

THE RUDIMENTS OF HUMAN RIGHTS*

Abstract

The knowledge of the evolution of human rights is a key to understanding the concept and the factors that influenced the growth and advancement of human rights. The wide spectrum of what we have today as human rights can be traced from the earliest times, down to the middle ages, and up to the present century. Since her inception the United Nations has championed the evolution of human rights to an acceptable contemporary canon of human rights through several human rights instruments and agencies. These instruments have helped to make the generations of human rights applicable globally, as standards to be aspired and attained by all nations. This work is set out to appraise the evolution of human rights through the ages to the present day.

Introduction

The term human rights made its first appearance in the international legal lexicon between 1942 and 1945. It is the recent label for what in earlier centuries were called natural rights or the rights of man. The tradition of rights in this sense is itself another expression of an even older tradition of natural law¹. The significance of the concept of human rights can only be appreciated by an understanding of its formative influence. It is intended to explore the concept from a historical perspective.

History is defined as a learning or knowing by inquiry; the knowledge of facts and events so obtained; hence a formal statement of such information; a narrative; a description; a written record.² Different ages have known the concept of human rights, which existed in European thought under several names. The political and religious traditions in other parts of the world also proclaimed what has been called human rights.

The history of the evolution of human rights is associated with the natural law tradition. Many writers take human rights as it is referred to today as a reinstatement of the natural law, which is regarded as the source of moral value.³

This article defines and clarifies the basic concepts of rights, human rights and fundamental human rights. It establishes that contemporary canon of human rights are borne to a certain extent as a result of historical experiences of oppression of individuals either on their own merit, or as members of a group, gender, age etc or for their natural vulnerability. This is the underlying principle why we have the so-called special rights. These are human rights, which have been identified are especially necessary for the protection of members of vulnerable groups against the specific sorts of abusive practices of the powers, which have historically oppressed them.⁴

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¹ R. Downie, "Social Equality", in A. Rosenbaum, (Ed.) **The Philosophy of Human Rights: International Perspectives**, (Greenwood Press, 1980), p. 127.

² *Brainy Dictionary. Com.*

³ The natural law tradition was chiefly espoused by classical Greek and Roman philosophers. See C. Friedrich. **The Philosophy of Law in Historical Perspective**, University of Chicago Press, p. 16; M. Crowe, **The Changing Profile of the Natural Law**, (Martinus Nijhoff Publishers, 1977) p. 29 and A. D'Entreves **Natural Law: An Introduction to Legal Philosophy**, (London: Hutchinson Univ. Library, 1970).

⁴ Such vulnerable groups include women and children, refugees etc, for whom special rights have been recognized

The present-day standard of human rights refers to the entire set of internationally recognized human rights declarations and conventions, beginning with the Universal Declaration of Human Rights (1948) and including all of the subsequently drafted and enacted international human rights instruments, such as the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; the Declaration on the Right to Development; the United Nations Convention on the Rights of the Child; Convention on the Treatment of Juvenile Offenders; the Refugee Convention; and several dozens of other international documents which identify and codify human rights norms.

The evolution of human rights in Nigeria is also discussed. Its origin is traced from the pre-colonial period to the present time. An attempt is also made at classifying the various rights in the Constitution and various international instruments, which Nigeria is party to.

Clarification of Concepts

Several authors and legal authorities have variously defined the term “human rights”. Before we go into the definition of human rights, it will be right at this juncture to pause for a brief definition and appraisal of the term right.

The Definition of Right

The word “right” is derived from the Latin word *rectus*, which means correct, straight or opposed to wrong. It may also mean in accord with law, morality and justice.⁵ *Black’s Law Dictionary* defined *right* to mean justice, ethical correctness or consonance with the rules of law or the principles of morals. In the noun form, it means a power, privilege, or demand, inherent in one person and incident upon another⁶.

The meaning of the word “right” has been a subject of confusion in the realm of jurisprudence. Jurists have put forward many theories, all in a bid to locate a precise meaning of the word “right”. It is not the focus of this article to delve into the complicated jurisprudential controversy on the rights theories. Nevertheless, some of the definitions will be given, while adopting a simplistic approach for the purpose of our present study.

According to Hon. Justice C.A. Oputa Rtd., a right, in general, is a well-founded claim which when recognized by the civil law, becomes acknowledged claim or legal right enforceable by the power of the state.⁷

Oliver Holmes asserted that a legal right is nothing but a permission to exercise certain natural powers and, upon certain conditions, to obtain protection, restitution, or compensation by the aid of the public force⁸. John Salmond defined a right as an interest or benefit recognized by law.⁹ For Ronald Dworkin, rights are trumps for justifying political decisions that state a goal for the community as a whole.¹⁰ For Raz, a right exists when an aspect of a person’s well being is sufficient reason for holding some other person or persons to be under a duty.¹¹

⁵ C.A. Oputa **Human Rights in the Political and Legal Culture of Nigeria**. Lagos: Nigeria, Law Publications, 1989, p. 38.

⁶ H.C. Black **Black’s Law Dictionary**, Minnesota: West Publishing Co., 6th ed., 1990.

⁷ *Op. cit.* note 5, p. 39.

⁸ O.L. Holmes **The Common Law**, Back Bay Books, 1964, p. 214.

⁹ J. Salmond, **Jurisprudence**, Sweet & Maxwell, London: 3rd ed. 1973) Sect 72.

¹⁰ Dworkin, **Taking Rights Seriously**, Duckworth & Co. Ltd. London: 1977, pp. 232-238.

¹¹ J. Raz, **The Morality of Freedom**, Oxford, 1986, p. 116.

F.E. Dorwick¹² explained the word right to mean claims, i.e. wants, desires, aspirations people have and express. He went on to say that they are claims, which people make on behalf of others or for themselves. Some of such claims are only recognized within a code of morality or an ethical theory. Hence, they are properly called legal rights. Those claims, which are recognized in various ways in a legal system and implemented via laws, are the legal rights¹³.

The key idea in the concept of right is entitlement. To say that you have a right to something is to say that you are entitled to it, such as the right to life, liberty and to fair hearing. A right can also be seen as a concept, denoting an advantage, a position or benefit, validly conferred on a person, human or artificial, by rules of a particular legal system.¹⁴

Legal rights are distinguishable from moral rights or claims. While a Legal right is the liberty to act or abstain from acting in a specified manner or the power to compel a certain person or persons from doing a particular thing and enforceable by law, moral rights on the other hand, are mere assertions of notions of right and wrong without any legislative backing. The law grants no remedy in the case of moral rights.¹⁵

One of the characteristics of a legal right is the possibility of challenging its violation in a court and either get the right enforced or grant damages for failure to carry out the corresponding duty.¹⁶ Section 46 of the 1999 Constitution makes provision for the enforcement of the Fundamental Rights provisions. It gives the High Court original jurisdiction to hear and determine any application made to it for the purposes of securing enforcement of any of the rights. In so doing, the Court may make orders, issue writs and give such directions, as it may consider appropriate.

Definition of Human Rights

Human rights can be defined simply as those rights, which every individual born into the world possesses, right from the moment of birth until death. They are a part of the natural gifts and endowments he received from God, and attach to him automatically. They can also be described as universal because all human beings all over the world are deemed to possess them.

Gaius Ezejiolor¹⁷, defined human rights as moral rights, which every human being everywhere at all times, ought to have, simply because of the fact that in contradistinction with other beings, he is rational and moral. Osita Eze¹⁸, thinks that human rights are demands or claims, which individuals or groups make on society, some of which are protected by law and have become part of the *ex lata*, while others remain aspirations to be attained in the future. With due respect to the learned professor, this positivist definition of human rights as demands or claims by individuals or groups on society, amounts to placing the cart before the horse. It places undue limitation on the congenital nature of human rights. These rights, which have in recent years been termed human rights, predate society. The earliest societies were formed by human beings

¹² F.E. Dorwick **Human Rights**, Saxon House, 1979, p. 8.

¹³ *Ibid.*

¹⁴ M. Ikhariale, **The Jurisprudence of Human Rights**, in **Journal of Human Rights Law and Practice**, vol. 5, no. 1, January 1995, p. 51.

¹⁵ G.W. Paton, **Jurisprudence**, Oxford Clarendon Press, 3rd ed. 1972, p. 283.

¹⁶ *Ibid.*, p. 286.

¹⁷ G. Ezejiolor, **Protection of Human Rights Under the Law** Butterworths, London: 1964, p. 3.

¹⁸ O. Eze, **Human Rights in Africa: Some Selected Problems** Macmillan Publishers, 1982, p.5

who always had those rights ever before any society. Human rights existed before the state, and are independent of it. It is also erroneous to categorize it as demands or claims because you do not demand what is intrinsic in human nature, and cannot be taken away from you, without outrage to humanity.

M. Cranston¹⁹ on his own part concludes that:

A human right is something which no one may be deprived without a great affront to justice. There are certain deeds, which should never be done, certain freedoms, which should never be invaded, some things which are supremely sacred.

Akin Ibidapo-Obe²⁰, sees human rights as those specie of rights, which are recognized as appertaining to man by the very nature of his humanity. However described, inalienable, fundamental, God given, or divine, the basic purport, being that these rights are not a gift of any ruler, because a ruler cannot give that, which does not belong to him.

A. Gerwith²¹ in his own contribution defines human rights as those rights which are personally oriented and are normatively necessary moral requirements. The point of calling human rights personally oriented is to bring out that these are requirements that are owed to distinct subjects or individuals. The point of saying that the rights are normatively necessary is to indicate that compliance with them is normally mandatory. Such mandatoriness distinguishes the human rights from virtues and other goods whose moral status may be optional, such as generosity or charity.

Human rights have also been described as inalienable. The delegates to the American Declaration of Independence, in 1776, proclaimed:

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 the pursuit of happiness...²²

Rhoda Howard thinks that human rights are a modern concept now universally applicable in principle because of the social evolution of the entire world towards state societies. To her, the concept of human rights springs from modern human thought about the nature of justice, that it does not spring from an anthropologically based consensus about the values, needs or desires of human beings. She admits though that one can find affinities, analogies and precedents for the actual content of internationally accepted human rights in many religious and cultural traditions; but that the actual concept of human rights is particular and modern, representing a

¹⁹ M. Cranston, **Human Rights Real and Supposed**, in Raphael (Ed.), **Political Theory and the Rights of Man**, (Bloomington: Indiana University Press, 1976), p. 52.

²⁰ A. Ibidapo-Obe, **Human Rights and State Security: The Nigerian Experience**, in **Journal of Human Rights Law and Practice**, vol. 5. Number 1, January 1995, p. 86.

²¹ A. Gerwith, **Social Philosophy and Policy**, pp. 1-24, quoted in Lloyd, **Introduction to Jurisprudence**, (London: ELBS, 1985), p. 229.

