were gathered and shot dead hundred of people between 12th December and 14th December, 2015. The secretary to the Kaduna state Government admitted on 11th April, 2016 that the state Government had secretly buried 347 bodies in a mass grave two days after the Incident.”(AI.2018:7).

Furthermore, the use of death penalty continues to subsist in the Nigerian legal system. Rather than abating, death sentences continue to be imposed throughout the country. “Between 2014 and 2017, nine states expanded the scope of death penalty to punishments for kidnapping. In 2017, the Senate also passed a bill prescribing death penalty for abduction and similar offences. By the end of 2017, there were 2,285 inmates on death row, many of them sentenced following unfair trials or after more than a decade in pre-trial detention.” (AI 2018:10).

People are forcefully evicted from their homes without notice, no compensation and with no provisions for alternative accommodations. “Between 2015 and 2017, some state



governments in Nigeria carried out large scale evictions and demolition of residential houses of people in Kaduna, Lagos and Rivers states without legal and procedural safeguards, including genuine consultation, adequate notice, access to legal remedies and provision of adequate compensation and alternative housing”(AI,2018:10-11). According to AI report since 2015, Lagos state authorities have forcibly evicted more than 40,000 people. (AI,2018).

It is to be noted that while civil and political rights have enjoyed varying degrees of protection since independence to some extent, successive Nigerian governments have done little in the promotion of social, economic and cultural rights. These rights have been described as a “neglected category of human rights”. (Dada, 2012/2013). According to him, the reason for the neglect of these rights is not just because of limited resources but partly because officials of various government are guilty of reckless spending and stealing of public funds.

CONCLUSION

A critical look at the period under review shows that human rights are supposed to be best practised, promoted and enhanced in a democratic setting than in a military regime but the facts on ground has not justify this high hope. This dream has not been achieved so far. Rather than ensure a seamless ride for the rule of law, good governance and human rights under the democratic setting, what we have is more or less the rule of the thumb. Government disobedience to court judgments, forced eviction and enforced disappearances, police brutality, extra-judicial killings, torture and mass killings/mass burials by security operatives and the destructive work of the insurgents etc, are the order of the day. Whatever the current attitudes and policies of governments, the reality of popular demands for human rights including both greater economic justice and greater political freedom is beyond debate.

However, observance of human rights poses problems everywhere and no country’s record, be it highly industrialized or economically undeveloped is faultless. Nigeria which is our major focus is not an exception. Since rights and duties are complimentary, it becomes imperative for both the government and the citizens to be alive to their responsibilities for the general well-being of the country.



RECOMMENDATIONS

From the foregoing discussion, it should be pointed out that in spite of the adequate provisions for the rights of the citizens in chapter IV of the Nigerian Constitutions of 1979 to 1989, and 1999 as amended, many Nigerians are still denied these rights and the basic necessities of life especially the poor masses who constitute the majority. Nevertheless, the rights of citizens can still be properly guaranteed and protected under the following measures:

- There is a need to further amend the Nigerian Constitution to incorporate the cultural and socio-economic rights that had hitherto been grouped under chapter two of the Nigeria Constitution to form part and parcel of our fundamental human rights under chapter four of the Constitution. By so doing, these rights become actionable and enforceable in the law court. Section 33(2) of the CFRN 1999 and the police force order 237 should also be amended to prevent the use of lethal force on Nigerians.
- The government of Nigeria should ensure that the use of violence against women and vulnerable people becomes a thing of the past in Nigeria. This can be achieved by domesticating the violence against persons (prohibition) bill passed by the National Assembly in all the 36 states of the federation. The gender and equal opportunities bill should also be passed into law and implemented by all the states of the federation.
- Adequate legal and procedural safeguards should be put in place to ensure that all cases of evictions comply strictly with laid down laws and also with international standard. A moratorium may also be declared to ensure that no one suffers such fate again in Nigeria.
- All cases of extra-judicial killings and allegations of mass burials, tortures e.t.c should be opened for investigation by independent international and regional human rights bodies with full and free access to detention camps, police stations, military barracks and mass grave sites. The provisions for fair trials and natural justice as contained in the Constitution of the Federal Republic of Nigeria, CFRN, 1999 should be implemented without reservations.



- Death Penalty should be completely removed from the Nigerian legal system and statute books. All death sentences should be commuted to terms of imprisonment in line with international best practices.
- A nation with an embarrassingly low literacy level cannot easily safeguard human rights. Despite increasing enrolment of students at primary, secondary and tertiary institutions, many of the students do not know what human rights entail. With this large chunk of citizenry being unaware of what constitute human rights, mass education and mobilization becomes more necessary. It should be noted here that democracy is not safe in a country where a large majority of the population is illiterate.
- In Nigeria, the effect of poverty is pervasive. Practically, actualization of most of the fundamental rights cannot be achieved in a country like ours where millions are living below starvation level. Therefore, there is a need for government at all levels to embark on poverty alleviation strategies with strong political will and on a non-partisan basis.
- The Nigerian Police force should be overhauled. This can be done in terms of re-organizing, recruitment of educated youths into the police, training and re-training of its personnel, provision of adequate working tools and equipment. The Nigerian police should also be re-orientated to move away from the ridiculous mentality of “police force” that is abusive and coercive to a more people friendly “police service”. That is, a police organization that is set out to serve, protect and preserve the rights of every citizen while carrying out its legal duties.
- There is a need to overhaul the Nigerian judiciary if the problems of human rights violations are to be tackled effectively. The issue of corruption within the judiciary, among others, should be seriously looked into as the judiciary is deemed to be the last hope of the common man. It must be above board and dispose of cases without undue delay.
- The Nigerian government has an obligation under international law to investigate, apprehend, prosecute and jail those responsible for the infractions and breaches of the human rights of others, including Boko Haram, Fulani herdsmen and government security forces.



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