

## ISSUES OF HUMAN RIGHTS AND RULE OF LAW IN AFRICA

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### **Abstract**

*For a just, equal and egalitarian society, observance of rule of law is a necessity and not an option. Rule of law embodies other related constitutional concepts including: separation of powers, human rights and the independence of the judiciary. If one was to make a prognosis on human rights and rule of law, the inescapable conclusion one comes is to effect that Africa's march to societal progress and human development depend on the strong pillars of human rights anchored on rule of law. It is the contention of this paper that the western concepts of human rights and rule of law would have to be tempered by African realities for them to take firm root in these climes. This is because however much we want to imitate the Europeans and Americans. We are African with a peculiar history, tradition and idiosyncrasies which would need to be factored into our approach to the critical choices we have to make regarding human rights and the rule of law putting into serious consideration the issues of women, children and the vulnerable in the African society.*

**Keywords:** Human Rights, Rule of Law, Africa, Nigeria

### **Introduction**

The rule of law and human rights are two sides of the same principle, the freedom to live in dignity. The rule of law and human rights therefore have an indivisible and intrinsic relationship. That intrinsic relationship has been fully recognized by member-states of the United Nations Organization since the adoption of the Universal Declaration of Human Rights in which it is stated that it is essential

If man is not to be compelled to have recourse, as last resort, to rebellion against tyranny and oppression, that human rights should be protected by rule of law.<sup>1</sup>

The backbone of the freedom to live in dignity is the international human rights framework, together with International Humanitarian Law, International Criminal Law and International Refugee Law. Those foundational parts of the

normative framework are complementary bodies of law that share a common goal; the protection of the lives, health and dignity of persons. The rule of law is the vehicle for the promotion of the common normative framework. It provides a structure through which the exercise of power is subjected to agreed rules, guaranteeing the protection of all human rights.

Rule of law entails that legal process, institutions and substantive norms are consistent with human rights, including the core principles of equality under the law, accountability before the law and fairness in the protection and vindication of rights. There is no rule of law within societies if human rights are not protected and vice versa; human rights cannot be protected in societies without a strong rule of law. The rule of law is the implementation mechanism for human rights, turning them from a principle into a reality.<sup>2</sup>

More importantly, rule of law has played an integral part in anchoring economic, social and cultural rights in national constitutions, laws and regulations. Where such rights are justiciable or their legal protection is otherwise ensured, the rule of law provides the means of redress when those rights are not upheld or public resources are misused. While universally agreed human rights, norms and standards provide its normative foundation, the rule of law must be anchored in a national and continental context including its culture, history and politics.

### **The Concept and Issues of Human Rights**

The concept of legal rights and duties is to say the least, a literature of controversy.<sup>3</sup> Various definitions of human rights abound, some rather too narrow and inadequate, others open-ended and imprecise for easy comprehension.

According to Osita Eze

Human rights represent demands or claim which individual or group make on society, some of which are protected by law, while others remain aspirations to be attained in future.<sup>4</sup>

Simply put, human rights are inherent in man, they arise from the very nature of man as a social animal. They are also those rights which all human beings by virtue of their humanity, whether black, white and yellow or red, the deprivation of which would constitute a grave affront to one's natural sense of justice. Human rights are not a new phenomenon or a new morality. They have a history dating back to antiquity.

Although belief in the sanctity of human life has ancient precedent in many religions of the world, the role of human rights that is notion that a human

right has a set of inalienable rights simply on grounds of being human began during the era of renaissance humanism in the early modern period.

Actually, in discussing the historical evolution of, and concern for human rights, reference must be made to the political struggle leading in England from Runny Mede in 1215, Magna Carta, to the Bill of rights of 1689. The Magna Carta declared that justice was not to be sold, denied or delayed and that all authority should be subjected to the general laws. The Bill of Rights provided for freedom against imprisonment or detention by command of the sovereign without cause shown, and prohibited excessive bail or fines or unusual punishment.<sup>5</sup>

The European wars of religion and the civil wars of 17<sup>th</sup> century England gave rise to the philosophy of Liberalism and belief in rights became a central concern of European intellectual culture during the 18<sup>th</sup> century Age of Enlightenment. More importantly, the idea of human rights lay at the core of the American and French Revolutions which inaugurated an era of democratic revolution throughout the 19<sup>th</sup> century paving the way for the advent of universal suffrage. The world wars of the 20<sup>th</sup> century led to the Universal Declaration of Human Rights in 1948. The post-world war era saw human rights movement for special interest groups such as Feminism and Civil Rights of African-Americans.