²² Noted in W. Janis, "The Declaration of Independence, the Declaration of the Rights of Man and Citizen and the Bill of Rights" in **Human Rights Quarterly**, vol. 14, no. 4, November 1992, p. 497.

radical rupture from the many status based, non-egalitarian, and hierarchical societies of the past and present.²³

Human Rights and Fundamental Rights

To the positivist, human rights are part of the *lex lata* of the particular state. They are such rights, which the particular state has selected from a plethora of rights, given to the citizens and other persons within its frontiers, and made enforceable against the particular state or its agencies.²⁴ This article holds a contrary opinion to the positivist view. The position here is that human rights derive from natural rights. Those rights have been adopted and given positive force of law by the Constitution in form of fundamental rights. Human rights are wider in scope than fundamental rights. Human rights can be regarded, as the genus while fundamental rights is the specie. While human rights attach to the individual at birth, fundamental rights are those recognized and supported by a state. Human rights span the range of human history, from medieval times to modern times. On the other hand, fundamental rights are of recent development and are normally associated with written constitutions. This point received judicial pronouncement in **Ransome Kuti and ors. v. The A.-G .of the Federation**,²⁵ There, Oputa, J.S.C, stated that:

Not every right is a fundamental right, the idea and concept of fundamental rights both derive from the premise of the inalienable rights of man- life, liberty and the pursuit of happiness. Emergent nations with written constitutions have enshrined in such constitutions some of these basic human rights and called them “fundamental rights” or “fundamental human rights. Each right that is thus considered fundamental is clearly spelt out.

Eso J.S.C. also in the same **Ransome Kuti’s case**, defined *fundamental right* as:

A right which stands above the ordinary laws of the land and which is antecedent to the political society. It is a precondition to civilized existence...and what has been done by your constitutions since independence...is to have these rights enshrined in the constitution so that the rights could be “inevitable” to the extent of the “non- immutability of the constitution itself.

Justice Chike Idigbe also added his voice to this point, by noting that:

It must be pointed out at this stage, that these rights (i.e. human rights) which are antecedent to the political society itself, do not exist, only in societies or states without any written constitutions. However, unless their existence is guaranteed under the states constitutions, they cannot with reference to the particular state or political society be described as fundamental rights.²⁶

It is therefore, submitted from the foregoing, that constitutions do not create fundamental rights or the very basic human rights, but declare and preserve existing rights as such. The term human

²³ R. Howard, “Dignity, Community and Human Rights”, in An-Na’im A., (Ed.), **Human Rights in Cross Cultural Perspectives**, (Washington DC: The Brookings Institution, 1992), p. 81

²⁴ P.N. Agu, “The Role of Lawyers in the Protection and Advancement of Human Rights” in **Journal of Human Rights Law and Practice**, vol. 1, no. 3, p. 2: Professor Osita Eze, holds a similar view, *ibid*, p. 21.

²⁵ (1985) 2 N.W.L.R (part 6), p. 211.

²⁶ Idigbe JSC, **All Nigeria Judges Conference Papers**, 1982 at p. 61 (emphasis, mine)

rights, in its broadest perspective, can be categorized into three classes viz; the first,²⁷ second²⁸ and third generation rights.²⁹ Each successive generation of human rights as we have in contemporary canon has arisen historically as a set of normative responses to policies, practices, and institutional systems, which were felt to be oppressive by some group or other.

Justice Oputa³⁰ said that we talk of fundamental human rights or the inalienable rights of man because each human being has intrinsic worth. He went further to explain that these rights are inalienable because they attach to man as a result of his humanity, without them; there is automatically a diminution of his humanity. The state cannot withdraw them, as they were not conferred on man by the state. He bases his argument on the simple logic that it is only he who gives that can take away³¹. Contrary to the above assertions, on the inalienability of human rights, contemporary human rights documents have rejected the character of the inalienability of some of the so-called human rights.

These rights are not absolute and can be overridden by other considerations. To say that a right is inalienable, means that its holder cannot lose it temporarily or permanently by bad conduct, or by voluntarily giving it up³². For instance, the right to freedom of movement can be alienated by conviction and sentence to imprisonment by a court of law. It can also be voluntarily alienated by a person who makes a lifelong commitment to live in a monastery. The right to life can be alienated by lawful execution of a person in compliance with the sentence of a court.

By the provisions of section 45 of the 1999 Constitution, the rights contained in sections 37³³, 38³⁴, 39³⁵, 40³⁶, 41³⁷, 33³⁸ and 35³⁹ can be derogated from⁴⁰. Human rights may be conferred on individuals or particular groups of individuals, for example, refugees or stateless persons⁴¹, women⁴² and children.⁴³ According to Morton Winston,⁴⁴ This is the reason why we have so-called "*special rights*:" these are human rights which have been identified as especially necessary for the protection of members of vulnerable groups against the specific sorts of abusive practices of the powers which have historically oppressed them. He went further to explain that Human rights form a system of norms, which function to protect human dignity by

²⁷ These are the Civil and Political Rights.

²⁸ They are, the Economic, Social, and Cultural rights. They are also known as Security oriented rights.

²⁹ They are the extension of socio-economic and cultural rights. It includes, within its substantive provisions, group solidarity or peoples' rights.

³⁰ *Op. cit.* note 5, p. 45.

³¹ *Ibid*

³² Nickel, J., *Human Rights, The Stanford Encyclopaedia of Philosophy (Summer 2003 Edition)*, Edward N. Zalta (Ed.), URL = <http://plato.stanford.edu/archives/sum2003/entries/rights-an/>. Retrieved on 24/2/2010

³³ Right to private and family life.

³⁴ Right to freedom of thought conscience and religion.

³⁵ Right to freedom of expression and the press.

³⁶ Right to peaceful assembly and association.

³⁷ Right to freedom of movement.

³⁸ Right to life

³⁹ Right to personal liberty

⁴⁰ More discussions on derogations are presented in the subsequent section on derogations.

⁴¹ See the **Convention on the Status of Refugees**, 1951.

⁴² See the **1953 Convention on the Political Rights of Women; 1957 Convention on the Elimination of All Forms of Discrimination Against Women, 1979; Protocol to the African Charter on the Rights of Women in Africa.**

⁴³ Gasiokwu M., **Human Rights, History, ideology, and Law** (Jos: Fab Educational Books, 2003), p. 5.

⁴⁴ Morton Winston *The Indivisibility and Interdependence of Human Rights* <http://www.bu.edu/wcp/MainHuma.htm>. Retrieved on 23/2/2010.

thwarting systems of oppression. Though they have individual and particular justifications in themselves, they form a unity because the techniques of repression, which they are intended to combat, also form a unity as parts of the systems of oppression.⁴⁵

The Historical Foundations of Human Rights

Earliest Times

Human rights are divine. The Holy Bible records in the book of *Genesis*,⁴⁶ what appears to be the earliest record of the manifestation of human rights. When the first man disobeyed God by eating the forbidden fruit, he gave him the opportunity to be heard before passing his sentence. He thereby established the rule, *Audi alteram partem*⁴⁷, which is a pillar of fair hearing.

The question of when and where universal validity of human rights originated has become an academic question and people of several cultures now lay claim to the notion.⁴⁸ Before the emergence of slave owning societies, what existed then was a kind of communalism, where everyone was equal and there were no class distinctions. For instance, on the principle of equality and human dignity, we find consensus among various cultures and traditions to support these principles. Chinese religious and philosophical traditions (Taoist and Confucian) are rich in notions of equality and human dignity. The Confucian saying, “Within the four seas, all men are brothers”, supports this.⁴⁹ Scholars of Buddhism could draw upon the Buddhist declaration of “Compassion for every living creature” and on traditional injunctions of justice.⁵⁰ Jews, Christians and Muslims can find in divine source, support for the principle of justice and equality and of the concern for the human kind.⁵¹ The Empress of Iran claimed to find support for human rights in Iranian tradition that dates back thousand years.⁵²

Ancient African societies developed and employed the notions of fairness, justice and equality. Notions like the sanctity of human life had always been rooted in African tradition. Certain acts were abominable as being contrary to the will of the gods. Professor Osita Eze, noted that African societies in their process of development have evolved ideas of right and duty, right and wrong, as well as notions of justice and fairness⁵³. He went further to explain that these ideas and notions as in other societies formed the foundations of what subsequently came to be known as human rights in western jurisprudence.⁵⁴

In the various Yoruba communities of Nigeria, the concept was firmly established in the proverbial and wise saying, “*Agbejo enikan da agba osika ni*”, meaning: A judge who hears only one side, is the most wicked person. The Ibos of Southern Nigeria also have a popular saying: “*Anaghi ebe ookwu n’onu ofu onye*”, meaning: you do not pass judgment by merely

⁴⁵ *Ibid.*

⁴⁶ *The Holy Bible*, King James Version, Genesis, Ch.3, vss 9-19.

⁴⁷ See K. Eso, **Why Human Rights?** in A. Kalu and Y. Osibajo (Eds.), **Perspectives on Human Rights** (Federal Ministry of Justice, 1992), p. 275.

⁴⁸ Alice Henken, **Human Dignity**, (Aspen Institute for Humanistic Studies, 1977), p. 7

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *ibid.*, p. 2.

⁵³ O. Eze, “African Concept of Human Rights”, in A. Kalu and Y. Osibajo, (Eds.), **Perspectives on Human Rights**, *op. cit.* note 47.

⁵⁴ *Ibid.*

hearing from one party. This view that human rights existed in traditional African, societies, had found favour with Professor Umozurike, who said that:

Human rights occupied an important place in traditional African societies. The rights of the members of a community were respected and regarded as being integral with the rights of the community itself. The rights of the members were thus not isolated or held against the community, but formed a great admixture with community rights so that members had an interest in the well-being of other members.⁵⁵

The concept of human rights is therefore not alien to Africa and other societies, if anything at all, the concept only lacked proper documentation.

The history of the evolution of human rights cannot be separated from the struggle between the privileged and the oppressed, which characterized every societal formation. Class formations started with the practice of slave ownership. They were antagonistic and built on segregation. The history of slave ownership could be traced to warfare and captivity⁵⁶. The slave owning society, which existed in many countries in ancient times, had the hallmark of extreme deprivations and oppressions. Slaves were made to work for the masters without any dignity. The slaves lacked the right to almost every freedom. The slave had the status of a chattel, and could be sold at the will of the master. If there were manifestations of human rights in this era, they were certainly, not for the slaves.

