

# THE PLACE OF HUMAN RIGHTS IN NIGERIA'S DEMOCRACY

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## **Abstract**

Human Rights are ontological, inherent and intrinsic to all human beings in as much as they are human, irrespective of nationality, sex, ethnicity, origin, colour or any other status. These rights can be protected in a functional democratic setting that anchors its foundation in the rule of law. In democracy, the rule of law protects the rights of individuals, preserves order, and limits powers of government. In Nigeria's democracy, the reverse seems to be the case. Human rights are not respected. Extra-judicial killing, unlawful detention, and other series of human rights abuses are still prevalent in Nigeria democracy. To discuss the human rights in Nigerian democracy, the paper undertakes the following: Meanings of human rights, historical development of human rights, democracy, rule of law, human rights and Nigerian democracy, fundamental rights in 2011 constitution (As Amended), conclusion and finally recommendation.

## **Introduction**

It was precisely on December 10<sup>th</sup> 1948 that the United Nations General Assembly adopted and made a proclamation on Universal declaration on Human Rights. The declaration centred on the ontological and inherent dignity, equality of human person, and inviolable and inalienable rights of all human family. Since human beings have moved from state of nature to organized civil society, certain institutions are needed to secure and protect those inviolable and inalienable rights of human person. Among those institutions formulated by men, we take democracy in this paper as that which is capable of guaranteeing those rights. Democracy as a system of government that allows people to express themselves and also revolves round people; if practiced well could ensure preservation of

human rights. Human rights cannot be respected in a country where rule or law is neglected. In fact, rule of law is the bedrock of democracy. Rule of law means that everybody no matter your position is under the law, that is, the law is supreme. Not only that the law is supreme, it is also its duty through justice system and other government agencies to protect the rights and dignity of human person.

### **Conceptualizing Human Right**

The ontological essence of man demonstrates he is a being with value. The cognition of this intrinsic dignity and value shows imperative inalienable rights of human beings. Those inviolable rights are foundation for justice and peace in the world. If the rights are neglected and disregarded, it will result to barbarous acts which are antithetical to the human conscience. The world in which human person shall express himself, enjoy freedom of speech, religion, freedom from fear, lack and want are the superlative dreams of the human family. Human rights then, are inviolable, inalienable basic rights which a human person possesses inherently simply because he or she is a human being. Human rights are perceived as universal, that is, it is for every person. These rights in national and international law could exist as natural or legal rights. It should be noted that what is meant by “Right” has generated lots of controversy and a subject of ongoing philosophical discourse. Rights as freedom from unlawful imprisonment, torture, and execution are regarded as belonging fundamentally to all persons. Human rights are basic rights and freedom that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language, or other status. It includes civil and political rights, such as the right to life, liberty and freedom of expression and social, cultural and economic rights including the right to participate in election to work and receive education. Oraegbunam, Ikenga K. E. writes,

Fundamental human rights are attached to every human being by virtue of that very fact of being

human. They are rights inherent in the essence of man<sup>1</sup>.

Following the ongoing definition of human right, Ezejiolor quoted in Idowu asserts,

...moral rights which every human being everywhere, all times, ought to have simply because he is rational and moral in contradistinction with other beings<sup>2</sup>

Right and human rights have always been problematic since antiquity; correlativeness and comparativeness of the two have generated serious debate in the intellectual circle, depending on the school one belongs. Right is that which belongs to a particular thing. Human rights are those rights that belong to humans because they are human beings. Thomas Jefferson rightly articulated definition of human rights in 1887 as he writes from Paris to James Madison on the imperativeness and necessity of upholding individual liberty and the need for a bill of right. Hence, he writes... a bill of rights is what people are entitled to against every government on earth<sup>3</sup>. Humana opines, human rights are Laws and Practices that have evolved over the countries to protect ordinary people, minorities, groups and races from oppressive rulers and governments<sup>4</sup>.

Human rights were thus initially believed to be natural rights of every individual and as such, those rights had a distinct anthropological quality. In other words, basic human rights and fundamental freedom were determined by their author's perception of the nature and essential characteristics of human person. The particular rights and freedoms that were thus thought to be natural concomitants of being human were identified by contemplating the condition of an individual person in a stateless society. By eliminating all conditions that might be conditioned by a person's station in life as a member of a political society, philosophers

attempted to penetrate the true essence of human being and sought to translate the vital modality of being human into rights Talk<sup>5</sup>.

