

## **Human Rights: Concepts, Facts, Problems and Prospects (A Philosophical Reflection)**

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### **Introduction**

In everyday life, we hear people of all ilk talk of, discuss or argue with regard to human right: there is little surprise that the talk of this or that right is at the rock bottom of arguments in defence of liberty and equality. It is already taken for granted that every individual is a moral agent capable of choice-making; and that any attempt to treat him as a means to an end courts disaster as it is an affront on his right and a march on his dignity. The truth is that any attempt to look into the concept of human rights is bound to be shrouded in deep controversy for its meaning and indeed relevance must change face and shift ground in different social formations. That means that it cannot be rightly treated if divorced from the social context, hence every treatment of it must be contextual. To have any meaningful discussion of human rights in any society necessitates looking at the history of the concept and trace its evolution and development. This paper no doubt focuses on human rights in Nigeria; that means it wants to see how human rights have fared in the nation and assess the practice. It is an open secret that human rights have been violated in the history of mankind. Conflicts, rebellions, revolutions, wars and even mutinies were caused by violation of human rights.

One cannot rightly doubt the intelligibility of the word right, what we doubt or are in doubt most often or at times is the content of a particular right or rights. As plants tend toward light (irritability), fishes towards water, man tends towards the actualization of those things which are his rights as they are natural to him, hence inalienable. Little wonder, if one tells another homo sapiens who is sane that he has been unjust in his actions, he tries to have a re-think and change his course or action for the concerned has evoked the sense and spirit of love and attention. In the alternative telling him that he has denied you of your rights puts him on the edge and because you have awakened and triggered the spirit of contention in him, he may go defensive and will be positioned to challenge your utterance or claim: this may give rise to conflictual tension.

Why is it so? It is simply because right is a word with emotional undertone. Human rights violation was there in the past, it is still alive today: The cry and persistent demand for fundamental rights and justice is an indication that the life-wire of our society has broken and that we need to do something positive to restore confidence in the system or else every other thing will go hay-wire.

The golden rule-do unto others as you would like them to do unto you and the adage what is good for the goose is also good for the gander must pierce through the walls of our hearts as the love-song of night in gale pierces through the deep and thick silence of the night if we are hopeful of building a human society or civilization where there would be justice and peace. Further violations of human rights will show how human and reasonable we are. To violate "human rights to drift off course in the course of humanity, and dwell at the level of sub-humanity or brute. Remember to act like a brute is an invitation to be treated like a brute. Let us now examine this concept,' look at how human rights have fared in Nigeria, and see if human rights are absolute.

### **Meaning of Human Rights**

Ogugua has made it clear without equivocation that any concept that can be misunderstood is likely going to be misunderstood. This is so because concepts that are not properly analyzed, and put into their right parameters must be misunderstood and easily too; as such to minimize such occurrences and avoid semantic distortions, we have to show carefully and delineate properly what concepts mean. This concept looks slippery and any inquiry into it may generate ripples, some scholars still offered definitions and descriptions. Although man has inalienable rights, the -term human rights is of recent origin, just four centuries old. From the point of view 'of etymology it is derived from the latin word 'rego' meaning that which is straight; that means that which is just. It is at this point that distinguishing between substantive and subjective rights is indeed necessary. When viewed substantively, we think and talk of right objectively and it is in this sense that Glenn (1942) sees it as" that which is owed or that which is due" (p. 136). In everyday life we think more of subjective rights; rights resident in agents (persons). Glenn (p. 36) holds that it is the "moral power residing in a person ... of doing, possessing, or requiring something".