With the emergence in the Middle Ages of the feudal society in Europe, the institution of slavery was replaced by serfdom. Feudalism was a system of land holding, where the land users were obliged to pay high levies, and render services to the landowner⁵⁷. This system encouraged the rules of hierarchy. The Emperor and the Pope were at the top of the hierarchy, owning large portions of land. While the Emperor possessed the secular power, the Pope had the spiritual power. Underneath them were the aristocrats with different designations, like kings, barons, counts, earl etc.⁵⁸ At the very bottom of the feudal societal pyramid, were the numerous exploited masses called the *serfs*, who were also deprived of their rights like the slaves.

All these, culminated in the emergence of oppositions and uprisings against dominion and oppression. The reformation and renaissance that swept across Europe played important part in dismantling feudalism, with the emergence of the commercial working class, who wanted freedom and recognition of his rights and the need for a sovereign to protect his property. Thus, the emergence of the *Magna Carta* in 1215 England and the other similar documents in other countries.

The *Osu* cast system practiced by the Ibos of the South Eastern Nigeria is akin to the feudal system⁵⁹ Osita Eze notes that:

⁵⁵ U. Umozurike, "The Significance of the African Charter on Human and Peoples' Rights", in Kalu A., and Osibajo Y., (Eds.), *op. cit.* note 47, P. 44.

⁵⁶ M. Gasiokwu, *op. cit.* note 43, pp. 49-50.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ U. Umozurike, **The African Charter on Human and Peoples' Rights**, (Hague: Martinus Nijhoff Publishers, 1997), p. 16.

Traditional African societies knew of institutionalised derogations from human rights. There was the *Osu* System and the caste system epitomized by the untouchables: there was human sacrifice as well as the practice of killing twins in the superstitious belief that they will bring evil.⁶⁰

The *Osu* system was a caste system, whereby some people were taken as the property of the gods. They and their genealogy were thus considered holy and untouchable. They were not to have marriage relationships with people outside the caste. If such a marriage took place the person being married by the *osu*, whether male or female, is automatically converted into the caste. Equally they were stigmatised and not to be associated with. Even though the caste system has been abolished by legislation, the stigma still subsists today on their offspring.

Besides the caste system there were numerous aberrations of human rights. The killing of twins was quite acceptable by the primitive Ibo, Efik and Ibibio of Eastern Nigeria. Whereas the Yorubas of Western Nigeria cherished twins, their Eastern brothers considered such babies evil, and were not to be spared, but to be sent back to the gods. The twins were not allowed to live and were either killed by hand, or thrown into the evil forest where they would be devoured by wild beasts, or die of hunger and starvation. As for the mothers of such babies, they were either banished or sent back to their parents' home, for bringing forth evil. The contributions of Mary Slessor, a Scottish missionary, towards the end of this barbaric act would not be easily forgotten.⁶¹

Besides the killing of twins, idol worship among the primitive African societies required constant sacrifices to appease the gods for one reason or the other. In many cases human beings were used for such sacrifices, depending on the choice of the gods as pronounced by the Chief Priests. Oji Umzurike, an expert in African human rights, noted that primitive belief in the spirit world necessitated that on the death of dignitaries; they would be buried along with slaves and servants to serve them in the great beyond⁶².

The 17th and 18th Centuries witnessed the coming into being of natural law documents occasioned by the shift in emphasis from the duties and obligations of the natural law, to the rights conferred on man by this law. Thomas Paine advocated a state funded system of social security. He developed a strong argument for a variety of economic and social rights. He also played an essential role in the emergence of the English working class movement at the end of the 18th Century.⁶³ The 17th and 18th Century documents drew their inspiration from a very earlier document, the *Magna Carta* of England, (1215). The barons led a rebellion against King John. The noblemen felt oppressed by the practices of the King in dealing with their fellows and ultimately compelled him to sign the *Magna Carta* into law at Runnymede.⁶⁴

⁶⁰ O. Eze, **Human Rights in Africa, Some Selected Problems**, *op. cit.* note 18, p. 13.

⁶¹ U. Umzurike *op. cit.* note 59, p. 16.

⁶² *Ibid.*

⁶³ See E. Thompson, **The Making of the English Working Class**, Pantheon Books, 1964, pp. 86-113.

⁶⁴ A. Ibadapo-Obe, *op. cit.* note 20, p. 151; C. Oputa, *op. cit.* note 5, p. 46.

The latter documents are:

1. **The English Petition of Rights, (1627);**
2. **The Habeas Corpus Act, (1679);**
3. **The American Declaration of Independence, (1776);**
4. **The United States Constitution, (1787);**
5. **The American Bill of Rights, (1791), and**
6. **The French Declaration of the Rights of Man and Citizens, (1789).**

The French Revolution of the 18th Century is traceable to the economic and social injustices of the French *ancien regime*. The abuses that characterized the regime, despite the criticisms by philosophers, led to the agitation by the Third Estate for a French Constitution and the ultimate inclusion of the Declaration of the Rights of Man and Citizens in the Constitution after the overthrow of the monarchy and the establishment of the first French Republic.⁶⁵

All the documents that came after the *Magna Carta*, adhere to the principle that natural law should protect the rights of individuals against the abuse of governments. The documents enshrined the *due process of law*, which requires that the state be subjected to the rule of law.

The American and French Revolutions drew much vigour and philosophical strength from the intellectual influence of Locke, Montesque, and Rousseau. In the words of Bodenheimer,

No other philosophy, moulded and shaped American thinking and American institutions to such extent as did the philosophy of natural law in the form given to it in the 17th and 18th Century.⁶⁶

Thomas Jefferson's document is an imprint of the natural rights of individuals and of the natural duties of government as influenced by Locke⁶⁷. The American Declaration of *Independence*, detailed a long list of abuses committed by George III. As Constitutions for the thirteen newly independent American States were drafted, Bills of Rights enumerating specific rights were directly incorporated therein with the states of Virginia, being the first to add the rights in its Constitution.⁶⁸

After the American Declaration, the French Declaration, followed in the same fashion, drawing great influence from Rousseau's philosophy.⁶⁹ The import of the two revolutions has been buttressed by a learned writer. A. P. d' Entreves, when he noted,

On the eve of the American and French Revolutions, the theory of natural law had been turned into a theory of natural rights. The old notion which lawyers, philosophers and political writers had used down the ages had become to use Professor Wiley's expression, a liberating principle, ready to hand for the use

⁶⁵ See G. Ezejiolor, *op. cit.* note 17, pp. 9-10.; see also **A Short History of the Human Rights Movement**, <http://www.hrweb.org/history.html>, edited on April 5, 2009. Retrieved on 12/2/2010.

⁶⁶ Bodenheimer, *Jurisprudence*, quoted in Paton G., **A Textbook of Jurisprudence**, Oxford: Clarendon Press, 1951, p. 78.

⁶⁷ M. Janis, *op. cit.* note 22, p. 497.

⁶⁸ S. Morrison, Commanger H., Leuchtenbury W., **The Growth of the American Republic** Oxford University Press, New York: 6th ed., 1962, p. 121, in Janis M, *ibid.*

⁶⁹ *Ibid.*

of modern man in his challenge to existing institutions. Even then, the two meanings survived. The doctrine of natural rights was closely associated with that of a “fundamental law”, the American version of the continental idea of the law of nature.⁷⁰

Justice will not be done to this article, without mentioning the impact of the natural law rights theory on the early judicial fora. The English and American courts made references to natural rights as far back as the 18th Century. In the celebrated case of **Sommerset v. Stuart**,⁷¹ the Negro slave, Sommerset was claimed by his master, a Virginian planter, while in England. Lord Mansfield, in discharging the slave, declared:

Slavery is so odious that nothing can be offered to support it, but positive law. Whatever inconveniences may follow from the decision, I cannot say this case is allowed or approved by the law of England, and therefore, the black must be discharged.⁷²

This set the stage for the dismantling and abolition of slave trade and a relatively humanitarian attitude towards slavery was established under English Common Law.⁷³ In the case of **Entik v. Carrington**,⁷⁴ the courts in England recognized the right to personal freedom. In that case, the Secretary of State, issued a general warrant to officers who broke into the house of Entik, who was suspected of editing a seditious publication, *The British Freeholder*, and seized his books and papers. The Lord Chief Justice castigated the government’s conduct severely and awarded Entik 300 pounds damages for trespass. The court thereby firmly established the rule that no state official or policeman should enter a citizen’s premises unless he has authority of law.⁷⁵

Another case, based on natural rights is the case of **Omychund v. Barker**.⁷⁶ In this case, heathens were accorded the right to practice their religion and not to have Christian practices imposed on them. In the Canadian case of **Crawford v. St. John**,⁷⁷ an action was held to lie where a person was deprived of his right to vote at a municipal election by the negligence of another. In the American case of **Plessy v. Ferguson**,⁷⁸ Justice Harlan made the point that nothing can arouse race hatred than state enactment, which proceeds on the ground that coloured citizens are inferior to whites.⁷⁹

Internationalization of Natural Rights

In the international fora, the earliest recognition of human rights was quite minimal. It was mainly in the area of warfare and slavery. Until the middle of the 19th Century, agreements to

⁷⁰ A. D’ Entreves, **Natural Law: An Introduction to Legal Philosophy**, Hutchinson Univ. Library, London: 1970, pp. 60-61.

⁷¹ 12 George III, AD (1771-1772), LOFF T, 20 Howell’s State Trials.

⁷² E. Fiddes, **Lord Mansfield and the Sommerset Case**, in 501 Q.R.499, (1934), noted in Vinoyradoff, *ibid*, p. 173.

⁷³ E. Azinge, “Milestone Decisions on Human Rights”, in A. Kalu, and Y. Osibajo, (Eds.), **Perspectives on Human Rights** *op. cit.* note 47, p. 203.

⁷⁴ (1765), 19 State Trials, 1029, see Azinge, *ibid*.

⁷⁵ *Ibid*.

⁷⁶ (1774),

⁷⁷ (1893), 34 NBR, 560(C.A.), noted in Azinge, *ibid*, p. 204.

⁷⁸ 163U.S. 534, (1896).

⁷⁹ A century later, this dissenting opinion of Justice Harlan, was justified in the famous case of **Brown v. Board of Education**, 347 U.S., 483 (1954).

protect the victims of wars were merely of transient character, binding only upon the contracting parties, and based on the principle of reciprocity.⁸⁰ In reality, they were purely military agreements made effective only for the duration of a particular conflict.^{2a}

The General Act of the Berlin Conference on Central Africa, in 1885, declared trading in slaves, forbidden in conformity with the principles of international law. In 1889, the Brussels conference, not only condemned slavery, and the slave trade, but also agreed on measures for the suppression, including the granting of reciprocal rights of search, and the capture and trial of captains and crews of slave ships.³

The First Geneva Convention of 22nd August, 1864 was aimed at the amelioration of the condition of the wounded soldiers in the battle field. Representatives of twelve states signed it.⁴ The Convention is a milestone in the development of international law, since it is the first unlimited and multilateral agreement that brings into force, ethical principles in armed conflicts between states.⁵ The Convention was considered necessary due to the way wounded soldiers were left to die with little or no care, and the oppressive treatment of soldiers by the enemy forces. The other Geneva Conventions that followed were also the result of historical wartime experiences.