### **Historical Development of Human Rights**

The belief that everyone by virtue of his or her humanity is entitled to certain human rights is fairly new. Its roots, however, lie in earlier tradition and documents of many cultures; it took the catalyst of World War II to propel human rights onto the global stage and into the global conscience.

Throughout much of history, people acquired rights and responsibilities through their membership in a group - a family, indigenous nation, religion, class, community or state. N. S. Rembe opines,

Historically, the origins of the concept of these rights can be traced to ancient Greece and Rome. It was closely linked to the pre-modern natural law doctrines of Greek stoicism whose founder, Zeno, taught that universal working force pervades all creation and that human conduct therefore should not violate the law of nature. Roman law recognized the existence of natural law and upheld certain universal rights that extended beyond the rights of citizenship<sup>6</sup>.

Be that as it may, it was only after the Middle Ages that natural law doctrines became closely associated with liberal political theories about natural rights. Till then, the emphasis was on the duties imposed by natural law rather than the rights deriving there from. But even at that, these doctrines, as evident from the writings of Aristotle and Aquinas accepted the legitimacy of slavery and serfdom, thus excluding the concepts of freedom and equality which are the pivotal ideas of human rights as we understand them today. Human rights generally had to wait for donkey years to be recognized as general social need.

Documents asserting individual rights such as the Magna Carta (1215), the English Bill of Rights (1689), the French

Declaration on the Rights of man and citizen (1789) and the US constitution and Bill of Rights (1791) are the written precursors to many of today's human rights documents. Yet many of these documents, when originally translated into policy, excluded women, people of colour, and members of certain social, religious, economic and political groups. Nevertheless, oppressed people throughout the world have drawn on the principles these documents express to support revolutions that assert the right to self-determination.

Contemporary International human rights law and the establishment of the United Nations (UN) have important historical antecedents. Efforts in the 19<sup>th</sup> century to prohibit the slave trade and to limit the horrors of war are prime examples.

On December 10<sup>th</sup>, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal declaration of Human Rights whereas recognition of the inherent dignity and of the equal inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Whereas disregarded and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people<sup>7</sup>.

## **Democracy**

The word democracy has been on the bill board from ancient times to this modern period. It is a song in almost every tongue now. Universal democratization seems apparent the way global and international politics are going. Francis Fukuyama in his book, End of History and the Last Man, maintains that Western Liberal democracy may signal the end point of humanity's socio-cultural evolution and the final form of human government. Fukuyama rightly captures it thus,

What we may be witnessing is not just the end of the cold war or the passing of a particular period of

post-war history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of western liberal democracy as the final form of human government<sup>8</sup>.

Whether western liberal democracy is the final form of human government is not really the thrust of this work. We have to add quickly too, that Fukuyama may have exaggerated democracy as the paradigm of all democracies. Western democracy may seem to be working and setting standards for other democracies, yet, it is still not enough to assign finality of democracy to it. History is still going, and to also assign finality of democracy to history may look absurd.

Fukuyama's notion of western democracy is trying to show the beauty of democracy and how the western development hinges on it. After all, current Arab-Spring going on may give credence to Fukuyama's view. We allude to the above to show inherent goodness of democracy.

Etymologically, democracy was derived from Greek word "Demos" meaning "the people" and "Kretein" which stands for "the rule of people". Literally then, democracy demonstrates "the rule of the people". Abraham Lincoln definition of democracy could be likened to the Greek meaning. That is "the government of the people, by the people, and for the people". This shows that democracy is participatory. It involves everybody although indirectly through election. It is a system of government that is anchored on the masses as its foundation. The policy and decision of government must of necessity conform to the will of common people because it is from them that the legitimacy of the government is derived.

Appadorai affirms, "Democracy is a system of government under which the people exercise the governing power either directly or through representatives periodically elected by themselves"<sup>9</sup>. Power and government reside in the people in a democratic setting. It is the people that own the government and not vice versa. Although in Nigeria, it is not always the case. Those in authority see

power and government as belonging to them. Democracy as a system that guarantees freedom and general well-being, when put in good use, will bring about development. Democracy is a purveyor of development. Joint Pastoral letter of Nigerian Catholic Bishops delineates,

Authentic development is centred on the human person, on the actualization of his potentials and on the fulfillment of his legitimate aspiration. By giving human beings freedom, God gave human person the capacity to actualize his or her potentials, and, by so doing, fulfill his or her legitimate aspiration<sup>10</sup>.

