

## **Human Rights, Governance And The Nigerian Constitution: A Historical Survey**

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**Abstract:** *This article is an attempt at examining the centrality of human rights in the historical evolution of Nigeria, its constitutional development and the nature of civil state relations as a basis for determining how the country fared and functioned on the basis of the synergy engendered by human rights between the state and the people. The article is divided into five parts. The first part is the introduction while the second part attempts a philosophical and conceptual appraisal of the essence of human rights in social aggregation. The third part locates the place of human rights in the various Nigerian Constitutions while the fourth deals with the feature of human rights practice in the governance of Nigeria at the various stages of its historical development. The conclusion forms the last part .*

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### **I. Introduction**

The Universal Declaration of Human Rights adopted in 1948 and expressed in the United Nations Charter, affirms the dignity and rights of all humans beings. The works of the social activities Eleanor Roosevelt (widow of former United States President Franklyn Roosevelt) proved effective in this, international treaty<sup>1</sup>. The declaration affected the terms of several national constitutions that were written after the World War II. As a matter of fact, since 1956, the United Nations has been requesting for progress reports on human rights every three(3) years from member states.

It is important to note that concern for the preservation and respects for human rights have always been a central issue in the management of the affairs of societies. Human rights can be understood in terms of the inalienable privileges employed by individuals by virtue of their humanity in which they seek to protect dignity through which to enable a fulfilling life<sup>2</sup>. Concerns for human rights is as well expected to be granted and guaranteed by institutions and constituents of the state. This finds a lucid expression in the present intensifications and universalisation of liberal values, which places high premium on human rights as a critical element in governance and constitution making process of modern state<sup>3</sup>. The United Nations since its inception has retained compliance with international treaty as basis of her relations with member states.

Nigeria's emergence as a state in 1960, legally thrust her into the web of recognised and member states of the United Nations, which had over a decade earlier, adopted a universal framework for observance and protection of human rights as a fundamental precept of statehood. As implicit in the Declaration by the then Prime Minister of Nigeria "...we are committed to the principle upon which the United Nations is founded<sup>4</sup>, there is a tacit acceptance of the "Universal Declaration of Human Rights" as an essential corollary in the country's subscription to the ideals of the United Nations, and also essential nature of its statehood.

This article therefore seeks to examine the centrality of human rights in the historical development of the Nigerian state, its constitutional development and ultimately the nature of civil state relations, as a means of determining how the country has fared and functioned on the basis of the synergy engendered by human rights, between the state and the people. Thus, the paper is divided into five part of which introduction is the first. The second part attempts a philosophical and conceptual appraisal of the essence of human rights. The third part locates the place of human rights in the various Nigerian constitutions, while the fourth deals with the feature of human rights practice in the governance of Nigeria, at the various stages of its historical development. The fifth is the concluding part of the essay.

### **II. Human Rights: A Conceptual Discourse**

The word, "Human Rights," as a concept has been an issue of great importance in political discourse. The clamour for liberty and freedom against the authoritarian states of Europe and the struggles for reforms in the church which led to various uprising which in turn led to some libertarian concessions such as the ones that helped to liberalise the state and gave recognition to the being of man<sup>5</sup>. Consequently, the struggle for liberty was to mark the beginning of Europe's steady walk to democracy. These liberties were to be informed by the idea of solipsism, an idea that was to be the basis of individualism, the hallmark of European concept of individual rights. The European concept of individual rights pre-supposes the rights of individuals and their liberties within the framework of the constitution. But as stated earlier Human Rights was an issue before it was a concept. Its transformation came as a result of scholars' need to understand its meaning within the prism and

search for an appropriate designation of a term to capture an issue so fundamental to society and law. In lending weight to this argument R.L. Smith, opined that:

...everywhere, the issue of individual liberties is central to human rights; this has come to be recognised as a necessity and compulsory for all states to embrace and institutionalize human rights all for the sake of human freedom. This is as old as history and man himself<sup>6</sup>.

His arguments and submission open our eyes to another dimension of the issue which helps us to understand that human rights was first an historical issue necessitated by nature of human existence and it later became political when it was necessary for states to formally adopt and enshrine them in the constitution. In the same vein, Wale Adeyemi asserts that for man to define the rights of existence, there is the great need for him to first of all fight and struggle against nature and later fellow men who with the emergence of societies, states and other social structures conspired to deny man his right to existence. Man's struggle for his rights pre-dated state formation, hence its support by nature<sup>7</sup>.