Labour unions brought about laws granting workers the right to strike, establish minimum working conditions, forbidding or regulating child labour, establishing a forty hour week in the US and many European countries, etc.⁶ The 1906 Second Berne Conference produced two Conventions, which are the forerunners of many post First World War Labour Conventions. They are: The International Convention respecting the Prohibition of Night Work for Women in Industrial Employment, and the International Convention Respecting the Prohibition of the Use of White (Yellow) Phosphorus in the Manufacture of Matches.⁷

After the First World War, the League of Nations Covenant in its Article 22, specifically stated that advanced nations mandated to oversee the administration of colonies and territories that were not yet able to stand by themselves would guarantee amongst other things, freedom of conscience, religion, and the prohibiting of abuses, such as slave trade.⁸

Treaties are a source of international law that influenced the growth of the human rights movement. The protection of minorities has long been rooted in treaties. The First World War ushered in a heightened attention to problems of racial, religious or linguistic minorities and this yielded some treaties. The 1919 Minorities Treaty between the Principal Allied and Associated Powers and Poland, popularly known as the Treaty of Versailles, served as a model

⁸⁰ See C. Chukwu, **The Role of the International Committee of the Red Cross in the Implementation of the Geneva Conventions in Armed Conflicts**; an unpublished LL.M Dissertation by the present writer, submitted to the Faculty of Law, University of Nigeria, Nsukka, Enugu Campus, 1996, p. 6. See generally, chapter 1 of the work.

^{2a} F. Bory, **Origin and Development of International Humanitarian Law**, (ICRC, 1982), p. 7.

³ Humphrey, "The International Law of Human Rights in the Middle Twentieth Century", in Richard B. Lillich & F. Newman (Eds.), **International Human Rights: Problems of Law and Policy** (Boston: Little Brown & Co. 1979), p. 1.

⁴ P. Boissier, **From Solferino to Tsushima** Geneva: Henry Dunant Institute, 1985, p. 125, noted in C. Chukwu, *ibid.*

⁵ H. Haug, **Humanity For All**, Geneva: Henry Dunant Institute, 1993, p. 3

⁶ **A Short History of the Human Rights Movement**, *op. cit.* note 65.

⁷ See Humphrey, "The International Law of Human Rights in the Middle Twentieth Century", in Richard B. Lillich & F. Newman (Eds.), **International Human Rights: Problems of Law and Policy** (Boston: Little Brown & Co. 1979), p. 2.

⁸ *Ibid.*

for religious freedom for all the inhabitants of Poland.⁹ Chapters on the rights of the minorities within their borders were included in the peace treaties with the ex-enemy States.¹⁰ Some states like Albania and Lithuania made minority protection declarations as a condition for membership of the League of Nations.¹¹ The League of Nations in 1921, established the *Permanent Court of International Justice*¹² (*PCIJ*) as a means of implementing the duties under the League Covenant.¹³ The procedure for bringing complaints was such that the Council of the League received the complaint first, and where the Secretary General considered the case admissible, the ad hoc Minorities Committee were appointed to investigate the matter and try to reach a friendly settlement. Where that failed, the complaint was then referred to the *PCIJ*.¹⁴ For instance the case of the **Minority Schools in Albania**, where the *PCIJ* declared members of the Greek-speaking Christian Minority in Muslim Albania nationals of Albania and that the closure of minority schools was against the principle of equality. The Court also decided in 1928 the case on the **Rights of Minorities in Upper Silesia**, where it held that the question whether a person belonged to a racial, linguistic or religious minority is subject to no verification, dispute, pressure or hindrance whatever on the authorities.¹⁵ Prior to the *PCIJ*, the League of Nations made use of arbitral tribunals in settling disputes.¹⁶

The League Covenant in its Article 76 (c) expressly stated that one of their purposes of the trusteeship system is to encourage respect for all without distinction as to race, sex, language or religion.¹⁷ The Covenant in Article 23, bore an undertaking by members of the League to endeavour to secure and maintain fair and humane labour conditions and to secure just treatment for the native inhabitants in territories under their control.¹⁸

The need to codify natural rights in the form it is known today, as human rights was underlined by the fact that the two World Wars gave rise to a lot of unspeakable and oppressive atrocities against human beings, understandably, the promotion and protection of human rights were considered very essential elements for the preservation of peace and co-operation among nations of the world.¹⁹

International concern for the protection of human rights yielded what is referred to as Atlantic Charter of August 14, 1941. This is a joint Declaration of President Roosevelt and the Prime Minister of Great Britain, Winston Churchill.²⁰ Earlier in a message to the American Congress, in January 1941, before the United States entered the Second World War, President Roosevelt,

⁹ H.J. Steiner, and P. Alston, **International Human Rights in Context. Law Politics, Morals** New York: Oxford University Press, 1996, p. 88.

¹⁰ A. Robertson, **Human Rights in the World**, Manchester: Manchester University Press, 2nd. Ed, 1982, p. 20.

¹¹ *Ibid.*

¹² The Court was dissolved in 1946 and replaced by the International Court of Justice. See Lawson E., **Encyclopaedia of Human Rights**, New York: Taylor and Francis Inc., 1991, p. 938.

¹³ See Steiner and Alston, *op. cit.*, note 88, p. 88.

¹⁴ Robertson, *op. cit.* note 89.

¹⁵ *Ibid.*

¹⁶ For instance, the case of **United States of America (B. E. Chattin) v. United Mexican States claims**, was tried by such tribunal, *ibid.*

¹⁷ Humphrey *op. cit.* note 86

¹⁸ *Ibid.*

¹⁹ R. Lallah, "International Human Rights Norms", in **Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms**, (London: Commonwealth Secretariat, 1988), p. 3.

²⁰ The Atlantic Conference & Charter, 1941, available at: <http://www.state.gov/r/pa/ho/time/wwii/86559.htm>. Retrieved on 19/2/2010.

defined four freedoms. They are: freedom of speech, freedom of worship, freedom from want, freedom from fear-everywhere in the world. These to him are the necessary conditions for peace.²¹

The trials of Nazi war criminals at Nuremberg took place pursuant to the Charter of the International Military Tribunal, annexed to the Agreement for the Prosecution and Punishment of the Major war Criminals of the European Axis, signed in August 1945.²² The Nuremberg Tribunal declared certain acts, namely, crimes against peace, crimes against humanity, and conspiracy to commit such crimes as international crimes. The principles implicit in the judgment of the tribunal were formulated by the United Nations International Law Commission as a Draft Code of principles, in a Report presented in 1950. Under Principle 1 of this Report: “Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment”.²³

A major turning point in the efforts at internationalising human rights was the emergence of the United Nations Charter. It evolved during and in the immediate aftermath of the Second World War by the victorious warring nations. The Charter represents the profound moral and political reaction particularly in Europe and America against the worst features of the defeated fascist regimes.²⁴

Events leading up to the Charter, started at Dumbarton Oaks, Washington DC, in 1944. There, representation of four nations, USSR, USA, UK, and China, reached a number of agreements contained in the form of proposals.²⁵ The Dumbarton Oaks proposals were published in 1944 and contained only a general reference of human rights.²⁶ The proposals failed to meet the expectation of the generality of the people, who were still shocked by the atrocities of the war. Subsequently, countries like USSR, USA, and China again held a conference in San Francisco, California in 1945 to strengthen the Dumbarton Oaks proposals.²⁷

The Conference produced the United Nations Charter. The Charter was signed in June 1945 and entered into force on 24th October 1945.²⁸ The United Nations Charter of 1945, in its preamble declares the promotion of human rights as one of its purposes. It states in the preamble:

We the peoples of the United Nations, determined ...to reaffirm faith in fundamental human rights, in the dignity of the human person, and the equal rights of men and women and of nations large and small... have resolved to combine our efforts to accomplish these aims.²⁹

²¹ Humphrey, *op. cit.* note 86, p. 5

²² Article 6. See R. Lillich and F. Newman, *op. cit.* note 82, p. 727.

²³ See J.G. Starke, **Introduction to International Law**, Butterworths & Co., Publishers, 9th ed., 1984, p. 4.

²⁴ F. Dorwick, *op. cit.* note 12, p. 6

²⁵ Ezejiolor, *op. cit.* note 17, p. 55.

²⁶ Humphrey, *op. cit.* note 86, p. 5.

²⁷ Ezejiolor, *op. cit.* note 17, p. 55.

²⁸ Robertson, *op. cit.* note 89, p. 24.

²⁹ See the Preamble to the *U. N. Charter of 1945*.

The Charter made a number of other references to the promotion of human rights. In Article 55 and 56, member states pledge themselves to take joint and separate action in co-operation with the organization for the promotion and universal respect of human rights.³⁰

Article 68, provided for the creation of a Commission of Human rights under the Chairmanship of Eleanor Roosevelt³¹. The Organization's General Assembly, at midnight of December 10, 1948, adopted the Universal Declaration of Human Rights.³² The Declaration contains an impressive list of civil, political, economic, social and cultural rights, which now serve as a model for regional institutions and organizations as well as for various countries throughout the world.³³ The Declaration is also widely acclaimed as a Magna Carta of human kind to be complied with by all actors in the world arena³⁴.

Johannes Morsink, has attempted to show that a lot of the articles of the Universal Declaration of Human Rights, from have their origins in particular reflections concerning the crimes committed by the Nazi's during the Holocaust.³⁵ He asserts that the delegates were greatly influenced by the experiences of the war, and that each human right has its own justification, one that is discovered when that right is violated in some gross way. To further buttress his point he cites examples which includes Article 15 of the *UDHR* which says,

(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The revocation of citizenship and subsequent deportation and confiscation of property of Jews living in Allied countries by the Nazis and declaring them as stateless persons once they entered Germany made all Jews pariahs. The significance of this action was that it made it impossible for any country to inquire as to their fate, and it enabled that state in which they were resident to confiscate their property.³⁶

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted on 9th December, 1948. Article 146 of the 4th Geneva Convention of 1949, on the Protection of Civilian Persons in Time of War, requests that parties enact legislation to provide effective penal sanctions for those committing or ordering to commit grave breaches of the Convention and to search for such persons and bring them to trial. Section 145 of the Convention mentions the following acts committed against protected persons and property as great breaches: wilful killing, torture or inhumane treatment, including biological experiments, wilfully causing great suffering and serious injury, etc.

The Commission of Human Rights did not rest on its oars. It went ahead and drafted two other human rights instruments.³⁷ The United Nations in 1966, adopted the International Covenant

³⁰ This undertaking in the opinion of the International Court of Justice, (Advisory opinion, on the continued presence of South Africa in Namibia), 1971, ICJ, 16, binds member states to respect and observe human rights. See Humphrey, *ibid*, p. 6.