For recognizing that power rides in the people shows that democracy appreciates the human person as the sumum punti of development. Democracy accommodates pluralistic society where everybody is free within the law to express his or herself without molestation. As such, no group should take advantage of the other.

To give more support and how functional and functioning democracy is, Joint Pastoral Letter pointed out in the following words,

We recall what has been consistently proposed in Catholic Social Teaching, a teaching which any man or woman is able to subscribe to without necessarily professing the catholic faith, that the state exists to enable and not disable the human person, that the state is subservient to the people and not the other way round. That is the underlying logic of democracy... if military rule was the violation of the freedom given to us by God in his sovereignty, the freedom our past heroes fought for, democratic rule ought to give us a guarantee that our freedom is

protected. That is why; if we want to protect our freedom, we must protect our democracy<sup>11</sup>

### **Rule of Law**

For human rights to be respected and upheld, rule of law must be active, practicable and functional. Guarantor of rule of law is democracy. It assures the preservation, and protection of the rights of humans for being humans and citizens of a society. Rule of law is a doctrine that says everybody is under the law. The law is supreme and not a respecter of persons. Rule of law is one of the major parameters to judge any government in relation to its performance and governance. For Anozie,

The government must exercise its powers according to the law and the citizens must not be exposed to the arbitrary whip of the leader i.e. if the actions of the wielders of governmental powers are challenged, they must be prepared to defend their conduct that they acted in accordance with the rule of law<sup>12</sup>.

Aristotle maintained,

it is preferable that law should rule other than any single one of the citizen... he who asks law to rule is asking God's intelligence and not others to rule while he who asks for the rule of a human being is bringing in a wild beast, for human passion is like wild beast and strong feelings lead astray rules and the very best of men. In law, you have the intellect with passion<sup>13</sup>.

Furthermore, Dicey added, "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness of prerogative or even of wide discretionary authority on the part of the government"<sup>14</sup>. Appodorai formulated three different meaning of rule of law in the following:



1. 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.
2. No man is above the law, i.e. there is one law for all.
3. The general principles of the constitution, example, the right to personal liberty, the right to public meeting and freedom from trespass etc<sup>15</sup>.

This means that, the preservation and maintenance and dispensing of justice reside with the court. Zaato further added thus, "Ideally, the rule of law aims at protecting and securing the above and the general fundamental human rights of man. By these, the rule of law engineers stability in the society and gives the citizens a sense of belonging and being protected by the law. The rule of law is indispensable for the protection of human rights and the collective progress and happiness of any society or country"<sup>16</sup>. Rule of law or regular law is necessary for democracy. Rule of law is embedded in democracy. It is in and through it that democratic principles could be measured. This may not be achievable if the judicial system is not strengthened and protected from the influence of the politicians or the bourgeoisie of the society. It is the duty of judicial system to protect the sacredness and integrity of the law and rights of the people.

### **Human Rights and Nigerian Democracy**

Idowu, A.A says, adherence to the concepts of human rights and democracy had since been recognized as a veritable means of achieving peace, stability and development in the world. At present, efforts are being intensified by various individuals, regional and international organizations as well as governmental bodies to internationalize and globalize the campaigns for promotion of human rights and democracy with a view to eradicating all forms of oppressive regimes in all human societies<sup>17</sup>. The questions that are begging for answers are: Is human rights respected in Nigeria, Does the justice system have the will to treat the issues of human rights

without fear or favour? Does the country (Nigeria) have institutional framework to tackle and grapple with human rights abuses? Does the Nigerian government know what are human rights and tenets of democracy?

Nigerian governments know in principle what human rights and democracy are all about. But in practice, it is far from their dictionary. The 1999 constitution was explicit on the fundamental human rights of her people but those in governance still close their eyes on the constitutional provisions of the rights of the people. Almost all the institutions of government saddled to promote and protect human rights and dignity have relatively failed if not totally. To give credence to the above; Ojo says, “in virtually all political systems, there are a number of institutional mechanisms put in place either formally to safeguard the inalienable rights of man. The issue is only that the strength and efficacy of their safeguards differs from state to state and makes the level of political development cum democratic consolidation in each state”<sup>18</sup>.

The most significant human rights problems in Nigeria are extra-judicial killings and use of excessive force by security forces, impunity for abuses by security forces, arbitrary arrests, prolonged pre-trial detention, judicial corruption, and executive lawlessness and influence on the judicial system. Joint Pastoral Letter delineates:

Unfortunately, in Nigeria, our democracy is ailing and some sectors of the institutions that ought to protect our democracy – the executive, the legislature, the judiciary, and the press are not doing enough for the people, and are not yet always at the service of our God-given freedom<sup>19</sup>.