We cannot rightly hold that human right is this or that in every inquiry, it oscillates depending on political systems and social changes. According to Lloyd (1965) the concept implies a set of rights enshrined in the legal system activated when there is infringement of a right or any threat to so do, even if this is based on an inarticulate ideology. This conception seems to have played down on the meta - legal factors involved in the concept. For idealists, this concept implies rights attached to an individual as a human being with dignity; quite different from his rights as a citizen of a State. For the socialist, this concept need be conceived within the framework of a given society, and it is the mode of production prevalent at any point in time that gives it its essence and character. To 'overlook this crucial element makes a definition technistic. Osita Eze (1991) postulates that: Human rights, however, conceived, are ultimately a function of the nature of the dominant socio-economic system whether it is slave

owning, feudal, capitalist or socialist. It is also the dominant mode of production that determines whether emphasis should be placed on civil and political rights on the one hand or socio - economic rights on the other and whether pre - eminence should be given to private property or social property and whether in the realm of relations with the world system,.... (p.6)

It is clear from the renditions above that we cannot rightly divorce the concept of human rights from the social context; history is a sure witness to this. Adequate and sound analysis of this concept warrants a distinction between natural and legal rights. The former are based on social and moral practices while the later are based on laws. These opinions tally with those of naturalists and positivists respectively. For Cranston it is. Something of which no one may be deprived without a great affront to justice. There are certain deeds which should never be invaded, some things which are supremely sacred. (p.52)

It points towards natural equality of all persons. According to 'Osita Eze (1984), human right

Represents demands or claims which individuals or groups make on society, some of which are protected by law and have become part of ex lata while others remain aspirations to be attained in the future. (p.5)

There are all essentially equal, that is ontologically equal, but still unequal in many respects. But one thing certain is the fact that equality of life implies the means for taking care of this life; hence these means need be preserved and protected if this life will be protected and preserved. Do you not think that is exactly why we have insisted that there is need to talk of rights 'attached to man essentially as man and those accruable to him as a citizen? Moreover, the socialist school accepts that human rights are based on laws, of course that gives the impression that life (right therein) can be preserved and protected, for laws are enforceable. It does hold too that both the essence and character of law and human rights are determined by the mode of production, that is the interplay of the forces of production at any point in time.

In our day to day affairs we do not have laws to guide everyone of our actions with another. If it were to be so, then we will have a litany of laws, this no doubt will be a clog in the wheel of progress of society what is too clear and indisputable is that human rights are associated with the concept of justice which is one of the foundational values or virtues in any society. Ogugua calls it the ligament that hold society together, and the chief virtue of the State. For Aquinas, justice entails giving to each one his due. Who determines ones due? It is the social group that does it, how? It does it by determining what is law. For it is an infringement on law

that breaches one's right and is an affront to justice. Onwuanibe (1983) buttresses one's due is often expressed in a right which is determined by law. When and where one has a right others have a duty to respect such claim of right. Melden (1977) insists that promise therefore is a paradigmatic case for the creation of rights and duties. So when one fails to honour a promise, one deprives another of his right(s).

Distinction could be made, and according to Raphael (1967), it is when we talk of rights at the social and political realms that we demarcate between rights as liberties and claims. It simply means that an individual is not under any obligation to perform a certain act and that an individual limits another right respectively. Osita Eze (1984) states that in strict legal terminology only a right recognized and protected by the legal system can be considered as a right. So in Nigeria, only those in chapter two and four of our Constitution should be seen as rights, although only those in chapters four are justiciable.

We may ask at this point, what then is human right? For Muller David, they incorporate the claims which are required for the provision of a minimum standard of living for each person. Cranston sees it as "certain deals which should never be done, certain freedoms which should never be invaded, some things which are supremely sacred". From the position of Osita Eze, Cranston and some other scholars, we can imply that not everything included under the code of human rights is protected; some are nonjusticiable.

Human rights cover basic and fundamental human needs and interests; they invoke ideals like equality, liberty and justice. The natural or essential or ontological equality of everybody presupposes that everybody be equally placed before or with regards to the means used in protecting and preserving life. Just as freedom cannot be whole without responsibilities, or anyone avoid being free and shouldering responsibilities or even making choice, likewise rights cannot avoid corresponding duties.