³¹ This Commission was saddled with the task of drafting the bill of rights.

³² G.A. **Resolution 217A (III)** of December 1948.

³³ See M. Ajomo, "Fundamental Human Rights under the Nigerian Constitution", in A. Kalu, and Y. Osibajo, (Eds.) *op. cit.* note 47, p. 78.

³⁴ Azinge, *op. cit.* note 73, p. 200.

³⁵ J. Morsink, "World War II and the Universal Declaration." **Human Rights Quarterly**. Volume 15, Number 2 (May 1993), pp. 357-405.

³⁶ *Ibid*, p. 392.

³⁷ The Commission completed its work on the two instruments in 1954, but it was only in 1966 that they were approved by the General Assembly and opened for signature.

on Civil and Political Rights (ICCPR)³⁸ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁹

By transforming international concern with human right into legally binding international obligations, the covenants have laid groundwork for erection of international institutions and procedures, which are meant to give concrete expression of these obligations.⁴⁰

The United Nations has continued to champion the cause of human rights. It has through the work of its various organs and agencies, adopted various human rights conventions.⁴¹ The enforcement organs of the United Nations can be categorized into two groups, namely, Charter based organs and Treaty based organs.⁴² The Charter based organs are those whose creation is directly mandated by the *U.N Charter* such as the General Assembly, the Economic and Social Council, and the Commission on Human Rights. ECOSOC resolution 1503 (1970), authorizes the Commission on Human Rights to investigate communications that appear to reveal a consistent pattern of gross and reliably attested violations of human rights. The Commission's works have helped to focus international public opinion on violations in some countries like South Africa and Chile.⁴³ The Charter based organs also includes the organs authorized by one of these bodies, such as the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on the Status of Women. The Treaty based organs are those created by the other human rights treaties originating in the U.N processes, which are intended to monitor compliance by states with their obligations under those treaties. They include the Human Rights Committee founded under the ICCPR to monitor compliance with its provisions.⁴⁴ By Article 40(1) of the ICCPR Covenant, the parties to the Covenant undertake to submit reports on the measures they have adopted, which give effect to the rights recognized there, and on the progress made in the enjoyment of those rights.

The provisions of these Conventions have been activated in recent times, as witnessed by the number of persons that have been prosecuted for war crimes and crimes against humanity. Notable among them is Mr. Slobodan Milosevic, former president of Yugoslavia and others⁴⁵ who are indicted with war crimes against humanity and genocide.⁴⁶

Saddam Hussein, the erstwhile President of Iraq, was executed in December 2006 after being found guilty and convicted of crimes against humanity by the Iraqi Special Tribunal⁴⁷ Charles Taylor, former President of Liberia is currently facing trial for alleged war crimes.

³⁸ **G.A. Resolution, 2200 (XXI) of December 1966**, The First Optional Protocol is on parties recognizing the competence of the committee to receive communications and also on exhausting domestic remedies before bringing the complaint. It entered into force on 23rd March 1966. (G.A. Resolution 2200A (xxi) of 16 December 1966. The second Protocol is on the Abolition of the Death Penalty.

³⁹ **G. A. Resolution 2200 (XXI) of 16th December, 1966**; see also the classification of the rights below.

⁴⁰ Azinge, *op. cit.* note 73, p. 210.

⁴¹ See **Human Rights: A Compilation of International Instruments**, United Nations, New York Center for Human Rights, 1988, pp 1 to the end.

⁴² Steiner and Alston, *op. cit.* note 88, pp. 349-350.

⁴³ J. Donneley, **Universal Human Rights in Theory and Practice**, London: Cornell University Press, 1991, p. 206.

⁴⁴ Steiner and Alston, *op. cit.* note 88.

⁴⁵ They are, Radovan Kardzic, President of the Serbian Democratic Party, indicted with war crimes against humanity. http://International_Criminal_Tribunal_for_the_former_Yugoslavia Retrieved on 26/1/2010

⁴⁶ <http://usinfo.state.gov/dhr/archive/2005/Apr/06-37995.html> Retrieved on 26/1/2010

⁴⁷ http://electroniriraq.net/news/bytopics/Saddam_Hussein_put_to_death. Retrieved on 26/1/2010

The major regional efforts to codify human rights include: the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950; the American Convention on Human Rights of 1978; the African Charter on Human and Peoples' Rights of 1980 and the ASEAN Charter of 2007

The United Nations have through the years established other agencies and organs for the purpose of enhancing human rights. Some of the agencies include:

1. The United Nations Educational, Scientific and Cultural Organization⁴⁸, (UNESCO), which was established as an autonomous permanent intergovernmental organization with the basic purpose of contributing to peace and security by promoting collaboration among the nations through education, science, and culture.

2. The United Nations Children's Emergency Fund (UNICEF)⁴⁹ has been utilized for the benefit of children and adolescents of countries and territories, which were victims of aggression. Its assistance is provided on the basis of need without discrimination on the ground of race, creed, national status or political belief.⁵⁰

3. The World Health Organization (WHO) was established in 1946⁵¹ as a permanent intergovernmental organization dedicated to the premise that the enjoyment of the highest attainable standard of health is a fundamental right of every human being without discrimination.

Other organizations include, the **United Nations Environment Program (UNEP)⁵², The United Nations High Commissioner for Refugees (UNHCR).**⁵³

Regional efforts to codify human rights norms include the European Convention on Human rights, the European Social Charter, 1966; American Convention on Human Rights, 1969; the African Charter on Human and Peoples' Rights of 1980 and the ASEAN Charter of 2007.

The European Convention on Human rights contains an impressive list of rights, very similar to that of the UDHR and the ICCPR. The Convention entered into force on 3 September 1953, and has since bagged five additional protocols. The major organs for enforcement of the European Convention are the European Commission for Human Rights and the European Court of Justice. The European Commission for Human Rights hears complaints of alleged violations and attempts conciliation, while the European Court was established to take decisions as to whether a violation had occurred. The European Social Charter, which was signed in 1961, is also modelled after the ICESCR. The American Convention on Human Rights, like its European counterpart, is limited to civil, political and property rights. It contains 26 rights and freedoms. 21 of the rights are formulated in similar terms to the ICCPR. The Convention vested the authority to supervise its observance in 2 organs, the inter-American Commission, which was established in 1959; and the Inter-American Court of human rights created by the

⁴⁸ It entered into force on 4th November 1946.

⁴⁹ Established by the General Assembly on 11 December 1946 (Resolution 57(1))

⁵⁰ See E. Lawson, *op. cit.* note 91, p. 1605.

⁵¹ WHO's Constitution came into force on 7 April 1948.

⁵² An intergovernmental organization established in 1972, by U N General Assembly resolution 2997 (xxvii) as an outgrowth of the UN Conference on Human Environment, held in Stockholm, earlier that year.

⁵³ On December 1980 the UN General Assembly adopted the Statute of the Office of the *UNHCR*.

Convention.⁵⁴ There is no American equivalent to the European Social Charter, however Article 26 of the Charter is an undertaking by Member States to adopt measures aimed at achieving full realization of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.⁵⁵

The African Charter on Human and Peoples' Rights⁵⁶ makes provisions on civil and political rights that are quite similar to those in the ICCPR and other international and regional human rights instruments. The Charter incorporates a new concept of peoples' rights and the imposition of duties to the individual. Wolfgang Benedek, while commenting on these concepts in the African Charter, notes that the human rights approach to be found in traditional African societies is characterized by a permanent dialectical relationship between the individual and the group.⁵⁷ The African Commission is the organ saddled with a quasi-judicial, quasi-diplomatic and recommendatory function of protecting and promoting the Charter.⁵⁸

The reason proffered for not including a court in the Charter is that Africans prefer to settle disputes through negotiation and conciliation rather than the adversarial open confrontation approach⁵⁹. Another reason for rejecting a court is the fear that African states would not want to be subjected to the jurisdiction of a supra-national body⁶⁰. Recommendations were made at various conferences, for the inclusion of an independent African Court of Human Rights. During the fifth International Commission of Jurists Workshop on the work of the African Commission in 1993, some participants stated that the African Commission is inefficient, its decisions are not reasoned or published and therefore a court was needed either to replace the Commission or to compliment it.⁶¹ The Protocol on the African Charter on Human and Peoples' Right, establishing the African Court on Human and Peoples' Right, entered into force in February 2004⁶². By the provision of Article 34 (3) of the Protocol, the Protocol shall enter into force 30 days after 15 instruments of ratification or accession have been deposited. The Union of Comoros became the 15th state to ratify on 26th December 2003,⁶³ thereby giving the African Court on Human and Peoples' Rights the legal ground to be established⁶⁴. The Court

⁵⁴ Steiner and Alston, *Ibid*, pp. 641-642.

⁵⁵ The **Organization of American States Charter as Amended** sets up an Inter-American Council for education, science and culture, as well as an Economic and Social Council, both of which are supposed to set standards, consider reports made by states and make recommendations.

⁵⁶ Ratified and brought into force in Nigeria on March 17, 1983 by the **African Charter Ratification and Enforcement Act, Cap A 9 LFN, 2004**.

⁵⁷ W. Benedek, **African Rights and Individual Duties as Special Features of the African Charter on Human and Peoples' Rights**, (1985, p. 69), in Steiner and Alston, *op. cit.* note 88, p. 697.

⁵⁸ O. Umozurike, **The African Charter on Human and Peoples' Rights** *op. cit.*, note 59, pp. 79-82.

⁵⁹ P. Amoah, "The African Charter on Human and Peoples' Rights, An Effective Weapon for Human Rights", in **African Journal of International and Comparative Law**, 5, March 1992, p. 237.

⁶⁰ *Ibid*.

⁶¹ *ibid*

⁶² The Protocol was adopted by the Assembly of Heads of State and Government of the Organization of African Unity, (OAU), now African Union, (AU), at its 34th Ordinary Session in June 1998, at Ouagadougou, Burkina Faso. The African Court's principal function is to consider allegations of violations of human rights including civil and political rights and economic, social and cultural rights guaranteed under the *African Charter*, the *Protocol* and relevant human rights instruments.

⁶³ Establishing an African Court on Human Rights. Monday 26 January 2004, Press release, Amnesty International, <http://www.scoop.co.nz/storie/w00401/s00167.htm> . Retrieved on 21/7/2009

⁶⁴ **Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights**. On January 22, 2006, the Eighth Ordinary Session of the Executive Council of the African Union elected the first eleven Judges of the African Court on Human and Peoples' Rights. The Court had its first meeting on July 2-5, 2006. **Available at:** http://www.achpr.org/english/_info/court_en.html. Retrieved on 21/7/2009.

considers cases of human rights violations referred to it by the African Commission on Human and Peoples' Right, established pursuant to the African Charter; State Parties to the Protocol; and by individuals and non-governmental organizations where a State Party accepts the Court's jurisdiction. Unlike the African Commission, the African Court possesses the authority to issue a binding and enforceable decision on cases brought before it.