Historically, by the 21<sup>st</sup> century, human rights movement expanded beyond its original-anti-totalitarian feature to include numerous courses involving humanitarian, social and economic development in the world and political independence in many developing countries especially in Africa where a special ideology was developed in the African Charter on Human and People's Rights in 1981.<sup>6</sup>

Because of the importance of human rights, most states enshrined it in their constitutions having legal rights and duties. In essence, human rights are rights inherent to all human beings, irrespective of one's nationality, place of residence, sex, ethnic group, colour, religion, language, and any other status. The rights are all inter-related, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the form of treaties, customary international law, general principles and other sources of international law. International law lays down obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedom of individuals or groups.<sup>7</sup>

➤ **Universality and Inalienability of Human Rights**

As the cornerstone of international law and human rights, the principle of universality of human rights as first emphasized in the Universal Declaration of Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations and resolutions. The 1993 Vienna World Conference on human rights, for example, noted that it is the duty of states to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. Human rights are inalienable. They should not be taken except in specific situation and according to due process. For example, the right to liberty may be restricted of a person if found guilty of a crime by a court of law.<sup>8</sup>

➤ **Interdependency and Indivisibility of Human Right**

Human rights are said to be indivisible, inter-related and interdependent whether they are civil and political rights as the right to life, equity before the law and freedom of expression, or collective rights such as rights to development and self-determination. The improvement of one right facilitates advancement of the other, likewise the deprivation of one right.

➤ **Equality and Non-Discriminatory Principle of Human Rights**

Non-discrimination is a cross-cutting principle in International human rights. The principle is present in all the major human rights treaties and provides the central theme of some international rights convention on the elimination of all forms of racial discrimination and the convention on the elimination of all forms of discrimination against women. The principle of non-discrimination is complemented by the principle of equality as stated in the Article I of the Universal Declaration of Human Rights.

➤ **Rights and Obligations**

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, protect and fulfill human rights. The obligation to respect means that the state must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires states to protect individuals against human rights abuses. The obligation to fulfill means that the state must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled to our human rights, we should also respect the human rights of others.<sup>9</sup>

### ➤ **The Concept of Fundamental Rights**

In Africa, particularly Nigeria, the descriptive epithet “fundamental rights” is constitutionally employed to differentiate the species of civil and political rights that are justiciable from the genre of other non-justiciable human rights. It has been judicially decided that owing to our constitutional development, a distinction has emerged between the fundamental rights and human rights. Fundamental rights are integral part of human rights, but have remained in the area of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the land, which is the constitution.

Human rights are of much wider concept and apply at the international level. Indeed, human rights are as old as society itself, whereas fundamental rights are of much later development. Also, while human rights span the entire range of human history, fundamental rights are much more recent development and are most usually associated with constitution. This means that not every civil or legal right is a fundamental right. The idea of fundamental rights derives from the premise of the inalienable rights of man to life, liberty and the pursuit of happiness.

In Nigeria, for example, as an offshoot of the Willinks Minorities Commission, 1957 report, fundamental rights provision were entrenched in the 1960 independence constitution. Since then, they have never been omitted in the subsequent constitutions of 1963, 1979, and 1999. The 1999 constitution of the Federal Republic of Nigeria as amended provides for Fundamental Rights in Chapter Four of the constitution. Some of the major components of Chapter Four of the 1999 Nigerian constitution as amended include right to life, right to dignity of persons, right to personal liberty, right to fair hearing, right to freedom of thought, conscience and religion, right to acquire and own immovable property anywhere in Nigeria etc.

In essence, while every fundamental right is a human right, not all human rights are fundamental rights because constitution accommodates only fundamental rights and gives it right of justiciability and enforceability.

### **The Concept of Rule of Law**

The concept of “rule of law” is the building block on which the modern democratic society is founded. For a successful functioning of the polity, it is imperative that there is enforcement of law and of all contracts based on law. One of the prime objects of making laws is to maintain law and order in society

and develop a peaceful environment for the progress of the people. Rule of law means that law is supreme and is above every individual. No individual whether if he is rich, poor, rulers or ruled etc are above and they should obey it.

