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INTERNATIONAL AND REGIONAL MACHINERY FOR THE PROTECTION OF HUMAN RIGHTS: AN APPRAISAL

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Abstract

Human rights have advanced globally at the interface between international treaties and international law, along with the norms and practices of global human rights institutions. It has been institutionalized globally through the United Nations system and the connections between the development over time of international human rights institutions on the one hand, and their relative effectiveness at regional level where compliance is adhered to. These rights are guaranteed in constitutions of various countries of the world as rights which belong to human simply because they are human beings. This article significantly focusedmon appraising the international and regional machineries designed for the protection of human rights.

Keywords: Rights, Protection, Regional, and International

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1. Introduction

Human rights are those liberties, immunities and benefits which by accepted contemporary values, should be enjoyed by all human beings as of right. It is a right tied to humanity that even in the absence of enforcing machinery, its existence and status cannot be denied. These are rights possessed by all persons by virtue of their common humanity to live a life of freedom and dignity[2]. They are the same for everyone, everywhere. These rights are inalienable and indivisible. They are described as those 'rights without which we cannot function as human beings. Upholding the above assertion, Oputa JSC, stated that:

Some rights are inalienable as they attach to the human person and form an essential part of his/her humanhood. To deny any human being (be he a man or be she a woman) such rights will be at best to distort his or her humanhood and at worst to destroy that which is most essential to us as human beings – our humanity. Other rights are secondary and protective and assist in the enforcement of essential and primary rights. But an essential primary right which cannot be enforced is a white elephant, toothless bull-dog, omnipotent in theory and on paper but hopelessly impotent in fact and in practice[3]

Human right as a concept exceeds even the parameters of law as it is undoubtedly multifaceted and diverse in nature[4]. Notably, these rights are hamstrung by potent multifarious and multidimensional impediments in developing nations of the world. In Nigeria, it suffers a major blow from the derogation clauses, primacy of domestic legislation over international human rights treaties[5], disobedience to court orders and weak institutions[6]. Despite these challenges, there are set out machineries to protect human rights internationally and at regional level.

What is Human Rights?

Human rights maybe said to derive from moral principles or norms which describe certain standards of human behaviour; they are protected as legal rights in municipal and international law. These rights are commonly described as inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being. They are rights which are inherent in all human beings regardless of their nation, location, language, religion, ethnic origin or any other status.

Kayode Eso JSC [7] succinctly described human rights as:

A right which stands above the ordinary laws of the land Which infact is antecedent to the political society itself. It is a primary condition to a civilised existence, and what has been done by our Nigerian constitution since independent is to have these rights enshrined in the constitution so that the rights could be immutable to the extent of the non-immutability of the constitution itself.[8]

Human rights are universal, egalitarian and require empathy and the rule of law and impose an obligation on persons to respect the human rights of others. They should not be taken away except as a result of due process based on specific circumstances[9]. Being right which covers virtually every area of human activity, they are more than mere demands as a result of its internationally agreed characteristics of universality and indivisibility. Defining human rights from the point of values, these values have their origin in religion and philosophies, and the value systems vary in details from one society to another but the fundamental ideas are in the concept of justice and human dignity. A refreshing definition was offered by Williams Igwe when he emphasised that:

Human rights may then be seen as cherished entitlements endowed upon every person in virtue only of being a human and which are not extinguishable by derogations (even when they are massive,

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[2] Aduba Nnamdi, "Inquiries on Human Rights Practice in Nigeria Past, Present and Future" being an Inaugural Lecture delivered at the University of Jos Inaugural lecture series, 54 on 29 June, 2012. p8

[3] Oputa , C.A, ‘‘Human Rights in the Political and Legal Culture of Nigeria’’ Lagos(Nigerian Law Publishers, 1989)73.

[4] Olomojobi Yinka, Human Rights and Civil Liberties in Nigeria: Discussions, Analyses, and Explanations (Princeton & Associates Publishing Co. Ltd, 2016) iv

[5] Section 1(3) Constitution of the Federal Republic of Nigeria 1999 (As Amended)

[6] Section 12(1) Constitution of the Federal Republic of Nigeria 1999 (As Amended)

[7] Ransome Kuti v. AG of Federation (1985) 8NWLR (pt.6) 211

[8] Ibid pp.229-230

[9] Constitution of the Federal Republic of Nigeria 1999 (as amended) s33(2)(b)

consistent and systematic) as they carry the status of innateness, being inherent, inalienable and therefore immutable[10].