In September 2007, The Association of South East Asian Nations (ASEAN) composed of Brunei, Cambodia, Indonesia, Laos, Malaysia, Burma, the Philippines, Singapore, Thailand and Vietnam *signed the first Charter promoting human rights and democracy in the region*.⁶⁵ The document, agreed by the 10 member states at a summit in Singapore, sets out ASEAN's principles and rules for the first time in its 40-year history. Human rights occupy only a few paragraphs in the ASEAN Charter, whose main aim is to make the bloc a legal and rule-based body similar to that of the European Union. The Charter also failed to include a mechanism for enforcing human rights.

The African regime is more developed than those in Asia and the Middle East. Jack Donnelly⁶⁶ asserts there are neither regional norms nor decision-making procedures. The Association of South East Asian Nations (ASEAN) is perhaps the most promising sub regional organization in that region. The League of Arab States established a permanent Arab Commission on Human Rights in 1968, but there are no substantive regional human rights norms⁶⁷. In 1983, the Institute for Arab Unity Studies, Beirut, organized a Pan-Arab Conference on the "Crisis of Democracy in the Arab Homeland" The participants agreed that Arab regimes regardless of their political orientation, deny their citizens and subjects all basic human rights. The Conference succeeded in establishing the Arab Organization of Human Rights, which have produced several reports to document the sad state of human rights in the Arab world.⁶⁸

Classification of Human Rights

The term *human rights* in its broadest perspective can be categorized into three classes viz: The first, second and third generation rights.

The First Generation Rights

The first generation rights are the civil and political rights. Rights which fall under this head, are those which we find in the International Covenant on Civil and Political Rights, 1966.

These first generation rights, also known as Liberty Oriented Rights⁶⁹ are basically rooted in natural law and have the same identity as those rights defined by earlier philosophers as natural rights. In effect, it means that they are the core human rights and citizens of Nigeria are entitled to them for the simple reason that they are human beings. David Selby, while discussing civil and political rights noted that they are:

Rights concerned with giving individuals freedom of action and choice, and freedom to participate in the political life of their community and society.

⁶⁵ See [cnn.com.asia](http://www.unpo.org/content/view/full/7345/83/) available at: <http://www.unpo.org/content/view/full/7345/83/> posted on 21/9/2007. Retrieved on 12/7/2009

⁶⁶ J. Donnelly, *op. cit.* note 122, p. 218.

⁶⁷ *Ibid.*

⁶⁸ B. Tabi, "European Tradition of Human Rights and the Culture of Islam", in An – Na'im A., and Deng F., (eds.) **Human Rights in Africa. Cross Cultural Perspectives** Washington DC: The Brookings Institution, 1990, pp. 116-117.

⁶⁹ D. Selby, **Human Rights** Cambridge University Press, 1987, p. 9.

Their aim is to give individuals as much freedom and control over their own lives as possible. They therefore provide defences for the individual against excessive state power, by limiting what governments and government bodies can do.

The provisions of Chapter IV of the 1999 Constitution like that of several other countries are modelled after the Universal Declaration of Human Rights of 1948. Articles 1-21 of the UDHR, proclaims the civil and political rights. Article 1 of the UDHR is a declaration that all men are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

By the provision of Article 2, everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political, natural or social origin, property, birth or other status.

Articles 3-21 make express provisions on the traditional classical liberty oriented rights. They are: right to life;⁷⁰ to liberty and security of person;⁷¹ protection from servitude and forced labour;⁷² protection from torture or cruel, inhuman or degrading treatment or punishment;⁷³ recognition as a person before the law;⁷⁴ equality before the law;⁷⁵ effective remedy by the competent national tribunal for acts violating the fundamental rights;⁷⁶ protection from arbitrary arrests, detention or exile;⁷⁷ fair and public hearing;⁷⁸ presumption of innocence;⁷⁹ privacy of family, home and correspondence;⁸⁰ freedom of movement;⁸¹ right to seek and enjoy asylum;⁸² right to marry and found a family;⁸³ right to own property;⁸⁴ freedom of thought, conscience and religion;⁸⁵ freedom of opinion and expression;⁸⁶ right to peaceful assembly and association;⁸⁷ right to take part in government and to have equal access to public service.⁸⁸

The International Covenant on Civil and Political Rights (ICCPR) also sets out the various rights, which it protects in Articles 6-27. It is almost a recapitulation of the UDHR, except for the few additional rights. One of the apparent differences is that the ICCPR makes specific provisions for the segregation of accused persons from convicted persons.⁸⁹ It also makes

⁷⁰ Art. 3

⁷¹ Art. 3

⁷² Art. 4

⁷³ Art. 5

⁷⁴ Art. 6

⁷⁵ Art. 7

⁷⁶ Art. 8

⁷⁷ Art. 9

⁷⁸ Art. 10

⁷⁹ Art.11

⁸⁰ Art. 12

⁸¹ Art. 13

⁸² Art. 14

⁸³ Art. 16

⁸⁴ Art. 17

⁸⁵ Art. 18.

⁸⁶ Art. 19.

⁸⁷ Art. 20

⁸⁸ Art. 21

⁸⁹ Art. 10(2)

special provisions for juvenile offenders.⁹⁰ Article 11 bars any imprisonment on the ground of inability to fulfill a contractual obligation. Other noticeable differences include: the rights of aliens from unlawful expulsion;⁹¹ the rights of the child,⁹² and the rights of minorities.⁹³

The United Nations, in championing the cause of these rights, have made quite a number of conventions resulting from past events and the need to forestall any future occurrence of such atrocities and to protect people in all parts of the world. The important ones are: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984⁹⁴; the Convention on the Prevention and Punishment of the Crime of Genocide, 1948⁹⁵; the Convention Relating to the Status of Refugees, 1951⁹⁶, and its 1967 Protocols⁹⁷; the International Convention on the Elimination of All Forms of Racial Discrimination, 1965⁹⁸; the Convention on the Elimination of All Forms of Discrimination Against Women, 1979⁹⁹ etc.

The African Charter on Human and Peoples' Rights¹⁰⁰ makes provisions on civil and political rights that are quite similar to those in the ICCPR and other international and regional human rights instruments.¹⁰¹ It provides the following rights: right to equality before the law;¹⁰² right to life;¹⁰³ prohibition of slavery and slave trade, torture, etc¹⁰⁴; right to liberty and security of the person;¹⁰⁵ right to fair hearing;¹⁰⁶ freedom of conscience and religion;¹⁰⁷ freedom of expression and the press;¹⁰⁸ right to peaceful assembly and association;¹⁰⁹ freedom of movement;¹¹⁰ political right;¹¹¹ right to private and family life¹¹² and rights of the child.¹¹³

The first generation rights are enshrined in the 1999 Constitution, and labelled Fundamental Rights. By the terms of the Constitution, they are considered higher than any other rights conferred by the Nigerian legal order. These rights which are considered fundamental and therefore, protected include:

Right to life – S.33

⁹⁰ Art. 10(2) (b), (3) and 14 (4).

⁹¹ Art. 13

⁹² Art. 24.

⁹³ Art. 27

⁹⁴ **G.A. Resolution, 39/46 of December 1984.**

⁹⁵ G. A. 260 A (iii) of 9th December 1948.

⁹⁶ **G. A Resolution 429. (v) of 14th December 1950.**

⁹⁷ Entered into force on 4 October, 1967 in accordance with Article viii

⁹⁸ **G.A. Resolution 210 6A (xx) of 21 December 1965.**

⁹⁹ **G. A. Resolution 34/180 of 18th December 1979.** See A Compilation of International Instruments.

¹⁰⁰ Ratified and brought into force in Nigeria on March 17, 1983 by the **African Charter Ratification and Enforcement Act, Cap 10, LFN, 1990.**

¹⁰¹ See the *UDHR, ICCPR, the European Convention on Human Rights and the American Convention.*

¹⁰² Art. 3.

¹⁰³ Art. 4.

¹⁰⁴ Art. 5

¹⁰⁵ Art. 6.

¹⁰⁶ Art. 7.

¹⁰⁷ Art. 8.

¹⁰⁸ Art 9

¹⁰⁹ Arts. 10 and 11.

¹¹⁰ Art.12.

¹¹¹ Art. 13.

¹¹² Art. 18.

¹¹³ Art.18 (3)

- Right to dignity of the human person – S. 34.
- Right to personal liberty-S. 35.
- Right to fair hearing – S. 36.
- Right to private and family life – S. 37.
- Right to freedom of thought, conscience and religion - S. 38.
- Right to freedom of expression and of the press – S.39.
- Right to peaceful assembly and associations - S.40.
- Right to freedom of movement – S. 41.
- Right to freedom from discrimination – S. 42.
- Right to acquire and own property – S. 43.

Derogation provisions

Once these rights have been selected and guaranteed in the written constitution, they carry the same implication as in other parts of the civilized world, subject to the right of the competent authority in the particular state to cut down or increase the scope and implications of the rights through legislation. Thus by the provisions of section 45 of the Constitution, the rights contained in sections 37¹¹⁴, 38¹¹⁵, 39¹¹⁶, 40¹¹⁷ and 41¹¹⁸ can be derogated or restricted in the interest of defence, public safety, public order, public morality, or public health and for the purpose of protecting the rights and freedoms of other persons. Sections 33¹¹⁹ and 35¹²⁰ can be derogated from by an Act of the National Assembly during periods of emergency, through measures, which are reasonably justifiable for the purpose of dealing with the situation that exist during the period of emergency¹²¹. With the exception of the right to human dignity and freedom from torture¹²², the rest of the rights are also derogable because they have derogability provisions woven within their provisions.

The derogation provision is not peculiar to our Constitution. Article 29 (2) and (3) of the UDHR, permit derogations for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirement of morality, public order and the general welfare in a democratic society.

The African Charter on its own employs what has been described as claw back clauses in making provision for derogations.¹²³ A claw back clause has been described as a clause, which leaves open the possibility for domestic legislation to provide in what circumstances preventive derogation maybe allowed.¹²⁴ While derogation clauses provide for occasions when fundamental rights could be suspended, claw back clauses, permit such derogations both in emergencies and in every day circumstances.¹²⁵

¹¹⁴ Right to private and family life.

¹¹⁵ Right to freedom of thought conscience and religion.

¹¹⁶ Right to freedom of expression and the press.

¹¹⁷ Right to peaceful assembly and association.

¹¹⁸ Right to freedom of movement.