In a narrower sense, the rule of law implies that government authority may only be exercised in accordance with the written laws, which were adhered through an established procedure. The principle of rule of law is intended to be a safeguard against arbitrary actions of the government authorities. Historically, rule of law is as old as mankind. In the thirteenth century, a judge in the reign of Henry III in a way introduced the concept of rule of law when he wrote "The king himself ought to be subject to God and the law, because law makes him king"<sup>10</sup>

Edward Coke is said to be the originator of the concept of rule of law when he said that "The king must be under God and law and thus vindicated the supremacy of law over the pretentious of the executives. But the credit for developing the concept of rule of law goes to Professor A.V. Dicey who in his classic book "*Introduction to the Study of the Law by the Constitution*" published in the year 1885 tried developing the concept of rule of law.

As per Dicey no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. This establishes the fact that law is absolutely supreme and it excludes the existence of arbitrariness in any form.

According to Dicey, where there is scope for discretion, there is room for arbitrariness and that every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.<sup>11</sup>

**Dicey's theory of rule of law consists of three main principles;**

**1. Supremacy of Law or Absence of Arbitrary Power:**

This means that there is absolute supremacy of law and no man is punishable or can be lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the courts of the land.

Dicey was of the view that all individuals whether if he is a common man or government authority are bound to obey the law, and also no man can be punished for anything else than a breach of law which is already established.

And also that the alleged offence is required to be proved before the ordinary courts in accordance with ordinary procedure.

## **2. Equality Before the Law:**

This means the equality of law or equal subjection of all classes of people to the ordinary law of the land which is administered by the ordinary law courts. In this sense, rule of law conveys that no man is above the law. Even the government officials are under a duty to obey the same law and there can be no other special courts for dealing specifically with their matters.

## **3. Constitution is Supreme or Supremacy of Constitution:**

This entails that constitution is the result of the ordinary law of the land. In many countries, rights such as right to personal liberty, freedom, arrest etc are provided by the written constitution of the country.

Actually, rule of law connotes that every exercise of governmental power which affects the legal rights of the citizen must be justified in terms of having a strictly legal pedigree and that the court could invalidate any act not found to be in order. Rule of law therefore provides a standard against which the laws and actions of a state may be judged in terms of its justness or otherwise as the main purpose of the law is to do justice.

## **Synergy between Human Rights and Rule of Law**

At the United Nations General Assembly's first ever high level meeting on the Rule of Law in September, 2012, all 193 member states united to reaffirm their commitment to the rule of law. The High Level Declaration was a significant affirmation of a concept at the very heart of the work of the organization. The declaration provides member-states with a wide range of elements and tools of the rule of law, highlighting its depth and its breadths. It stressed the importance of the rule of law for the three main pillars of the United Nations: peace and security, development and human rights. The Declaration covers several aspects of the rule of law such as constitution, trade law, organized crime, international humanitarian law and the rights of women and children.<sup>12</sup>

In essence, rule of law, based on human rights, underpins peace and security. At the international level, the Charter provides the basis for friendly relations between states as sovereign equals. At the national level, justice and the rule of law can prevent and mitigate violence and conflict by providing peaceful

channel for the resolution of grievances. Justice and the rule of law promote inclusive economic growths and builds accountable institutions that underpin sustainable development. The rule of law helps to make basic service such as education, health and sanitation available for all. More importantly rule of law empowers citizens to address underlying causes of inequality and exclusion.

Indeed, the rule of law and human rights are interlinked and mutually reinforcing. The Universal Declaration of Human Rights states; "If man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression,... Human rights should be protected by the rule of law."<sup>13</sup> Rights are empty words in the absence of a legal and political order in which they can be realized. The rule of law is the vehicle for the promotion and protection of all human rights. At the centre of the international system is the importance of compliance with the Charter of the United Nations and its purposes and principles. At the national level, governments are to translate their international obligations into national legal frameworks, from constitutions to the regulation of business activity. Just and fair legal frameworks should govern all areas of society in order to foster peace, development and human rights. These frameworks must be fully and impartially applied and enforced.

In a rule of law driven society, institutions help ensure that guarantees included in the law are realized. Without access to effective justice institutions, people can be deprived of their rights and be intimidated by threats or violence. Justice and police institutions that serve the citizens and society are essential to both peace and security, and development.

