

## The State Of Human Rights in Africa in the Past Two Decades: An Assessment.

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**ABSTRACT:** Like every other aspect of the law, Human rights have also developed over the years. Human right in the antediluvian times no doubt have not remained the same. It has evolved and metamorphosed leading to the development of various human rights principles which affirms that human rights is as well dynamic. This work will assess the development of human rights in Africa in the past two decades by majorly focusing on the three (3) stages of human rights evolution to date (which are pre-colonial, colonial and post-colonial eras) and in contemporary times. It will appraise the existing institutional and legal framework that were developed in the course of human rights development to ascertain how well they have fared. The assessment will expose the positive and negative impacts of these human right developments and activities and roles played by these institutions in human rights development. It is hoped that the assessment will enhance human rights jurisprudence in Africa.

**KEYWORDS:** Colonization, expansionism, liberation, humanitarianism, industrialization and judicial activism.

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### I. INTRODUCTION

Human rights evolution in Africa is traceable to the three (3) stages of development in Africa which are the pre-colonial, colonial and post-colonial eras. In each of these stages, there exist significant impacts in the human rights development. These three (3) stages of human rights development are compass for the assessment of the state of human rights in Africa.

### II. HUMAN RIGHTS IN PRE-COLONIAL, COLONIAL AND POST-COLONIAL AFRICA

The evolution and stages of human rights development in Africa is antiquated and is traceable from the pre-colonial era till date. Human rights are inherent in nature. Before colonization there were human right abuses such as killing of twins and others that were in place because of the superstition inherent in the culture of the indigenous people.

These practices were eradicated by the Colonial masters who and in turn introduced slavery, forced labour, exploitation and British expansionism to the detriment of the indigenous people of Africa. However, the activities of the colonial masters and their exit sharpened the various theories<sup>1</sup> and principles of human right.<sup>2</sup> The theories and principles of human rights basically expounds that human rights should universally apply to all citizens without any discrimination and not subject to any qualification before its application. The activities of the colonial masters gave rise to the quest for liberation from their strong hold, abolition of slavery and forced labour.<sup>3</sup> The said quest for abolition of slavery and forced labour gained momentum with the forming of Non-Governmental Organizations<sup>4</sup> spear headed by black slaves set free and former black rich slave merchants; and thereafter the gradual repatriation of blacks back to their countries of origin. Thereafter the quest for independence of countries in Africa and control of natural resources birthed the principles of human rights in instruments. From the 19<sup>th</sup> to 20<sup>th</sup> centuries, with the entrance of communication of international world affairs, there was need for new repair in the international relations leading to NGOs to fight for humanitarianism in

1. Naturalist theory, Social contract theory and positivist theory.
2. All rights are universal, indivisible, interdependent and inter-related. See Vienna Declaration and Program of Action, 1993; par3.
3. It was against right to dignity of human person and liberty. See OW Igwe, *Preliminary Studies in Human Rights* (Rings & Favolt Ltd., 2002), 217.
4. They include The Quakers, The Clapham Set, The Association of St. George's Bay, The sierra Leone Company, The Society of the Friends of the Blacks, The Anti-Slavery Society and The American Colonization Society.

armed conflicts, sexual equality, prostitution and white slave trade, protection of children and young people from forced labour, defence of minority, peace and abolition of slavery etc.<sup>5</sup> Their role made a significant impact in the history of the protection and enforcement of human rights in international fora, most significantly, in the drafting of Charter of United Nations, 1945 on the inclusion of articles that mentioned protection of human rights and fundamental freedoms.<sup>6</sup> The said Charter of the United Nations, 1945 was the first agreement among nations to promote and observe human rights and fundamental freedoms for all through legislative, judicial and administrative actions.<sup>7</sup> This was followed by the UDHR 1948 as an authoritative interpretation of human rights and the reaffirmation of the rights contained in the Charter of the United Nations, 1945.<sup>8</sup> The UDHR has become a standard by which the conduct of government is judged both within and outside the United Nations,<sup>9</sup> as it is being reflected in many national Constitutions and legislations in Africa. Despite that, there was great need for the ratification and implementation of the Human rights instrument. The NGOs are instrumental to pressurizing other member states to ratify the 1966 Covenants with the resultant effect of reaching the required number of thirty five (35) for the instruments to come into force and they came into force in 1977, and also the drafting of other specific instruments relating to the vulnerable groups.