¹¹⁹ Right to life

¹²⁰ Right to personal liberty

¹²¹ S. 45 (2) (c)

¹²² Section 34 of the **1999 Constitution of the Federal Republic of Nigeria (CFRN)**.

¹²³ D'sa M., "Human and Peoples' Rights: Distinctive Features of the African Charter" 1985, **J.A.L**, vol.. 29, no. 1, p. 75

¹²⁴ *Ibid*.

¹²⁵ *Ibid*.

These claw back clauses feature in Articles 6¹²⁶, 8¹²⁷, 9¹²⁸, 10¹²⁹, 11¹³⁰ and 12¹³¹ of the ACHPR. There is no express derogation, rather the phraseology used is in this form: except for reasons previously laid down by law; subject to necessary restrictions provided for by the law; and in accordance with law. It is not stated that such laws must be strictly required by the exigencies of the situation, as in other conventions or constitutions.¹³²

The Second Generation Rights

The second-generation rights are the economic, social and cultural rights. They are also known as the Security Oriented Rights. They have their origin from the UNDHR, but were given more impetus by the ICESCR of 1966. These second generation rights are basically claim rights against the state. They have been referred to as rights of credit against the state and the organized national and international bodies as a whole.¹³³ This generation of rights is essentially responses to the forms of economic and political oppression and exploitation associated with the rise of industrial capitalism and colonialism. Trade union rights, for instance, are human rights because they provide some safeguards against the total domination of workers by their employers and empower workers to protect their own interests against these often much more powerful forces through collective bargaining.¹³⁴ The second generation rights found in the ICESCR include: the right to work¹³⁵; right to favourable conditions of work¹³⁶; Right to form and join trade unions¹³⁷; right to social security¹³⁸; right to adequate standards of living¹³⁹; right to enjoyment of the highest attainable standard of physical and mental health¹⁴⁰; right to education¹⁴¹; right to take part in cultural life¹⁴²; and right to enjoy the benefits of scientific progress.¹⁴³

International Conventions that relate to labour include: The Freedom of Association and Protection of the Rights to Organize Convention¹⁴⁴; the Right to Organize and Collective

¹²⁶ Right to personal liberty

¹²⁷ Freedom of conscience and religion.

¹²⁸ Freedom of information.

¹²⁹ Freedom of association.

¹³⁰ Right to assemble.

¹³¹ Freedom of movement.

¹³² See U. Umzurike, "The Significance of the African Charter on Human and Peoples' Rights", in A. Kalu, and Y. Osibajo, (Eds.), *op. cit.* note 47, p. 46.

¹³³ K. Vasak, For the Third Generation of Human Rights: The Right of Solidarity. Noted in Alston P., A "Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Right Law?" **Netherlands International Law Review**, vol. 28 and 29, (1982/83), p. 307.

¹³⁴ M. Winston, *ibid.*

¹³⁵ Article 6

¹³⁶ Article 7

¹³⁷ Article 8

¹³⁸ Article 9

¹³⁹ Article 11

¹⁴⁰ Article 12

¹⁴¹ Article 13

¹⁴² Article 15 (1) (a)

¹⁴³ Article 15 (1) (b)

¹⁴⁴ No. 87. Adopted on 9th July 1948 by the General Conference of the International Labour Organization at its 31st session . It entered into force on 4th July, 1950.

Bargaining Convention¹⁴⁵; Workers Representatives Convention;¹⁴⁶ Labour Relations Public Service Convention;¹⁴⁷ Employment Policy Convention;¹⁴⁸ Convention Concerning the Promotion of Collective Bargaining;¹⁴⁹ Convention Concerning Employment, Promotion and Protection against Unemployment;¹⁵⁰ Convention Concerning Discrimination in Respect of employment and Occupation;¹⁵¹ Convention Concerning Indigenous and Tribal Peoples in Independent Countries;¹⁵² Convention for Equal Remuneration for Men and Women¹⁵³ and the Convention on the Abolition of Forced Labour.¹⁵⁴

The right to food is secured by the following instruments: Rome Declaration on Hunger¹⁵⁵, World Declaration on Nutrition,¹⁵⁶ Rome Declaration on World Food Security.¹⁵⁷

The Instruments protecting the right to education include: the Convention against Discrimination in Education¹⁵⁸ and the Recommendation concerning Education for International Understanding, Co-operation and Peace Education Relating to Human Rights and Fundamental Freedoms¹⁵⁹. In the area of health rights and social development the following instruments are relevant: A Patient's bill of Rights¹⁶⁰, Ukunda Declaration on Economic Policy and Health¹⁶¹ Peoples Health Charter,¹⁶² the Right to Highest Attainable Standards of Health,¹⁶³ Copenhagen Declaration¹⁶⁴ Istanbul Declaration and Habitat Agenda¹⁶⁵ Rio

¹⁴⁵ No. 98. Adopted on 1st July 1949 by the General Conference of the International Labour Organization at its 32nd session and entered into force on 18 July, 1951.

¹⁴⁶ No. 135. Adopted on 23rd June 1971 by the General Conference of the International Labour Organization at its 56th session. It entered into force on 30th June, 1973.

¹⁴⁷ No. 151. Adopted on 27th June 1978 by the General Conference of the International Labour Organization at its 64th session. It entered into force on 25th February, 1981.

¹⁴⁸ No. 122. Adopted on 9th July 1964 by the General Conference of the International Labour Organization at its 48th Session. It entered into force on 15th July, 1966.

¹⁴⁹ No. 154. Adopted on 19th June 1981 by the General Conference of the International Labour Organization at its 67th session. It entered into force on 11th August, 1983.

¹⁵⁰ No. 168. Adopted on 21st June 1988 by the General Conference of the International Labour Organization at its 75th Session. It entered into force on 17th October, 1991.

¹⁵¹ No. 111. Adopted on 25th June 1958 by the General Conference of the International Labour Organization at its 42nd session. It entered into force on 15th June, 1960.

¹⁵² No. 169. Adopted on 27th June 1989, by the General Conference of the International Labour Organization at its 76th session. It entered into force on 5th September, 1991.

¹⁵³ No. 100. Adopted on 29th June 1958 by the General Conference of the International Labour Organization at its 34th session. It entered into force on 23rd May, 1953.

¹⁵⁴ No. 105. Adopted on 25th June 1957 by the General Conference of the International Labour Organization at its 40th session. It entered into force on 17th January 1973.

¹⁵⁵ Adopted by The World Food Day Colloquium held in Rome, Italy in October 1982.

¹⁵⁶ Adopted by the International Conference on Nutrition at Rome, Italy, December 1992

¹⁵⁷ Adopted by the World Food Summit at Rome, Italy, 13-17 November 1996.

¹⁵⁸ Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14th December, 1960, and entered into force on 22nd May, 1962.

¹⁵⁹ Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its 18th session, on 19th November, 1974.

¹⁶⁰ Adopted from American Hospital Association, 1973 by the Association for Consumers' Action on Safety and Health, Mumbai, India (Revised in October 1992)

¹⁶¹ Adopted by the first African Regional Conference of Social Science and Medicine, 13th September 1990.

¹⁶² Adopted by the (International) People's Health Assembly, Savar, Bangladesh, 3-8 December 2000.

¹⁶³ Adopted by the Committee on Economic, Social & Cultural Rights, 22nd Session, Geneva, Switzerland, 25 April - 12 May 2000.

¹⁶⁴ Adopted by the World Summit for Social Development, Copenhagen, Denmark, 6-12 March 1995

¹⁶⁵ Adopted by the United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey, 3-14 June 1996.

Declaration on Environment and Development¹⁶⁶ Helsinki Declaration on Action on Environment and Health in Europe.¹⁶⁷

The right to Social Progress and Development parades an array of instruments like the Declaration on Social Progress and Development;¹⁶⁸ Declaration on the use of Scientific and Technological Progress in the Interest of Peace and for the Benefit of Mankind;¹⁶⁹ Guidelines for the Regulation of Computerized Personal Data Files;¹⁷⁰ Declaration on the Rights of Peoples to Peace;¹⁷¹ Declaration on the Right to Development;¹⁷² Declaration on the Principles of International Cultural Co-operation¹⁷³ and the Universal Declaration on the Eradication of Hunger and Malnutrition.¹⁷⁴

The rights of persons living with disability are protected under the following instruments: Declaration on the Rights of Mentally Retarded Persons;¹⁷⁵ Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Care;¹⁷⁶ Declaration on the Rights of Disabled Persons¹⁷⁷.

The economic, social and cultural rights are contained in Chapter II of the 1999 Nigerian Constitution, under the caption, Fundamental Objectives and Directive Principles of State Policy. Besides the economic, social and cultural objectives, the chapter goes further, to list a host of other objectives and directive principles, which do not fall under the above categories.

Economic Objectives

The economic rights which we encounter under the fundamental objective and directive principles are as follows: Section 16 (1) (b) contains provisions that in effect, grant the right to maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity. The right to engage in economic activities, outside the major sectors without prejudice to the right to participate in the major sector of the economy is apparent in section 16 (1) (d). Section 16 (2) (d) enshrines such rights as: adequate shelter, suitable and adequate food, reasonable minimum living wage, old age care, and welfare of the disabled.

In order to give the economic objectives, the strength it deserves, section 16(3), provides for the setting up of a body by an Act of the National Assembly. The body to be set up, shall have power to review from time to time, the ownership and control of business enterprises operating in Nigeria, and make recommendations to the president on same; and to administer any law for the regulation of the ownership and control of such enterprises.

¹⁶⁶ Adopted by the United Nations Conference on Environment and Development or the Earth Summit, at Rio de Janeiro, Brazil, 3-14 June 1992.

¹⁶⁷ Adopted at the Second European Conference on Environment and Health, Helsinki, Finland, 20-22 June 1994

¹⁶⁸ General Assembly Resolution 2542 (XXIV) of 11 December 1969.

¹⁶⁹ General Assembly Resolution 3384 (XXX) of 10 November 1975.

¹⁷⁰ General Assembly Resolution 45/95 of 14 December 1990.

¹⁷¹ General Assembly Resolution 39/11 of 12 November 1984.

¹⁷² General Assembly Resolution 41/128 of 4 December 1986.

¹⁷³ General Conference of UNESCO at its 14th session on 4th November 1966.

¹⁷⁴ Adopted on 16th November 1974 by the World Food Conference convened under the General Assembly Resolution 3180 (XXVIII) of 17th December 1973; and endorsed by the General Assembly Resolution 3348 (xxix) of 17th December 1974.

¹⁷⁵ General Assembly Resolution 2856 (XXVI) of 20th December, 1971.

¹⁷⁶ General Assembly Resolution 46/119 of 17th December, 1991.

¹⁷⁷ General Assembly Resolution 3447 (XXX) of 9th December, 1975.