Furthermore, transparency and accountability are powerful tools for oversight of the use of public resources, including preventing corruption because corruption distorts markets and hinders sustainable development.

### **The Ugly Situation in Africa**

It is rather so unfortunate that Africa is not yet a theatre for the dramatization of the ideals and spirits of human rights and rule of law. It has been a worrisome story of abuses of human rights and reckless disdain for the rule of law.

Makau Mutuo maintains that independence from colonial rule which started in the 1950's brought little relief as the hopes of resurgence were



consumed in the cauldron of the cold war and a scandalous international order. Also, opaque and oppressive one-party states and military dictatorships proliferated the continent of Africa. More worrisome is that African ruling elite failed to implant the promise of the liberal constitution and to cohere the state.

Indeed, the transition from colonialism to an independent viable post-colonial state proved exceedingly challenging. They elites chose first to consolidate their own power. They shifted dissent, dismantled liberal constitutions, retreated to ethnic loyalties and buttressed the patrimonial state. Corruption and crony capitalism became a culture. Infrastructure collapsed, societies fragmented, religious, civil and ethnic conflicts became all too common. In essence, building and sustaining state institutions including in the justice sector was undermined by the lack of internal cohesion, ethnic rivalries, cultural dissonance and external interventions.<sup>14</sup>

It is so unfortunate that in most African countries today, every arm of the state, executive, legislature and judiciary is experiencing contraction, dysfunction or collapse. An overbearing executive is often the culprit because he who controls the executive superstructure, controls the other institutions of the state. This is against the letters and spirits of human rights and rule of law. That was why when former President Barack Obama visited Africa during his presidency, he stated unequivocally; "That Africa needs strong institutions and not strong men".

In Africa, most men in power usually corralled the legislature and turned it into a rubber stamp. The Africanization and indigenization of the judiciary failed to transform the justice sector from a colonially-racist, anti-people, and oppressive instrumentality. Judges now become extensions of the executive and served at its whim. Instead of becoming fountains of justice, courts were used to instill fear in the populace at the behest of the executive.

The court is being used to crush political dissent and curtail civil society. Under this present regime, it is impossible to even think of reconciling conflicting legal regimes within the state. Formal and informal justice systems – civil and common law, Muslim and Sharia law, African dispute resolution and justice – regimes co-existed without coordination. The result is now a confused hodge-podge, a stew of legal regimes in which justice is often the casualty. Legal pluralism which is otherwise a source of strength and vibrant diversity, instead subjects citizens to often unequal, and discriminatory treatment. Women and children are often they most affected in this melodrama. As a result, our courts

now and the wider legal sector is rarely viewed as legitimate institutions where citizens could seek justice. Now judges are viewed with disdain, contempt, or fear in most African states. This is why today the law, courts and the legal sectors are viewed with suspicion by most Africans. To be candid, illegitimacy of the justice sector extended to all the other arms of the state which is so unfortunate.

The situation in Nigeria is most disturbing. Supremacy of the law is only in theory. As for equality before the law, it is an open secret that there can be no equality between a Dangote and his driver regardless of whether the constitution or the laws might say. Not only is there no equal access to legal services despite the existence of legal aid and efforts of pro bono lawyers. There is glaring inequality in the imposition of criminal sanctions among the highly-heeled vis-à-vis members of the underclass.<sup>15</sup> While a poor, hungry citizen could bag a long term of imprisonment for stealing a goat. Representatives of the ruling class are not unknown to have been slapped on the wrists for “misapplication or misappropriation of large amounts from the public purse. The consequence of all this is that doubt and cynism are bred among large segments of the populace whenever the topic of human rights and rule of law is raised. When to all this is added flagrant disregard of judicial pronouncements especially by the executive arm of government, the perilous state of the rule of law in Nigeria becomes self-evident.

### **Ways and Means of Improving Human Rights and Rule of Law Issues in Africa**

It is an apparently clear that no sustainable development which gives citizenship meaning, a sense of belonging and allows a culture of justice is possible without the twin pillars of human rights anchored on rule of law. Human rights appreciate the dignity in human person and understands our common humanity while rule of law governs the operations of the state to ensure justice, fair play and equity and not at the whims and caprices of one man who can even lay claim to be the state. The following measures can be of immense benefit in improving human rights and rule of law issues in Africa.