However, human rights through the instrumentality of the UDHR, 1948 has remained the basis for important decisions taken by organs of United Nations which inspired lots of robust instruments at the international,<sup>10</sup> regional<sup>11</sup> and national levels<sup>12</sup> as well as specific ones on vulnerable groups.<sup>13</sup> Despite these achievements, it appeared that human rights development covered protection of rights and fundamental freedoms in peace times without covering same for war or armed conflict times. This led to the establishment of the first NGO called the International Committee of Red Cross for humanitarian aid in times of war.<sup>14</sup> The atrocities of World Wars I and II brought about the great need to develop the human rights in the aspect of humanitarianism in times of armed conflicts or wars with the coming into force of the Geneva Conventions.<sup>15</sup> Despite that, the United Nations had to (because of the effect of the cold war) enhance discussions on protection and respect for the rights of persons to include the captured combatants,<sup>16</sup>

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5. See The Anti-Slavery Society, The World Alliance of Young Men's Christian Association, The International Committee of the Red Cross, The Institute of International Law, The International Abolition Federation, The International Alliance of Women, The International Federation of Human Rights etc. NGOs were catalyst to the African liberation from the stronghold of colonial masters.
  6. See OW Igwe, *Op. Cit.*, 228.
  7. CE. Obiagwu, 'International Human Rights Framework: A Challenge to Nigerian Courts' in CC Nweze and O Nwankwo ed., *Current Themes in the Domestication of Human Rights Norms*, (Fourth Dimension Publishing Co., Ltd., 2003), 52.
  8. See J Rehman, *International Human Rights Law*, (Pearson Education Ltd. 2<sup>nd</sup> ed.), 79-81.
  9. G Ezeji-for, 'The Development of the Concept of Human Rights: Definition and Philosophical Foundation', in AO Obilade, C Nwankwo and A Tunde-Olowu, *Text for Human Rights Teaching in Schools*, (Constitutional Rights Project, 1999), 37.
  10. ICCPR, 1996 and its two Optional Protocols and the ICESCR, 1966 and its Optional Protocol,
  11. At regional levels, States have adopted human rights treaties for protection and promotion of human rights within regions. See CE. Obiagwu, 'International Human Rights Framework: A Challenge to Nigerian Courts' in CC Nweze and O Nwankwo ed., *Op. Cit.*, 53. See also the ACHPR, 1981; European Charter on Human Rights and Fundamental Freedoms, 1950; American Convention on Human Rights, 1969 and European Social Charter, 1961.
  12. Constitution of the Federal Republic of Nigeria, 1999 as amended; Constitution of the Republic of South Africa, 1992; Constitution of Ghana, 1992; Constitution of the Republic of Kenya, 2010 etc.
  13. CEDAW, 1979 and its Optional Protocol; CAT, 1984; CRC, 1989 and its 3 Optional Protocols; Convention on the Rights of Persons with Disabilities, 2008; International Convention of the Protection of the Rights of All Migrant Workers and their Families, 1990 and International Convention of the Protection for the protection of All Persons from Enforced Disappearance, 2006 etc.
  14. A Swiss philanthropist, Henri Dunant who witnessed the sufferings of soldiers in the battle of Solferino due to the absence of mechanism to retrieve those wounded in the battle field and died for lack of care advocated for the establishment of a non-discriminatory civilian relief corp called for that purpose with Red Cross as sign of Military medical personnel.
  15. Geneva Conventions of 1864 and 1929; Geneva Conventions (I) to (IV) of 1949 and the Protocols I and II of 1977 and Protocol Additional to Genocide Convention of 1949 and relating to the Protection of Victims of International Armed Conflicts; and Protocol III of 2005.
  16. J Rehman, *Op. Cit.*, 778.

non-combatants<sup>17</sup> and the environment<sup>18</sup> during armed conflicts. The Member States to United Nations agreed to statements in the Vienna Declaration of Program of Action, 1993 wherein Member States of United Nations agreed that human rights are universal, interdependent and interrelated and the need for humanitarian aid to victims of natural or man-made disaster without any form of discrimination.

### III. HUMAN RIGHTS IN CONTEMPORARY AFRICA

The development of African countries with the attendant industrialization and technological advancement introduced new dimensions of human rights abuses not contemplated in the already existing human rights legal framework which gave rise to contemporary dimensions of human rights. The jurisprudence of human rights developed to accommodate other hostilities that gave rise to quest for protection and promotion of right to development,<sup>19</sup> right to environment and the impact of foreign investment policy. There are however modern human rights instruments governing development, environment and foreign investment policies over the past two decades.<sup>20</sup> This goes to buttress the definition of human rights by Osita Eze that it represents demand or claims which individuals or groups make on society, some of which have become part of *lex lata* while others remain aspirations to be attained in the future.<sup>21</sup> Despite the constant development of the jurisprudence of human rights over the past two decades, the problems encountered in the course of its development lies in its legal and institutional framework at the international, regional and national levels. These problems are categorized as legal<sup>22</sup> and non-legal<sup>23</sup> impediments. Notable of the problems is the application of international norms of human rights.<sup>24</sup> The difficulty is usually encountered in dualist states because of the dependence on the domestic machineries of the national governments for enforcement of international human rights norms.<sup>25</sup> Another difficulty faced is usually national governments citing local differences<sup>26</sup> as their challenge in applying those international human rights norms and the non-justiceability of economic, social and cultural rights.<sup>27</sup> Despite these problems, myriads of NGOs have made substantial contributions to many human rights instruments and enforcement of human rights and humanitarian laws based on their consultative status to the United Nations. The successes recorded by ICTY and ICTR have emboldened State to sue their governments on the crimes against humanity committed by their government in times of armed conflicts irrespective of the notable problem that lies with the implementation and enforcement of these international human rights and international humanitarian laws. In order to make up for the shortcomings of the ad hoc tribunals and to combat impunity, the International Criminal Court was established in 20<sup>th</sup> century to try war crimes.<sup>28</sup>