According to Momoh and Adejumobi<sup>8</sup> the major historical landmark on human rights span through the Magna Carter of 1215, the Revolutions of 1640 and 1660" the Tom Wilkes led parliamentary rights of 1660, the American war of independence, the Atlantic Charter and the Universal Declaration of Human Rights.

Momoh and Adejumobi are therefore of the opinion that the concept of human rights ...derives from a sense of the individual and the recognition of the need for individual freedom that is defined at least in the formal sense. On that basis also, the historical study of the concept of Human Rights presumably follows the Western Liberties upsurge and practices . The idea that human rights with its universal application as entrenched in the United Nations Charter is riddled in the Eurocentricity of its prescription and application and equally western in origin, is a major source of contradiction in major discourses.

With the definition of Human Rights as purely socio-political without considering class factor and peculiar nature of class stratification and relations of social forces in the third world countries, would it not generally appear as a misplaced exercise if its continuous application in the Third World countries continue to have minimal success. The nature of its successes, though so limited because of its universal Eurocentric and absolutely westernized individualistic usage, is anti-ethical to the socio-cultural foundations of state and existence to the Third World countries.

The above development no doubt informed the submission of Eskor Toyo after carefully considering the nature, essence, characteristics and focus of the Eurocentric perception of Human Rights in the Third World countries, by averring; that

Our focuses have greatly shifted. We no doubt, cannot understand what rights we are clamouring for, we are yet to ask ourselves whether the rights we desire has been the one we are demanding for, whether the end of the one we are asking for can give us economic freedom and political Eldorado. I wonder why we have not been able to, see properly the inherent evil of (what, we are clamouring for<sup>9</sup>

From the above, it can be inferred that the emphasis on individual rights as an Eurocentric conception of Human Rights contrast the reality of inter-state relations, in which states deny and emasculate the weaker ones the capacity to perform the obligation of protecting the aggregate rights of their citizens. Stemming from the standpoint of the vicissitude of western imperialism, Shivji has blamed the Western conception of political, social and economic administration on contravention of the universal reserves of Human Rights<sup>10</sup>. Furthermore, The concept of human rights has equally been a subject of ideological conflict, For instance, Marxist thinkers have argued against the position of western liberal thinkers that holds the view or equated Human Rights with socio-political rights. Consequently, the understanding offered at this level amplified the basic political tenets of democracy in which freedom and choice were offered as political rights. Unfortunately, the above position has no relevance to the aspiration of the neo-colonies that are still scrambling to hold or define the economic forces of their societies on which the democratic tenets would stand. Thus, looking at the limitations of this concept, there is the need to point out that its transplantation to the third World countries were to shift their focus from the basic problems of imperialism and the need for revolutionary restructuring of their societies. To them, Human Rights would be more meaningful if it takes economic imperatives as necessary units of analysis and explanation of the problems of Human Rights. Wale Adeyemi poignantly asserts that:

...the deceit of Human Rights struggle informs the gradual erosion of Human Rights struggle in Africa. As to the Africans, the struggle is about their economic emancipation but to their utter chagrin, their struggles have led to more change 'of guards under the same structures that guarantee no economic Eldorado ... the degree at which the leadership deflect to the camp of the oppressor class further sickens our people; betrayal, woes and discomfort are the tales they now tell<sup>11</sup>.

Indeed, Human Rights as a concept deserves to be appreciated in its totality and its far-reaching application. Irrespective of the nature of the state, the ideological disposition of the ruling class and other segments of the society, its structural formation and other considerations, there are rights which every social and political system seeks to protect.

In Africa, examples abound about historical accounts of pre-colonial societies, who established codes in limiting rulers' application of power in dealing with the society. In the case of Yorubaland for example the rulers of the various kingdoms operated within certain laid down taboos and institutional checks, in order to protect the rights of the people from being abused by power hungry rulers, a classical example is the role of the Oyomesi in the pre-colonial Oyo empire<sup>12</sup>. In the pre-Colonial era, the Oyomesi served as a major traditional political apparatus that was used to check the powers of the Alaafin the head of the kingdom. However, the early European contact with Africa which manifested in the inhuman trade in slaves, colonialism and neo-colonialism, distorted the organic process of state formation as well as usurping the basis of Human Rights culture of the conquered and occupied states. Remarkably also, the resolve by the affected people to resist colonial domination and other forms of imperial control could be seen as people's reaction in challenging and revolting against those whom they perceived as threat to enjoying their national rights. It is also a sign of awakening the Human Rights consciousness of the subject people. What is expected therefore is that the crafting and practice of constitution, as a device for governance is expected to take into cognizance the socio-cultural and historical background as well as political circumstances that invigorate Human Right regime as basis of civil relations in the state or society.