To Igwe, Human rights are irreducible human element, the quintessential value through which we affirm together that we are a single human community. He cautioned that human rights should never be equated with, nor regarded as the lowest common denominator amongst all nations at the barest minimum should be regarded as the absolute yard stick, which constitutes the common language of humanity.

This paper shall enumerate some human right alongside its international and regional machinery:

(1) Right to Life (Section 33(1) Cfrn)

2. INTERNATIONAL MACHINERY

A- The Universal Declaration on Human Rights (1948),

Article 3 states that; ''*Everyone has the right to life, liberty and security of person''*

B- International Covenants on Civil and Political Rights, adopted in December 1966 by the general meeting of the United Nations Organisation.

Article 6 states that; *''Every human being has the inherent right to life, this life shall be protected by law. No one shall be arbitrarily deprived of his life''*

C- The second optional protocol to International Covenant on Civil and Political Rights. (Aiming at abolition of the death penalty) was adopted and proclaimed by general assembly resolution 44/128 on 15 December 1989. Article 1

Article 1(a) states that; ''No one within the jurisdiction of a state party to the present protocol shall be executed.

Article 1(b); Each state party shall take all necessary measures to abolish the death penalty within its jurisdiction.

D- International Covenant on the protection of the Rights of all Migrant Workers and Members of their Families. Adopted by general assembly resolution 45/158 of 18 December 1990.

Article 9; The right to life of the migrant worker and members of their families shall be protected by law.

E- The Convention on the Rights of the Child. Was adopted and opened for signature ratification and accession by general assembly resolution 44/25 of 20 November 1989, but came into force on 2 September 1990.

Article 6(1); State parties recognize that every child has the inherent right to life.

Article 6(2) State parties shall ensure to the maximum extent possible, the survival and development of the child.

3. REGIONAL MACHINERY

A- African Charter on Human and Peoples' Right (1981)

Article 4; ''Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one shall be arbitrarily deprived of this right''

B- Protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa.

Article 4 states; ''Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited''.

C- The African Charter on the Rights and Welfare of the Child (ACRWC) It came into force on 29 November 1999.

Article 5--- Survival and Development

5(1) Every child has an inherent right to life. This right shall be protected by law.

5(2) State parties to the present charter shall ensure, to the maximum extent possible the survival, protection and development of the child

5(3) Death sentence shall not be pronounced for crimes committed by children.

[10] Williams Igwe, Preliminary Studies in Human Rights Law (Rings and Favolit Ltd, 2002) p6.

(2) RIGHT TO HUMAN DIGNITY (section 34(1) CFRN)

INTERNATIONAL MACHINERY

A- Universal Declaration of Human Rights.

Article 1 'All human beings are born free and equal in dignity and rights''

Article 4; ''No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all forms.

Article 5; ''No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

Article 22; ''All persons have the right to realize the full potential of his/ her dignity and personal development.

Article 23(3) Affirms that every worker and their family have a right to human dignity and social protection.

B- International Covenant on Civil and Political Rights.

Article 10(1) states that: ''All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 10(2)(a;Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvinced persons;

C- The Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (1987) in its preamble states thus:

Considering that in accordance with the principles proclaimed in the charter of the United Nations, recognition of the equal and inalienable rights of all members of human family is the foundation of freedom, justice, and peace in the world.

D- The Declaration on the protection of all persons from being subjected to torture and other cruel, inhumane, degrading treatment or punishment.G.A res 3452(xxx), annex U.N.GAOR Supp.(No 34) at 91, U.N Doc. A/10034(1975)

Article 2: Any act of torture or other cruel, inhumane or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of the United Nations and as a violation of human rights and fundamental freedoms proclaimed in the universal Declaration of Human Rights.

Article 3: No state may permit or tolerate torture or other cruel, inhumane or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture or other cruel, inhumane or degrading treatment or punishment.

E- International Convention for the protection of all persons from enforced disappearance, G.A res 61/177, U.N Doc. A/RES/61/177 (2006). Emphasises the protection of persons from enforced disappearance.