#### **(a) Transparency:**

This is an unarguable condition which is required for inclusive and participatory political and economic development of Africa. Without it, any meaningful notion of rule of law or in culture of justice will be a mirage. It is on record that state brutality, impunity and corruption grow immensely when the state is opaque.

Information about government resources and how they are spent is essential. This requires institutions to oversight at the local and national levels and an unfettered press. Citizens' participation in planning allows communities to claim their own development and gives meaning to their agency. Indeed, openness will help in fighting corruption that has been the bane of rule of law in Africa.

**(b) Equity and Social Justice:**

One of the most underdeveloped sectors in African states is the justice sector. Traditionally, judiciaries have been beholden to the executive and corrupt private business interests. Courts of law are now often not fountains of justice, and no longer the last hope of the common man. Judges are now for sale and some lawyers facilitate the corrupt deals. Large segments of the population that cannot buy justice have no access to the courts. Women and the poor, often the largest segments of the population, are shut out. It is not unusual for litigants to wait for a decade before a case is heard. Lack of access to justice is compounded by the paucity of courts in rural areas where the majority Africa lives. Yet this is where courts are most needed to settle land disputes and protect the vulnerable such as women who are often disinherited, or subjected to severe exclusion. Indeed, there is an urgent need to reform the justice sector in Africa to cater for the needs of Africans in this 21<sup>st</sup> century humanity. There must be integrity, credibility and transparency in our judicial system in line with global best practices.<sup>17</sup>

**(c) Devolution:**

There is a big problem in the concentration of power in the executive, and the concentration of power in the hands of the head of state. This ugly arrangement begot the patrimonial state and bred impunity and corruption. Indeed, power must be decongested and devolved to smaller units within the state. Power here should be both political and economic. Thus devolved units must have the ability to plan and expend resources in a locally participatory process. This makes locally elected officials accountable at the grassroots.

Devolution can be a safety valve for ethnic grievances in fractured societies because it permits a degree of regional, or ethnic autonomy, without weakening the central state, or turning into full-blown federalism. In essence, it enhances national cohesion and give colonial loyalties a reason to embrace the post-colonial state to create a national consciousness that will impact positively on the citizenry and the larger society.

**(d) Women and Citizenship:**

Gender remains among the thorniest challenges to the rule of law and development in Africa. A poisonous mix of culture, colonial era laws, and religious practices have conspired to consign women and girls to the margins of society. The privation of African women from domestic violence to exclusions on property ownership is well known.

There is consensus that actual and sustainable development will not occur in Africa, unless women are not only included, but play a manifestly public role. When human rights of women are taken into serious consideration, both the women and the society will be better for it which will also in no small measure enhance the tenets of rule of law that will engender sustainable development.

**(e) Culture of Governance:**

The culture and style of politics in Africa weighs heavily on the state. Those who carry the instrument of the state expect to be feared, not just respected giving credence to the erroneous belief that public officers are masters and not servants of the people. This construction of public power goes against every norm of democratic governance, it stifles citizens, kills dissent, dulls the public, and puts the state at perpetual loggerheads with the people.

Indeed, it creates deep distrust in the population towards public authority which is not good to rule of law and justice delivery in the state. Without mincing words, the arrogance of power facilitates the theft of public resources and condones the violations of basic human rights. In essence, this unfortunate culture must be directly interrogated and publicly confronted to give way to a culture of civility, simplicity, integrity, accountability and adherence to the tenets of rule of law.

**Conclusion**

For a just, equal and egalitarian society, observance of rule of law is a necessity and not an option. Rule of law embodies other related constitutional concepts including: separation of powers, human rights and the independence of the judiciary. If one was to make a prognosis on human rights and rule of law, the inescapable conclusion one comes is to effect that Africa's march to societal progress and human development depend on the strong pillars of human rights anchored on rule of law.

It is my contention that the western concepts of human rights and rule of law would have to be tempered by African realities for them to take firm root in these climes. This is because however much we want to imitate the Europeans and Americans. We are African with a peculiar history, tradition and idiosyncrasies which would need to be factored into our approach to the critical choices we have to make regarding human rights and the rule of law putting into serious consideration the issues of women, children and the vulnerable in the African society.

In conclusion, observance of human rights and rule of law in Africa will make for an egalitarian society and engender development only that it must accommodate Africa's peculiarities and cultural realities.

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