Human rights concept has become part and parcel of the Nigerian constitution. Its enthronement in the Nigerian constitution has its explanation in the history of the political process that necessitated it. So much was this historical commitment that the Nigerian constitution from 1979 have clear provisions for it, beyond this, the international system with its supranational powers, also has a way of ensuring that basic treaties in the international communities are adhered to by member states. Thus, Nigeria being a member of the international community and a signatory to the international protocols on human rights sourced her human rights constitutional provisions from these three primary sources, that included the United Nations Universal Declaration of Human Rights of 1948, and the African Charter on Human and Peoples Rights, benefited from the provisions of the 1948 Universal Declaration of Human Rights by the United Nations.

The 1948 Universal Declaration of Human Rights by the United Nations aptly offered rights universally at the social, political and economic level specifically, Article 20(3) states that: All peoples shall have the rights to assistance of the states to the present charter for the liberation struggle against foreign domination be it political, economic and cultural<sup>13</sup>

There is however the need for the modification of this, in order to reflect the African condition, which was informed by the need to define rights in conformity with African culture, realities and history. It is imperative to note that, what constitute human rights are as diverse as there are different cultures and races but the content of human rights are not as protean as the diversity in culture, therefore, human rights goals are the same everywhere.

Today, human rights has become a universal phenomenon, so much so that the metamorphosis it has gone through, made it expedient that the current usage of human rights has attained a rather more sophisticated dimensions. Hence in that recent usage, human rights can be said to have the following constituents.

**a. Civil Rights:** This embraces (i) the liberty of the person (ii) freedom of speech (iii) freedom of thought (iv) freedom of movement (v) freedom of assembly (vi) freedom of association and faith (vii) right to due processes and the rule of law (viii) right to the empowerment of or removal of discrimination against women, youth, peasants and religious minorities and their subordinate groups.

**b. Political Rights:** This includes the (i) rights to participate in political activity, voting and competition for political office (ii) rights which are promoted by pluralism of political organisation (iii) to belong to any political party of one's choice (iv) the mass media rights (v) the rights to belong to trade union and other professional association.

**c. Social and Economic Right:** This includes the rights (i) to economic welfare (ii) to social security (iii) to qualitative and functional education (iv) to available and affordable medicare (v) to employment (vi) to living wage (vii) to security including the prevention of the monopoly of public resources by a minority in society.

Nigeria, being a signatory to the African Charter on Human and Peoples Rights, took steps further to enshrine the principles of Human Rights in her Constitution<sup>14</sup>. Thus, section four of the 1979 constitutions took notice of this and the provisions are also guaranteed in the constitutional document of 1999.

The international politics of recent times, placed high premium in the observance of human rights as part of civilized states behavior and even, the supervision of which the international community cannot permit otherwise. Permitting the framework of such concepts as pariah state, rogue state and even application of sanctions to states that are favoured to disregard human rights.

However, the Nigerian government have found ways of violating human rights especially under her various military regimes who upon ascending office, first set aside the constitution. To pave way for its replacement by decrees, which are characteristically draconian and anti-human rights. The Nigerian 1979 Constitution it must be noted, was fashioned along the model of the American Constitution. In essence, the Constitution (1979) as a legal framework was already fraught by not taking cognizance of the socio-political and political context of

Nigeria. As a result, the civilian dispensation that was ushered in soon collapsed, following the coup d'etat of 1983 which truncated the second Republic<sup>15</sup>.

The trend under emergent military dispensation was consistent with the period of the first military incursion in 1966. What is however remarkable here, was the attempt at a transition programme which spanned an entire 12 year period. The transition programme commenced by the General Ibrahim Babangida in 1987, was bedeviled with a series of postponement of the handing over date, culminating in his stepping aside in 1993. The regime was characterised by a diacritical arrangement wherein Civilian governors with a military president and national assembly, as well as with a National Defence and Security Council. Incidentally, the June 1993 election, which would have ushered in a democratically elected President, was truncated<sup>16</sup>. The fallout of this was increased agitations by the people, especially for a sovereign national conference. The 1994 Constitutional Conference was seen as a direct response to these agitations. The conference, if properly managed, would have proffered an enduring legal framework that would have passed the acid test of Government's machinations, made its proceedings and subsequent report clearly predictable. Furthermore, it failed to address the problems that were thought germane to the continued existence as a corporate entity, for example, issues of rotational presidency, resource control, religion and gender amongst others were not adequately addressed.

