

# ISSUES IN FUNDAMENTAL HUMAN RIGHTS

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## INTRODUCTION

The concept of human rights has become a global issue. The principle that all men and women are created equal has become the foundation of all democratic societies. It has been observed that opinions of people based on race, personal belief, or social standing form the structure of prejudice and bigotry. This has made the attainment of equal rights to remain a constant struggle. The existence, validity and content of human rights continue to be the subject of debate in philosophy and politics. However, human rights are defined in both domestic and international laws. There is, however, a great deal of variance between human rights norms are perceived and defined in both, context and how they are upheld in different countries.

### Concept of Human Rights

The concept of human rights has been viewed from different political, sociological and philosophical perspectives. Socio-politically, human rights is a concept which regards human beings as having universal rights, or status, regardless of legal jurisdiction, and other localizing factors, such as ethnicity and nationality (Wikipedia, 2006). Philosophically, as observed by Hill (2006), human rights are based on social contract theories and their conception of natural rights. According to Forsythe (2000), human rights refer to the supposed basic rights and freedoms to which all humans are entitled. Murray (2006), from anarcho-capitalist orientation, explained human rights as a condition in which person's ownership rights to his body and legitimate property rights are neither invaded nor aggressed against by person, group of persons, or government.

In a domestic sense, the concept of human right refers to safeguards for the individual against arbitrary use of power by the government in relation to the following:

1. The well being of individuals;
2. The freedom and autonomy of individuals; and
3. The representation of the human interest in government.

In addition, the concept of human rights deals with small subset of values that should be available for implementation by individual, other individuals, or government. These values are clearly stated in the constitution and are based on the legal and political traditions of every country including Nigeria.

According to Wright (2006), these rights include the right of life, the right to an adequate standard of living, freedom from torture and other maltreatment freedom of religion and of expression, freedom of movement, the right to self-determination, the right to education, and the right to participation in cultural and political life. From these various points of view, fundamental human right can be explained as the basic universal inalienable social should be enjoyed by all human beings regardless of their religion, race, ethnicity, gender and status. In other words, fundamental human right, are rights that belong to all as human beings and citizens of a country.

Human rights are held to be inalienable and belong to all human and that is why rights are clearly written in the constitution of nations. They are necessary for freedom and rights to the maintenance of a reasonable quality of life. For instance, it can be seen in the United States Constitution (1783) and French Declaration of Rights of Man and of the Citizen (1793) and the Nigeria constitution (1999). If a right is inalienable, that means it cannot be bestowed (e.g one cannot commit suicide or sell self to slavery). According to Charles (2006), rights may also be non-

derogable (not limited in times of national emergency); these often include the right of life, the right to be prosecuted according to the laws that are in existence at the time of the offence only, the right to be free from slavery, and the right to be free from torture.

### **Philosophical Basis of Human Rights**

Different theoretical approaches have been advanced to explain how human rights become part of social expectations. The biological theory considers the comparative reproductive advantage to human social behavior based on empathy and altruism in the context of natural selection. Other theories hold that human rights codify moral behaviour, which is a human social product developed by a process of biological and social evolution (associated with Hume) or as a sociological pattern of rule setting (as in the sociological theory of law the work of Weber). This approach includes the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls).

Natural law theory is built on "natural" moral order based on religious precepts, the assumed common understanding of justice, or the belief that moral behaviour is a set of objectively valid prescriptions. In legend, literature, religion, and political thought, justice (and eventually the concept of human rights) become socially constructed over time into complex webs of socio interaction striving toward a social order in which human beings are treated fairly. Religious societies tend to try to justify human rights through religious arguments. For example, liberal movements within Islam have tried to use the Qur'an support human rights in an Islamic context.

The social evolution theory is based on human needs and struggle that incorporates an analysis of the norm-creation process. Values become norms through the constitutive process of authoritative decision-making. Such norms may take the form of law through a particular form of authoritative decision making of institution associated with a legal system. It is the process of public reasoning through human rights norm-creating that progressively weeds out the culturally bound behaviours that are inconsistent with contemporary human rights. In this sense, culturally particular norms adapt to evolving human rights standards as defined in national constitutions and international human rights instruments.

Ultimately, the term human rights is often itself an appeal to a transcendent principle, without basing it on existing legal concepts. The term "humanism" refers to the developing doctrine of such universally applicable values. Some authors argue that nationalism and realism weaken human rights, while individualism and cosmopolitanism strengthen them. This is argued by Demetrius Klitou in his book *The Friends and Foes of Human Rights*. Klitou also outlines the need for a "human identity" in order to empower the human rights movement.