Article 2 defines enforced disappearance as

The arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

4. REGIONAL PROTECTION

African Charter on Human and Peoples' Right 1986

Article 5: Every individual shall have the rights to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel inhuman or degrading punishment and treatment shall be prohibited.

(3) RIGHT TO PERSONAL LIBERTY

INTERNATIONAL PROTECTION

A- Universal Declaration of Human Rights*Article 3: Everyone has the right to life, liberty and security of person. Article 9: No one shall be subjected to arbitrary arrest, detention or exile.*

B- International Covenant on Civil and Political Rights (1966)

Article 9:

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established.
(2) Anyone who is arrested shall be informed, at the time of arrest, of the reason for his arrest and shall be promptly informed of any charges against him.
(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgement.
(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceeding before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention s not lawful.
(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10: All persons deprive of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

C. International Convention on the protection of the Rights of all migrant workers and members of their families. 1990

(A) Article 16(1)(2)(4) and Article 17, Protects their liberty individually and collectively from arbitrary arrest and detention, security of persons, with effective protection by the state against violence, threats, intimidation, physical injury either by public officials or private individuals.

D. Convention on the Rights of Persons with Disabilities 2007

Article 14: Protects the rights of persons with disabilities, encourages equality, and enjoys the right to liberty and security of persons.

REGIONAL PROTECTION

(A) African (Bangul) Charter on Human and Peoples' Rights 1981,

Summary

Internationally, there are comprehensive institutional machineries to respond to human rights concerns around the world. At its centre are the UN Human Rights Council, the Special Procedure system, the Treaty Body system, the Universal Periodic Review (UPR) and the Office of the High Commissioner for Human Rights (OHCHR). It is clearly of great importance for the promotion and protection of human rights that these institutions, mechanisms and processes operate to their fullest potential.

Human rights issues at regional level should be analysed from the view of broader normative structures in which they are embedded. Obviously, important differences underpin the development of the regional systems with comparatively deep and complex institutionalization of human rights in Europe and the Americas, a mainly promotional regime in Africa, and Asia and the Arab world still without established human rights institutions. This regional variance partly reflects the extent of the cultural embedding of human rights norms across regions, but patterns of state formation, colonization and decolonization, civil society activism, legal and judicial traditions, democratization, and economic development also shape the scope and depth of regional institutionalization. Furthermore, while some regional systems may actively draw on global human rights norms (the Americas), other regional institutions seek to more actively resist extra-regional pressures for human rights (Africa). In other words, the impact of processes of regionalization on the development of international law lies in the ways in which they shape the interaction.

5. Conclusion

It is a known fact that human rights have become a global subject, with universal appeal, significant attention and recognition. Most nations of the world, have ratified major internationalhuman rights instruments, such as the Universal Declaration of Human Rights,1948; the International Covenant

on Civil and Political Rights, 1966 (ICCPR); The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); and other regional human rights instruments.

The United Nations which is the main human rights norm-creator for Africa, the Organisation of African Unity/African Union has appropriated many of these standards in treaties of its own. In as far as these treaties deviate from a global consensus; they do so to ensure greater normative legitimacy in the African context. The institutions created under AU human rights treaties especially the African Commission on Human and Peoples' Rights, have been relatively effective in promoting and protecting human rights. While the African Court on Human and Peoples' Rights was added by way of a subsequent redesign of the system, its potential has remained largely unexplored.

6. Recommendations

- Human rights machinery at regional level, especially in Africa which is associated more with human rights problems and humanitarian crises than with their solutions, should advance better modalities to be at par with the recommended international best practices, shielding the boarders of the machinery protecting human rights and its applications, from regional intrusion/ influence.
- New paradigms should be initiated to sustain the provisions of the machinery and make it effective as it is seen as a toothless bulldog, only effective on paper in most regions of the world, especially in developing countries like Nigeria. There is need to strengthen and extend complementarity between international and regional machinery as this can change the narratives.
- Policy-makers must have at their disposal accurate information and analysis about the manner in which the system is functioning and evolving, and practicable recommendations should be proffered on how it can be improved and strengthen the capacity of regional human rights mechanisms.