The administration of General Abdusalam Abubakar made an effort at fine-tuning the report of the Conference<sup>17</sup>. The Justice Niki Tobi Committee on the Review of the 1979 Constitution made a crucial finding: that the 1979 Constitution which was thought inadequate was indeed suitably adjusted to our socio-political problems. This palpably informed its "return" in the guise of the current 1999 Constitution<sup>18</sup>.

It is based upon this background that the Human Rights situation in Nigeria under the 1999 Constitution can be evaluated. Although, it is uncomfortable to do a comparison with Abacha's era, the Human Rights record of the Obasanjo civilian regime is really disturbing. In discussing the state of Human Rights in Nigeria, it is important to put issues in perspectives. Nigeria has had long and tragic history of military rule. More than thirty years of military rule brought about social injustice, political oppression, economic exploitation, gender criticism and judicial oppression. One of the main causalities of this history was Human Rights. If one takes into cognizance, the fact that Nigeria was under military rule for about 29 years, it would really be a while before Human Rights can really be allowed in this society.

In other words, the psyche of the ruling elite has been militarized. It is so bad that many Nigerians hardly make a difference between the situation under the defunct military dictatorship and civilian administration. One remarkable thing that should be noted is the fact that constitutionally, there is no basis to compare what obtains under the military regime and civilian regime. This is the restoration of chapter 4, of the constitution which is the area that firmly protects and guarantees the rights of the citizens, it was however guaranteed only on papers. Apart from the general derogation contained in the Constitution, fundamental rights are protected by the Constitution. What happens in practice is another thing. Unlike the days of military dictatorship when virtually every decree ousted the jurisdiction of the court or suspended chapter 4 of the Constitution, any aggrieved person can now go to court to ventilate a claim against the government or authorities of private companies with regards to violations of fundamental human rights. Beyond the above, judges have also been empowered by the constitution to adjudicate in legal matters without any fear or favour. In essence, judges now operate in a more liberal atmosphere to promote the enforcement of Fundamental Human Rights without any statutory inhibitions. In spite of the constitutional provisions on the rights of the citizenry, questions bordering on fundamental rights to an average Nigerian are shallow, meaningless and irrelevant more as a result of his financial incapacities which made the choice of engaging the legal services of an attorney difficult in the case of infringement. In most cases, most Nigerians are ignorant of their rights as a Nigerian. Unknown to most of them (Nigerians) for instance, section (46) of the Nigerian constitution imposes a duty on the National Assembly to enact laws that would provide the financial means for all oppressed and marginalized citizens. In order to be able to seek legal redress on issues bothering on any form of infringement. However, the fact that most Nigerians do not have adequate information about this constitutional provisions, the law to date has not been enacted in spite of constitutional provisions since 1979. The above development no doubt informed the increase in the cases of Human Rights abuse in Nigeria by successive government and their agents. In the 2011 electoral bill for instance, there are certain provisions that were meant to restrict or regiment the rights of Nigerians to form and belong to political parties of their choice contrary to constitutional provisions. This development no doubt remains an aberration, thus it was not surprising when it was struck down by the supreme court even after it was passed by the ruling Peoples Democratic Party controlled National Assembly in the case of INEC versus Balarabe Musa. It was an outcome of that epochal decision that made possible the multiparty democracy, now in practice in Nigeria.

There has been a big debate over the retention of death penalty in Nigerias statute book. About ten (10) years ago, that debate was meaningful in the country even under the military. But under the Obasanjo regime, most of all those who were paraded on television from time to time by the police as robbery suspects are murdered extra judicially by the police. A development that runs contrary to the provision of Nigerians

constitution and the African charter on human and peoples right, as a matter of fact cases of extra judicial, summary and arbitrary execution have been persistently recorded across the country.

Instances of such abuse includes the case of Godwin Anuka, a bus driver who was shot by a police constable on the 2<sup>nd</sup> of March 2005, due to his refusal to bribe the police at the check point in Makurdi, Benue State. A development that runs contrary to section 33 of the 1999 constitution on the right to life. Section 33 of the 1999 constitution states that:

“Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria”<sup>19</sup>.

Beyond the Nigerian constitution, Article 4 of the African charter on human and peoples right also provides that:

“Human Rights are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this rights”<sup>20</sup>.

Thus, inspite of the protection for the right to life provided for by national and regional legal instrument, cases of extra judicial killings, such as the one cited above and arbitrary execution by law enforcement agencies are prevalent in Nigeria as opposed to death by penalty.

Although when viewed from a critical point of view, base in the poverty level in Nigeria, it would not be out of place to ask the question regarding the right to life to a man who has no means of livelihood. What is right to a poverty-stricken Nigerian in the midst of plenty, unless imposed on the state to fend for the poor and the disadvantaged segment, the right to life is meaningless to such a person.