### **History of Human Rights**

The history of the human rights movement began with the ancient religions and societies and shows the evolution of concepts and institutions of human rights across civilizations. The roots of the notion of human rights started with the role of the individual in the state and can be drawn as far back as the ancient period. However, the idea of civil and political rights stems from liberal freedoms advocated by John Stuart Mill in his book *On Liberty*, while the concept of economic, social and cultural rights can be traced back to Hegel's *Elements of the Philosophy of Right*. According to Wikipedia (2006), the Persian Empire for instance, governed on a basis of human rights never seen before until the spread of the large Persian Empire.

The Cyrus Cylinder is recognized as the first document of human rights. According to the Cylinder's transcript, the Persian Empire freely let the people of the empire practise their own religious beliefs. This, of course, is also conveyed in the Bible where it shows the Persians releasing the followers of Judaism from oppression and letting them migrate back to their land.

The Cylinder also introduces such concepts as the abolition of slavery. This was practised too by the kings of Persia, where all palaces were built by 'paid' workers, an unusual concept at the time. The Cylinder now lies in the British Museum, London, and its contents have also been engraved a top the UN headquarters main entrance.

Much of modern human rights law and the basis of most modern interpretations of human rights can be traced back to relatively recent history. The British Bill of Rights (or "An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown") of 1689 made illegal a range of oppressive governmental actions in the United Kingdom. Two major revolutions occurred during the 18<sup>th</sup> century in the United States (1776) and in France (1789), leading to the adoption of the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which established certain rights. Additionally, the Virginia Declaration of Rights of 1776 set up a number of fundamental rights and freedoms.

These were followed by developments in philosophy of human rights by philosophers such as Thomas Paine, John Stuart Mill and Hegel during the 18<sup>th</sup> and 19<sup>th</sup> centuries. Many groups and movements have managed to achieve profound social changes over the course of the 20<sup>th</sup> century in the name of human rights. In Western Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labour. The women's rights movement succeeded in gaining for many women the rights to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi's movement to free his native India from British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them civil rights movements, and more recent diverse identity politics movements, on behalf of women and minorities in the United States.

The establishment of the International committee of red cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, to be further developed following the two World Wars. The origin of modern positive rights in international law may be traced to the creation of the International Labour Organization in 1919 as a western response to the socialist ideology of the Russian huge losses of life and gross abuses of Human rights that took place during those wars was a driving force behind the development of modern human right instruments. The League of Nations was established in 1919 under the treaty of Versailles following the end of the World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global welfare. Enshrined in its covenant was a mandate to promote many of the rights which were later included in the Universal Declaration of Human Rights.

At the 1945 Yalta Conference, the Allied powers agreed to create a new body to replace the League. This body was to be the United Nations Organisation. The United Nations has played an important role in international human right law since its creation. Following World War II, the United Nations and its members developed much of the discourse and the bodies of law which now make up international humanitarian law and international human right law. The Geneva Conventions came into being between 1864 and 1949 as a result of efforts by Henry Dunant, the founder of the International Committee of the Red Cross. The conventions safeguard the human rights of individual involved in armed conflicts, and build on the 1899 and 1907 Hague Conventions, the international community's first attempt to formalize the laws of war and war

crimes in the nascent body of secular international law. The conventions were revised as a result of World War II and readopted by the international community in 1949.

Earlier in 1948, the Universal Declaration of Human Rights resolution was adopted virtually unanimously by the United Nations General Assembly. While not legally binding, it urged member nations to promote a member of human, civil, economic and social rights, asserting these rights are part of the “foundation of freedom, justice and peace in the world”. The declaration limits the behavior of the state, which now has duties to the citizen (right-duty duality). Efforts to create a legally binding form of the charter led to disagreements between various states over which rights were acceptable. Thus, two different covenants, the International Covenant on Civil and Political Rights (opened for signature in 1966, entered into force March 23, 1976) and the International Covenant on Economic, Social and Cultural Rights (opened signature 1966, entered into force January 3, 1976) were created which bind those states together these three documents constitute the International Bill of Human Rights.

There has also been a number of other conventions regarding particular rights, including the Convention on the Prevention and Punishment of the Crime of Genocide (entry into force: 1951) Convention against Torture (entry into force: 1984) Convention on the Elimination of All Forms of Racial Discrimination (entry into force: 1969), Convention on the Elimination of All Forms of Discrimination Against Women (entry into force: 1981), Convention on the Rights of the Child (entry into force: 1989), Rome Statute of the International Criminal Court (entry into force: 2002).