The 1999 constitution of the Federal Republic of Nigeria mentioned in section 1(1): “The constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria”<sup>20</sup>. The Federal institutions whose work it is to respect human rights seem to forget the above constitutional provision. The manner they go about their work shows that they

don't have regard to the constitution. The law is made for the common people. That is why there is abuse of human rights in Nigeria. Some people are above the law. Rules can be bent to favour some people. Every human being is equal in as much as they are human. The American Declaration of Rights of Man (1776) asserts,

... We hold these truths to be self-evident that all men are created equal; that they are endowed by their creator with certain inalienable rights that among these are life, liberty and pursuit of happiness<sup>21</sup>.

The attitude of those in governance depicts the opposite of the above written quotation. There is a divide in the entity called Nigeria. The government sees itself as super-human being. For them, the self-evident truth that all are equal before the creator is nothing but semantic. The common people are piece of wood that could be burnt at will. They are low-humans. United Nations on the adoption of human rights in 1948 postulates the following,

Whereas, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; whereas, disregard and contempt of human rights have resulted in barbarous acts which have outraged the conscience of mankind... that human rights should be protected by rule of law<sup>22</sup>.

If human beings see each other as equal, respect the right of others, especially those in governments to respect the rule of law not the rule of man, development is inevitable. Democracy is meaningful in free society where every person lives together in harmony and has equal chance and opportunity to take part in the process of governance. Umaru Musa Ya'ardua in his inaugural speech in May

29, 2007 says among other things, the development of the nation (Nigeria) hinges on rule of law. On this he said,

We already have a comprehensive plan for mass transportation, especially rail road development. We will make these plans a reality. Equally important, we must devote our best efforts to overcoming the energy challenges. Over the next four years, we will see dramatic improvements in power generation, transmission and distribution. These plans will mean little if we do not respect the rule of law<sup>23</sup>.

Idowu, on his part pointed out thus: “ The fact that since citizens are the most distinctive elements in democracy, their fundamental rights must be guaranteed and protected before they can be in a position to render their human resources for effective democratization and overall development of their nation. In other words, promotion of human rights is primarily fundamental to the emancipation of an enduring democracy and national growth”<sup>24</sup>

The public officers in Nigeria have not really done well to protect the human rights of her citizens. They took oath of office and allegiances to preserve, protect and defend the country’s constitution. Implicit to this are the duties to protect the rights of Nigerians. The question and is. Has the Government in this Democratic dispensation so far done well to reduce, if not eradicate series of abuses of human rights in the country? The government has not lived up to their responsibilities to protect and respect human rights and dignity of the individual. The agencies of government have not collaborated their activities to reduce human rights situation in Nigeria. Religious group have not also done well and government has not check these religious laws that are inconsistent with constitution. Twelve Northern State have adopted the Sharia penal code: Bauchi, Borno, Gombe, Kaduna, Kastina, Kabbi, Jigawa, Niger, Sokoto, yobe, and zamfara. The sharia panel code only applies to Muslims. It provides harsh sentences for alcohol consumptions, infidelity and amputations, lashing, stoning and long

prison terms. Christian's pastors in Nigeria have been accused of involvement in the torturing and killing of children accused of witchcraft. A number of children have been killed by their parents through the advice of the pastors who branded them witches and wizards. These types of practices and law should be seen as obsolete and as such replaced or abolished. The constitution should take precedence over these laws. Joint pastoral letters added in such country, human dignity is disrespected, just and peaceful co-assistance is at risk, anarchy sets in, and under-development reigns. It cannot be rightly said that such a nation is God fearing since the violation of human freedom is an affront to divine sovereignty. If the human is at the centre of authentic development, education teaches us to take personal responsibility for the common good. The role of personal responsibility is to be seen in the fact that God created human person with a desire for and the capacity to seek self-fulfillment by undertaking some task<sup>25</sup>.

### **Fundamental Rights in 2011 Nigerian Constitution (As Amended)**

Below are the fundamental rights as enshrined in the constitution:

#### **Right to Life**

2011 constitution as amended section 33 (1) states every person has a right to life and no one shall be deprive 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.