### **Are Human Rights Absolute?**

It does not seem that human rights are absolute, they are not even universalisable in the sense that every society honours the same rights in the same respect as other societies, Not even the right to life which Ogugua says is the supreme value with other values subordinated to it is absolute. He (2003 ) writes:

Life proceeds from God and it belongs to God. It is sacred, given to man on trust. It is a supreme gift with irreplaceable value, in short, it is priceless. Every other human value is subordinated to it. (p.7)

For if the right to life is absolute no human being will ever be killed for taking another life, hence there will be no justification whatsoever for allowing capital punishment. And of course, there will be no way for checking an unjust aggressor. We may then ask whose right to life should be uphold, that or" an innocent citizen or that or an unjust aggressor? Again, how meaningful will be the principle of double effect?

All over the world, there is no legal system or provision that is not limited. There is nothing like absolute freedom; although man is condemned to be free (Sartre), and this occasioned the statement of Jean Jacque Rousseau that man is free but everywhere in chain. This very chain is not a physical element but the limit nature and law put to rights. It is the recognition of this limit that gives rise to this statement that you have the right to fly your hands but not when the other starts to defend his nose.

Since the right to life is not absolute; the right to private property is not absolute, for an hungry man has the right to the 'property' of another if that is what will keep him alive. This is in obedience to the principle of self-preservation which is the second principle of natural law. There is again every need for recognition of goods which everyone has access to. Nwankwor asserts:

Human right understood in this limited sense means that an individual person may enjoy a superabundance of the natural economy while the others go in sack cloths and scorches of hunger.

A pivotal question raises its head at this point in time. Can we justify human rights?

### **Justification of human rights.**

Human rights are based on the very fact that man is made in the image and likeness of God. God is the source of life and He bestows these rights on man as He made him in His own image, so as to assist him to assume His likeness.

Vatican II holds

God did not create man a solitary for by his innermost nature man is a social being, and unless he relates himself to others he can either live nor develop his potential.

Man no doubt is a social and gregarious animal. By relating to the other, he build a chain of obligations, responsibilities and duties towards the other; so his social nature is one of the basis for human rights.

Vatican II is of the position that everything on earth should be related to man as their centre and crown. There is no gainsaying the fact that, it equally gives value and dignity to man, hence the emergence of human rights. Little wonder, Kalu opined that:

Beyond the encompassing nature of justice to which we shall return biblical scholars of various denominations and colours of vestments agree that human rights concept must emerge from the biblical view of man as a creation of God.

So, it stands to reason that every human being has inalienable rights, which are outcrop of his value, worth and dignity; these rights are his even before he becomes a citizen of any place, either White or Black, and even prior to his achievement in society. We make bold to say that common consent of mankind could be a basis for human rights. Naturalists hold that human rights are based on man's rationality and intelligence. On account of these features, man thinks before acting, that shows that he is capable of making choice, hence, he is either praise worthy or blame worthy (culpable). Human rights arise from the very nature of man. In the opinion of Aristotle, rationality and intelligence equip man for life in society, hence provide him with what he needs to attend to his needs.

Locke (1689) expanded this doctrine thus,

Though the earth and all inferior creatures be common to all men, yet every person has a property' in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. What ever then he removes out of the state that nature has provided and left it in, he has mixed his labour with, and joined to it, something that is his own, and thereby makes it his property. (p. 134)

Due to the fact that man has an unspecialized nature, majority of the rights he has will only to be actualized via labour. Whatever quality nature bestows on man is not in vain, for nature neither makes anything invain nor allows for a vacuum. Everything is purposive.

### **Human rights today: fact, problem and prospects**

By the use of the above headline, we are not holding that the principle of human rights has changed. We are rather trying to show that the use of the term at all hides the very fact that human rights are violated today with reckless abandon. Human rights are violated in all countries of the world, the difference between nations is that of degree. Careful reading of the Scriptures shows traces of human

rights violation .i.e the death of Abel. The Bible is replete with a Kyrielle of instances of such violation.

History and experience too testify that inspite of the height human civilization has reached, the litany of seminars, conferences and texts on human rights, irrespective of millions of dollar spent human rights are violated more today than in the past. When we talk of the violation of human rights today we do not mean the 'de jure' situation, we mean the 'de facto' situation. The 'de jure' the ought as far as human right is concerned still holds true; for human rights are inalienable.