A modern interpretation of the original Declaration of Human Rights was made in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993. The degree of unanimity over these conventions, in terms of how many and which countries have ratified them vary, as does the degree to which they are respected by various states. The UN has set up a number of bodies to monitor and study human rights, under the leadership of the UN High Commissioner for Human Rights (HCHR). There are also many regional agreements and organisations governing human rights including the European Court of Human Rights, the only international court with jurisdiction to deal with cases brought by individuals (not states), the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The United Nations (UN) is the only multilateral governmental agency with universally accepted international jurisdiction for universal human rights legislation. All UN organs have advisory roles to the United Nations Security Council and the United Nations Human Rights Council, and there are numerous committees within the UN with responsibilities for safeguarding different human Rights treaties. The most senior body of the UN with regard to human rights is the Office of the High Commissioner for Human Rights. The United Nations has an international mandate to:

*...achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex language, or religion.*

- Article 1 -3 of the United Nations Charter.

The United Nations Human Rights Council, created at the 2005 World Summit to replace the United Nations Commission on Human Rights, has a mandate to investigate violations of human rights. The Human Rights Council is a subsidiary body of the General Assembly and reports directly to it. It ranks below the Security Council, which is the final authority for the interpretation of the United Nations Charter. Forty-Seven out of the One hundred and ninety-One

member states sit on the council, elected by simple majority in a secret ballot of the United Nations General Assembly. Members serve a maximum of six years and may have their membership suspended for gross human rights abuses. The Council is based in Geneva, and meets three times a year with additional meetings to respond to urgent situations.

Independent experts (rapporteurs) are retained by the Council to investigate alleged human rights abuses and provide the Council with reports. The Human Rights Council may request that the Security Council take action when human rights violations occur. This action which may be direct actions, may involve sanctions, and the Security Council may also refer cases to the International Criminal Court (ICC) even if the issue being referred is outside the normal Jurisdiction of the ICC.<sup>22</sup>

### **Typology of Human Rights**

A fundamental right is a right that has its origin in a country's constitution or that is necessarily implied from the terms of that constitution. These fundamental rights usually encompass those rights considered natural human rights. In the United States Bill of Rights, the English Bill of Rights and the Canadian Charter of Rights and Freedoms, human rights are divided into negative and positive rights, although other classifications also exist. Negative human rights, which follow mainly from the Anglo-American legal tradition, denote action that a government should not take. These are codified in the United States Bill of Rights, the English Bill of Rights and the Canadian Charter of Rights and Freedoms and include freedoms of speech, religion and assembly.

Positive human rights follow mainly from the Rousseauian Continental European legal tradition, denote rights that the state is obliged to protect and provide. Examples of such rights include: the rights to education, to a livelihood, and to legal equality. Positive rights have been codified in the Universal Declaration of Human Rights and in many 20<sup>th</sup> century constitutions.

A categorization offered by Karel Vasak is the three generations of human rights: first-generation civil and political rights (right to life and political participation), second-generation economic, social and cultural rights (right to subsistence) and third-generation solidarity rights (right to peace, right to clean environment). Out of these generations, the third generation is the most debated and lacks both legal and political recognition. Human rights activists discredit these divisions by claiming that rights are interconnected. Arguably, for example, basic education is necessary for the right to political participation.

### **Fundamental Human Rights in Nigeria**

In the 1999 Nigeria constitution, some of the rights generally recognized as fundamental are:

- Right to life;
- Right to marry;
- Right to procreate;
- Right to raise children free from unnecessary governmental interference;
- Right to freedom of association; of expression;
- Right to equality of treatment before the law (fair legal procedures);
- Right to freedom of thought;
- Right to religious belief;
- Right to choose when and where to acquire formal education;
- Right to pursue happiness;
- Right to vote;

Right to Freedom of contract;  
Right to privacy;  
Right to interstate travel

Any restrictions on these rights on the basis of race or religion are unacceptable. If they are denied to everyone, it is an issue of substantive due process. If they are denied to some individuals but not others, it is an issue of equal protection. Examples of rights and freedoms which are often thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to food, the right to work, and the right to education.

### **Limitation of Fundamental Human Rights**

With the exception of so-called non-derogable human rights (the four most important are the right to life, the right to be free from slavery, the right to be free from torture and the right to be free from retroactive application of penal laws, most human rights can be limited or even pushed aside during times of war and state of emergency. However, it is also observed that human rights can be limited by level of education, poverty, religion, constitution and even the type of government. For instance, during military rule, human rights such as right to freedom of association, right to freedom of expression and political participation were pushed aside while a high level of human rights is enjoyed during civilian rule.

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