17. *Ibid*, 797. The non-combatant are civilians (that is the vulnerable group which includes children, women and aged).
18. *Ibid*.
19. It is a third generation of human rights which its non-existence of these rights will hamper the effective realization of the first and second generations of human rights. This is in line with the 2023 Agenda and the Sustainable Development Goals which integrated the Addis Ababa Action Agenda of the Third International Conference on Financing for Development to respect Human Rights including right to development.
20. Addis Ababa Action Agenda.
21. OC Eze, Human Rights in Africa: Some selected Problems, (Nigerian Institute and Macmillan Nigerian Publishers Ltd., 1984), 5.
22. They include doctrine of locus standi, ouster of Courts jurisdiction over economic, social and cultural rights, immunity clause of certain governmental officials, partial immunities relating to limitation of action, non-justiceability of second generation of rights etc.
23. They include poverty, illiteracy, ignorance, cultural relativism, religious intolerance, activities of international corporations, their loans and grant arrangement and repayment plan to developing countries in Africa.
24. This problem gave rise to two (2) theories of its application which are monism and dualism. Monism requires that any international treaty ratified or assented by the State is directly enforceable within the municipal system while dualism requires the parliament of the State to enact a law to incorporate the ratified treaties into the municipal laws before they can be enforceable within the municipal system. See Human Rights: Book for Parliamentarians No.26, (Inter-Parliamentary Union and United Nations 2016), 98. See also CE. Obiagwu, Op, Cit., 55-56.
25. *Ibid*., 56. See Constitution of the Federal Republic of Nigeria, 1999 as amended; s12.
26. *Ibid*, 54.
27. See Constitution of the Federal Republic of Nigeria, 1999 as amended; s6(6)(c).
28. See Rome Statute of ICC, 1998; arts5 and 25.

Much later, there was need for judicial activism in expansive, integrative and purposeful interpretation of the Constitutional guaranteed rights, that is using the law as an instrument of liberation. This need under reference above was reaffirmed in the Bangalore Colloquium of 1998<sup>29</sup> that settled the controversy of application of international human rights norms by national Courts where the national laws are silent on same. Again, popular empowerment became an educational tool for promotion and protection of human rights (that is human rights education) advocated by the Vienna Declaration of Program of Action, 1993 which captured the activities of NGOs right from the quest for black continent (African) liberation. Public interest litigation also became a tool in the legal protection and promotion of human rights. Through it, judicial recognition of rights, in particular economic, social and cultural rights were advanced and created.<sup>30</sup> It was also used to constrain the issue of locus *standi*. For instance, South Africa developed its Constitution to stifle the clog of locus *standi* to the realization of human rights so that anyone or association can sue for his or their own interest, on behalf of another or association of group of persons who cannot act for themselves.<sup>31</sup> Nigeria has also followed suit significantly on this as it pertains to human rights application<sup>32</sup> as expressed in the cases of *Center for Oil Pollution Watch (COPW) vs NNPC*<sup>33</sup> and *Esabunor & Anor vs Faweya & Ors*.<sup>34</sup>

#### IV. CONCLUSION

In conclusion, human rights development over the two decades is to be applauded and is hoped that the all sectors, African political leaders (and the various bodies under them), individuals, lawyers and scholars would make use of the available and robust legal and institutional framework for the maximum realization of the protection and promotion of human rights and fundamental freedom and sustained through the future generations.

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29. It has been reaffirmed in many judicial colloquia with Nigeria having the Abuja Confirmation of the Domestic Application of Human Rights Norms, 1991.

30. See the case of *Adesanya vs The President of the Federal Republic of Nigeria* (1982) 1 NCLR 324.

31. See Constitution of the Republic of South Africa, 1996; s38.

32. See the Fundamental Rights (Enforcement Procedure) Rules, 2009; Preamble 3(e).

33. (2019) 5 NWLR (PT 1666) 518.

34. (2019) 290 LRCN 1. The Doctor sought for the order of a Magistrate to give blood transfusion needs urgently for the treatment of a child whose parents' belief as Jehova Witnesses forbids blood transfusion. Unyielding, the Doctor administered same with an ex parte order from the Chief Magistrate. The child got well and was discharged. The matter got up to the Supreme Court where they held that the consideration of the child's welfare (that is saving the life and the best interest of a child before a decision is taken) far outweighs religious beliefs of the Jehova Witness Sect.