A cursory look around us and at the international scene will show a thousand and one ways how human rights are violated :

- What of chains of victimization of individuals by groups and government?
- What of political killings by government and some politicians?
- What of chains of kidnap cases?
- Are fraudulent acts not affront to justice?
- What of unjust imprisonment of some elites in our society? .
- Is clamping down of freedom of speech not a violation of human rights?

Nwankwor (1988) points out that:

Often people lay claim oppressively to what is not their entitlement under the legal bench of the bill of right. For the modern man, force, fraud and finance are the key definitive words for human right.

The new man sees human right as that which is inescapably and infact should more comfortably and more safely be clad to and swindled around everything except whatever that will favour justice and morality.

In a good number of places human rights are swept under the carpet, that is an indication at the human milk in such place run dry. In most countries during coup etat, the military junta suspends the constitution, this indirectly is suspension of human rights that are enshrined therein. Although some military regimes do not suspend these human rights, the courts find too difficult to protect these rights.

That means that they are denied. Osita Eze writes:

Military regime is' not perse antithetical to human rights protection. Ultimately, it is the nature of the regime and its political orientation that determine the degree to which human rights are guaranteed and protected.

In our constitutions, 1960, 1989, I 999, the right to life is given a cardinal status, hence it is fundamental. But how far are we faithful to it? The right to life implies availability or the necessary resources to take care of life .i.e. food, shelter, good roads, water, healthcare, education, etc. Anyone without these amenities and/or resources is not living, he is only existing; inshort, he is not modern. It does look like it is nonesensical to guarantee this legal right if the means to realize it are not there. For instance, the child has right but if it is unattended to by its mother, its right to life is indirectly abridged, it is bound to die.

Again the right to life is negative, for one loses life if the powers that be say that one should or must lose it .i.e. think of Ken Saro-Wiwa and the Ogoni nine. Think of Abiola, Ige, etc. these rights are more or less guidelines in many countries of the world.

It does seem that the law is now hijacked by the propertied class, for pre-eminence is given to protection of private properties even if these, properties are from ill - gotten money. Are the laws not instruments for exploitation of the masses?

What on earth made our leaders to think that privatization is the best thing for us when we have not built cushions to shoulder the effects of such action?

We think it is because most of our leaders are rogues of course, they bought these properties. For Eze the idea of privatization is  
a basic negation of the human rights of the peasants and workers  
who produce most of the wealth and whose mandate is not sought  
even when it is clear that their objective interest is threatened.

Power lies with the people. For our leaders to have embarked on the hydra .-headed mission of privatization is an infringement on social justice. What is the position of a government that retrenches workers in millions?

In our country for example, the Press does not seem to be the fourth estate of the realm, not even the watch dog of the government but rather the praise singer of the powers that be. The masses are hired or written of as "dictated by the need for the survival of the system" Osita Eze (1989).

Are Nigerians not worthy to have political rights? During the military regimes elections conducted were wish - washy. Even in 1992, inspite of the fact that many proclaimed an election free and fair, Babaingida did not look back in annulling it. In 2003, and 2007, Obasanjo's government did its selection and declared results in an election that was not held. Are the citizens not ripe for

political rights? Positions are dashed out or bought. Little wonder, the legislative members and the executive represent their own interests and not those of the masses. We need political rights that are realistic to make grassroots representation workable.

It does seem too that the judiciary regarded as the last hope of the common man is an instrument in the hands of the government. The judiciary does the job of interpreting the constitution and at times based on judicial atavism makes laws. But the professed equality of all the citizens before the law is a facade.

In many nations, there has been over - emphasis on civil and political rights as if they are the only sorts of rights. Even as that they have not been honoured and respected. Most often, social and economic rights escape the minds of our people more precisely leaders. Most often, our leaders fail to know that poverty cause a lot of injustices in our society and they allow it to multiply and fill the land. With regard to IBB regime in Nigeria Bishop Onaiyekan (1992) maintains:

The present regime has a lot of beautiful things to say about human rights. But the general impression is that there is a yawning gap between declared good intentions and the realities of our daily life.