#### **Right to Dignity of Human Person**

Section 34 (1), every individual is entitled to respect for the dignity of person, and accordingly. Paragraph A, no person shall be subjected to torture or to inhuman or degrading treatment. In paragraph B., no person shall be held in slavery or servitude. While in C, no person shall be required to perform, forced or compulsory labour.

### **Right to Personal Liberty**

Section 35(1) every person shall be entitled to his respect liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.

### **Right to Private Life**

Section 35(1) in the determination of civil rights and obligations including any question or determination by or against any government or author a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to cure its independence and impartiality.

### **Right to Private and Family Life**

Section 37 the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

### **Right to Freedom of Thought, Conscience and Religion**

Section 38(1) Every person be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and the public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

### **Right to Freedom of Expression and the Press**

Section 39(1) every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas, information without interference.

### **Right to Peaceful Assembly and Association**

Section 40 Every person shall be entitled to assemble freely and associated with other persons, and in particular he may form or

belong to any political party, trade union or any other association for the protection of his interests.

### **Right to Freedom of Movement**

Section 41(1) Every Citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

### **Right to Freedom from Discrimination**

Section 42(1) A Citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-(paragraph a) be subjected either expressly by, or in the practical application any law in force in Nigeria or any executive or administrative the government, to disabilities or restrictions to which citizens of other communities, ethnic group, places of origin, sex, religious political opinions are not made subject.

### **Right to Acquire and Own Immovable Property Anywhere in Nigeria**

Section 43 – Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.<sup>26</sup>

All these rights have their restrictions or duties attached to them. In the defense of public interest, some of the rights may be denied. The right to alter some of these rights resides in the court. To buttress this point, Section 45(1) – Nothing in Sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society. Paragraph A, added thus: in the interest of defense, public safety, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons. These are the conditions under which rights could be denied.

## **Conclusion**

Democracy, as system of government, from our excursus, has shown if practiced well could guarantee respect for human dignity and rights. It can also promote rule of law. Rule of law means equality of every person before the law and that the law is supreme. Why then does the government place herself over the law? The answers to this are manifold. Neglect to rule of law which is the bedrock of democracy will definitely lead to abuse of human rights.

The Nigerian constitution outlined in its provisions fundamental human rights and the United Nations in 1948, in her Universal declaration of human rights itemized those rights of human. The problem is not that the leaders do not know about the law, it is the problem of implementation. For any development to take place government should find a way to marry democracy, rule of law and human rights. The inherent rights and liberty of citizens as a constitutive work-force and human capital of the nation must of necessity be adequately protected and guarantee before democracy and development can be realized. For democracy to flourish, the human rights of individuals must be protected. Institutions of government saddled with the promotion of these rights must be functional and pro-active in maintaining and safeguarding of these basic rights.

Institutional framework may not work if majority of the citizens are poor and illiterate. Knowledge they say is power. Knowledge also makes you to know your rights and duties attached to those rights. Poverty can also make one to abuse or violate his/her own rights. If this is possible, it then follows that violation of human rights by government is possible if greater number of citizens are poor. Aguda opined,

... The practical actualization of most of the fundamental rights cannot be achieved in a country like ours (Nigeria) where millions are living below starvation level... Most of the rights entrenched in our (Nigerian) constitution are nothing more than empty words to millions of our people who are, or



whose children are suffering and in some cases dying of malnutrition and other preventable diseases associated with poor<sup>27</sup>.

Furthermore, Mamman supported, "the fight for human rights is a fight not only against political deprivation and economic exploitation. This applies to countries as well as people<sup>28</sup>.

If all the problems militating against human rights are removed beyond mere rhetoric human beings or citizens will unequivocally be agents, foundation and catalyst of development. Democratic education at this level is imperative.

### **Recommendations**

1. Strengthening of government institutions and agencies responsible for safeguarding and promotion of human rights should be unavoidable.
2. Leaders should be knowledgeable, sensitive and pro-active to the issue of human rights. knowledgeability can relatively guarantee citizen-oriented policy
3. Respect for human dignity. There should be emphasis for the leaders and citizens to see themselves as "Imago Dei" image of God. A transcendental subject, an end in his/her self.
4. Every obstacle to educational, economic and cultural development must be removed. Universal Basic Education must be encouraged by all levels of government.
5. Military rule/coup should not be allowed or tolerated. Military has been known to be the worst in abusing human rights of citizens. Efforts must be put in place to check-mate their encroachment into politics. Their duty is to protect the integrity and sovereignty of the nation not to rule.

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