In most western countries, social security system is instituted to address and care for those who are unemployed, homeless and hungry. Hence, one cannot drop out of school in any western country on the account of being poor, rather on the individuals mental capacity and choice.

Under a civilian administration, one would have expected the Nigerian government to play a role in ratifying the protocol for the establishment of an African court on Human Rights as a way of checkmating Human Rights abuses. Interestingly, however, Nigeria did not only fail to ratify the protection for the establishment of African courts on Human Rights but also refused to send nominations, when members of the court were to be nominated.

Thus, from the above analysis, it is clear that the Obasanjo regime was not interested in upholding or protecting the rights of its citizenry, as a matter of fact, never before had the country witnessed the official recklessness and total disobedience to court orders as it was under the Obasanjo regime.

Indeed, the Anambra political saga involving the then Governor Chris Ngige provides a classical example. The so called political crisis in Anambra summed up the height of executive lawlessness that became the order of the day under the Obasanjo regime. Rather than pay attention to the issue human rights and work towards providing basic infrastructural facilities for the citizenry, the Obasanjo government paid more attention to the issue of elements with criminal records who were celebrated as godfathers, as was as the case of the Anambra political saga. In a sane society, a godfather is usually a patron of ideal, a man to emulate, a man of achievement, a man of distinction who is both morally and religiously upright. In a religious setting one chooses a godfather for ones sons and daughters during baptism so that the child would live to emulate such godfather.

Beyond the above, the spate of unresolved political killings under the Obasanjo regime was very much especially within the political elites who are members of the same party. One of such killings was the case of Dikibo who was until his demise, the National Vice Chairman of the ruling Peoples Democratic Party in the South-South. Apart from Dikibo, the case of Harry Marshall, a former National Vice Chairman of the Peoples Democratic Party in the South-South but who later decamped to the All Nigerians Peoples Party. The irony of it all was that the Obasanjo government claimed that both men died as a result of armed robbery incidence. It was also during the Obasanjo regime that a serving Attorney General and minister of justice in the Obasanjo administration chief Bola Ige, was assassinated and to date the mystery behind his death is yet to be resolved.

Also remarkable was the incident at the inception of the Obasanjo administration in November 1999 during which troops were sent to Odi in Bayelsa State as a result of which more than 2000 Nigerians were massacred, the towns were also razed down with more than 500 houses demolished. Many other more incidents were recorded including the Zaki Biam massacre which affected former Army Chief, Victor Malu, his relations and others in the battle between Jukuns and Tivs.

### **III. Conclusion**

The state of human rights in Nigeria today is unsavory. It should be noted that Human Rights do not mean intimidation of innocent souls or jailing people. It means improving the living conditions and standard of the people. It means providing them all the basic rights. Where people cannot eat, cannot have shelter, cannot be secured, they cannot be said to enjoy basic rights. Rights are merely limited. Right includes a whole package of what makes a person feel like a human being under a free democratic government. Of course the question of

what to do about civilian dictators has proved a 'very difficult one to tackle. Core members of the international community such as members of the West Alliance have restricted themselves to suspension of aid open to criticism of offending regimes.

At this point, it is pertinent to make a few proposals in dealing with military regimes and civilian dictators. Firstly, we must insist that such universal organisations such as United Nations and such regional organisations such as ECOWAS should follow the lead already provided by the Commonwealth and the African Union (A.U.) in suspending the membership of countries who perpetuate human rights abuses.

Secondly, the mechanism of the International Election Observer Team should be strengthened. Although it is not perfect, the fact however remains that it is performing very useful services. Its funding should also be given prime consideration.

Thirdly, in dealing with a civilian dictator with a persistent record of violation of its own constitution and or with amending State's constitution to the detriment of the rights of the people, a panel of eminent persons should be set up to investigate the state of constitutionalism and human rights in that country. Where the report of the panel of eminent persons proves negative, a dictators who has installed himself through a coup d-etat should be made to face severe penalty.

Clearly, one of the biggest challenges facing the present government is building a country that is fair to all its citizens. A Nigeria in which all individuals feel and know that they are valued members of society and that they have rights that respect human dignity, promote human development and advance human freedom through freedom of expression would be considered by all and sundry as an ideal society that challenges everyone's sense.

What is desirable in the alternative is a constitutional change through the normal constitution amendment process and usher in an enhanced federalism. If there is a will and a consensus that the existing legal framework be reviewed, the supposedly rigorous amendment process under the 1999 Constitution will be easily overcome. It is unwillingness to amend, that make the constitution unduly rigid.

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