Odetola (1982) remarks that the fact that military regimes pass retroactive laws and enforce these ousts the jurisdiction of the Courts that they negate human rights by playing down on the supremacy of the law which is enshrined in the Constitution.

Outside our shores, racism is practiced and we know that it is a crime against humanity as it sees people and attends to them along colour line, thereby creating stratification of our society based on imagined physical characteristics, which are believed to be innate and immutable of course presumed to be "intrinsically related to moral, intellectual, and other non - physical attributes or abilities so said Kuper (1975).

In the past the term was used originally to categorize human conglomerations in non - European societies, but today it has got a pejorative connotation, used in describing social relations and attitude of Africans to one another, this conception has made it inimical to the development of Africa. For Mercier, Essien Idom, tribalism is defensive reactions or mechanism of one group towards another. Do you think this kind of attitude would not affect the practice of human rights?

Human right is not a personal issue, it affects virtually every level of human society, hence the need for the formation of human right groups even at the international level. Protection of these rights creates room for peace. Rachels (1971) holds that:

to be in a society in which there are rights and in which rights are generally respected is to live in a society in which social environment has been made appreciably more predictably and secure. (173)

### **Conclusion**

Human rights are reflection on the golden rule; hence are not privileges, but essentially a constitutive aspect of natural law. Human rights are based on eternal law, natural law and legal system. Although human rights are sanctioned by God, they are still not absolute..

It is our duty to defend our inalienable rights and even those of others who cannot defend their own rights. We have to ensure that these rights are included in our Constitution and honoured, and fight for the judiciary to be independent of the executive. Kant in Apparodai (1942 ) holds that it is necessary

to give the judges the courage and the fairness to do their duty fearlessly they ought to be confident of their security, of their salaries and stations.

It is the powerful who control power in a democracy, so we have to insist that the rule of law reign. David Miller (1976) is of the opinion that: Rights are the fruits of the law alone, There are no rights without law- no rights contrary to the law - no right inferior to the law (p. 55)

Of course, we believe he means a just law; law in accordance with the postulation of Aquinas, an ordinance of reason for the common good promulgated by one who cares for the community.

## References

- Apparodai, (1942) A Substance of Politics Madra,
- Cranston, M, (1967) "Human Rights: Real or Supposed" in Raphael (ed) Political Theory and the Rights of Man. London: Macmillan Pub.
- Eze, O. (1984) Human Rights in Africa Nigeria. Macmillan (1991) "Nigeria and "Human Rights - Prospects and Problems" in Bulletin of Ecumenical Theology Vol. 4, I- 2.
- Glenn, p, J. (1942) Ethics London: B, Herder Book co
- Kuper, L (1975) Race, Science and Society Paris.
- Kalu (1991) "The Protestants protest for Human Rights" in Bulletin of Ecumenical Theology.
- Lyold, D. (1 965) Introduction to Jurisprudence 2nd ed. London: Stevens & dons.
- Locke, J. (1956) Two Treatises of Government N. Y. Haflier Pub. Co.
- Miller, D (1976) citing Harnmont, W.D Social Justice Oxford.
- Nwankwor, R. C. (1988) "Violation of Human Rights: The world Problem" in sign magazine.
- Odetola, (1982) Military Reigmes and Development: A Comparative Analysis in African Societies. London: Georgy Allen & Unwin.
- Ogugua, P.1. (2003) Septanary Nature of Igbo Cultural Values Nigeria: Double Pee Comm.
- Onaiyekan (1992 - 1993) "Human Right in Nigeria within the Context of the Transition Programme" The Fount magazine Vol II, No II
- Onwuanibe, R.C. (1983) "A Critique of Revolutionary humanism Frantz Fallon. U.S.A. Warren H Green
- Rachels, J (ed) (1971) Moral Problems: A Collection of Philosophical Essays. N. Y.
- Raphael, D. D. (1967) Political Theory and the Rights of Man London: Macmillian Pub.