Social Objectives

The rights provided under the social objectives are as follow:

- a) Right to adequate opportunity for securing adequate means of livelihood, and adequate opportunity to secure suitable employment.¹⁷⁸
- b) Right to just and humane conditions of work.¹⁷⁹
- c) Right to adequate facilities for leisure and for social, religious and cultural life.¹⁸⁰
- d) Right to health, safety and welfare of all persons in employment.¹⁸¹
- e) Right to adequate medical and health facilities¹⁸².
- f) Right to equal pay for equal work without discrimination on account of sex or any other ground.¹⁸³.
- g) Right of children, young persons, the aged and the disabled to protection against any exploitation and against moral and material neglect.¹⁸⁴

Educational Objectives

The educational objectives are motivated by the need to eradicate illiteracy. Hence the following rights are provided¹⁸⁵:

- (a) Right to free, compulsory and universal primary education.
- (b) Right to free secondary education.
- (c) Right to free university education.
- (d) Right to free adult literacy program.

Directives on Culture

Section 21 dealing on directives on culture, does not give any individual right to participate in culture. It rather states that the state shall protect, preserve and promote the Nigerian cultures, which enhance human dignity and are consistent with the fundamental objectives.¹⁸⁶ The state is also enjoined to encourage development of technological and scientific studies, which enhance cultural values.¹⁸⁷

Third-Generation Rights

The third-generation rights are an extension of the socio-economic and cultural rights. They include within their substantive provisions, group, solidarity or peoples' rights.¹⁸⁸ Karel Vasak referred to collective rights, similar to those covered in the *African Charter*, as belonging to the third generation of human rights and termed them, *Solidarity Rights*. According to him, rights under this umbrella,

¹⁷⁸ Section 17 (3) (a), *ibid.*

¹⁷⁹ Section 17 (3) (b), *ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ Section 17 (3) (c), *Ibid.*

¹⁸² Section 17 (3) (d), *Ibid.*

¹⁸³ Section 17 (3) (e), *Ibid.*

¹⁸⁴ Section 17 (3) (f), *Ibid.*

¹⁸⁵ Section 18, *ibid.*

¹⁸⁶ Section 21(a), *ibid.*

¹⁸⁷ Section 21(b), *ibid.*

¹⁸⁸ O. Eze, **African Concept of Human Rights**, *op. cit.*, note 149, p. 21.

Seek to infuse the human dimension into arrears where it has all too often been missing, having been left to the state or states... They are new in that they may both be invoked against the state and demanded of it, but above all... they can be realized through the concerted efforts of all the actors on the social scene, the individual, the state, public and private bodies and the international community.

Third-generation human rights are those rights that go beyond the mere civil and social, as expressed in many progressive documents of international law. The rights under this category, have some traits, which includes the fact that the beneficiaries are no longer confined to individuals and the rights are now collectively perceived either in the sense of humanity as a whole, a particular political community or a distinct section of the population within the body politic. Another unique feature of this right is that their effective implementation goes beyond domestic bills of rights, and necessitates international co-operation. Rights situated in this category are broad in its spectrum. They are:

- a) Group and collective rights
- b) Right to self-determination
- c) Right to economic and social development
- d) Right to a healthy environment
- e) Right to natural resources
- f) Right to communicate and communication rights
- g) Right to participation in cultural heritage
- h) Rights to intergenerational equity and sustainability.

Some of these recent human rights, like the right to economic, social and cultural development, the right to equal enjoyment of the common heritage of mankind; the right to development, or the right to live in an unpolluted environment, are attempts to establish ethical and legal norms which will protect people against new intimidation to their well-being fashioned by systems of power upon whose actions their fates depend but which they do not have power over.

For the protection of the environment and the right to development, the following are the basic instruments; Agenda 21, a global plan of action to promote sustainable development; the Rio Declaration on Environment and Development, a series of principles defining the rights and responsibilities of States and the Statement of Forest Principles¹⁸⁹, United Nations Framework Convention on Climate Change¹⁹⁰, The Kyoto Protocol¹⁹¹; the Convention on Biological Diversity (CBD)¹⁹², Biosafety Protocol Basel Convention, Convention on International Trade in Endangered Species (CITES), Convention to Combat Desertification, and Declaration on the Right to Development¹⁹³, Article 66 of the African Charter provides for special protocols to the Charter if necessary. Pursuant to this article, the African Union¹⁹⁴ adopted the Protocol

¹⁸⁹ These instruments were adopted at the *1992 UN World Conference on Environment and Development (UNCED)* held in Rio de Janeiro.

¹⁹⁰ Adopted at UNCED in 1992, entered into force in March 1993.

¹⁹¹ Adopted at the *Conference of Parties on Framework Convention on Climate Change (UNFCCC)*, held in Kyoto, Japan in December 1997.

¹⁹² Adopted in Nairobi in 1992, and opened for signature at UNCED in Rio the same year. The CBD entered into force in 1993.

¹⁹³ Adopted by General Assembly Resolution 41/128 of 4 December 1986.

¹⁹⁴ 2nd Ordinary Session of the Assembly of the Union.

to the African Charter on the Rights of Women in Africa. They were concerned that despite the ratification of the African Charter and the international human rights instruments by state parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices, and firmly convinced that any practices that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated. The Protocol besides containing rights that fall under the first and second generation also contains third generation rights peculiar to women, especially targeted to eliminate harmful practices against women.

The Protocol incorporates special rights like, elimination of harmful practices, which negatively affect human rights of women¹⁹⁵; right to equitable sharing of joint property in the event of separation or divorce;¹⁹⁶ widowhood rights;¹⁹⁷ right to inheritance;¹⁹⁸. Article 14 makes extensive provisions on reproductive rights. Rights under this article include: Right to control fertility;¹⁹⁹ right to decide whether to have children, number, spacing, etc.²⁰⁰; right to choose any method of contraception;²⁰¹ right to self protection against sexually transmitted diseases;²⁰² right to be informed on the health status of herself and that of her spouse,²⁰³ and right to family planning education.²⁰⁴

In Mark's view, the third generation rights,

Are human rights born of the brotherhood of men and their indispensable solidarity? Are these not tenets, which would unite men in the finite world? Such is the orientation of these new human rights of the third generation.²⁰⁵

Peoples' rights are sometimes referred to as the third generation human rights. The following rights have been identified as falling under the umbrella of third generation rights:

1. The right to self-determination.
2. The right to economic, social and cultural development.
3. The right to equal enjoyment of the common heritage of mankind.
4. The right to a healthy environment.
5. The right to freely dispose of wealth and natural resources.
6. The right to national and international peace.

These rights are found in Chapter II of the Nigerian *Constitution*, under the following sections:

¹⁹⁵ Article 5 of the Protocol.

¹⁹⁶ Article 7, *ibid.*

¹⁹⁷ Article 20, *ibid.*

¹⁹⁸ Article 21, *ibid.*

¹⁹⁹ Article 14 (a), *ibid.*

²⁰⁰ Article 14 (b), *ibid.*

²⁰¹ Article 14 (c), *ibid.*

²⁰² Article 14 (d), *ibid.*

²⁰³ Article 14 (e), *ibid.*

²⁰⁴ Article 14 (f), *ibid.*

²⁰⁵ Marks, "Emerging Human Rights: A New Generation for the 1980's?", 33 *Rutgers Law Review* 440-441(1990), noted in *Rich, Right to Development: A Right of Peoples* (Oxford Clarendon Press, 1988) p. 441.

- a. Right to equitable and just distribution of material resources – Section 16 (2) (b).
- b. Right to human and natural resources – Section 17 (a) (d).
- c. Right to universal peace – Section 19 (c).
- d. Right to safe environment – Section 20.

It appears that the Nigerian government has tried to take the right to a healthy environment more seriously than the other rights, going by the number of legislation in that regard. The National Environmental Standards and Regulations Enforcement Agency,²⁰⁶ is vested with statutory responsibility for overall protection of the environment. The Decree contains penal provisions against offenders discharging hazardous substances in harmful quantities into the air, land or water²⁰⁷.

There is also The Environmental Impact Assessment Act²⁰⁸, which seeks to ensure that all activities by all persons are subjected to environmental considerations at the commencement of project identification and planning in order to inculcate an environmental ethic in all citizens, persons and institutions in the country.²⁰⁹ Other laws on the environment include: The Land Use Act,²¹⁰ The River Basin Development Authorities Act²¹¹ (RBDA), and The Petroleum Act²¹².

In the international arena, the United Nations Charter in Article 1 (2) recognized the principle of self-determination of peoples and determined to take appropriate measures to strengthen universal peace, as part of its purpose.

Article 1 (1) common to the ICCPR and ICESCR, both of 1966, provided that:

All peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

The United Nations, Stockholm Conference on Environment and Development,²¹³ articulated the principles, on environmental pollution.²¹⁴ The World Environmental Day, (WED) was officially created by the United Nations General Assembly.²¹⁵ Since then, 5th June has been designated World Environmental Day at which governments and organizations in the United Nations system undertake, every year, worldwide activities reaffirming their concern for the preservation and enhancement of the environment.

²⁰⁶ Established by National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007, which repealed the old the Federal Environmental Protection Agency Act (FEPA) CAP F10 LFN 2004

²⁰⁷ M. Ajomo, "An Examination of Federal Environmental Laws in Nigeria", in Ajomo M., and Adewale O., (Eds.) **Environmental Law and Sustainable Development in Nigeria**, (Lagos: NIALS, 1994), p. 18.

²⁰⁸ CAP E12 LFN 2004.

²⁰⁹ O. Ajai, **Environmental Impact Assessment and Sustainable Development: A Review of the Nigerian Legal Framework, Current Legal Problems**. Vols. 2 and 3, NIALS, 1993-1995), p. 17.

²¹⁰ CAP L5, 2004

²¹¹ CAP R9, LFN 2004

²¹² No.51 of 1969,Cap. P10 LFN, 2004 LFN, 2004. See Ajomo, "An Examination of Federal Environmental Laws in Nigeria", *op. cit.* note 286

²¹³ 11 ILM 1416 (1972).

²¹⁴ Ajomo, *op.cit* note 286.

²¹⁵ **G.A. Resolution, 2994 (XXVII) of 15 December 1992.**

The United Nations General Assembly Resolution 1803 (XVII) of 1962 recognized the right of peoples and nations to permanent sovereignty over their natural resources.²¹⁶ The Niger Delta people of Southern Nigeria filed a Bill of Rights at the United Nations, seeking self determination and the right to religious and economic freedom with 100% control of their resources, or political autonomy similar in status to other oppressed indigenous people like the people of East Timor²¹⁷. This struggle for resource control and political autonomy have given rise to the emergent of militant groups which have paralyzed the activities of oil prospecting companies in the region.

Of all the conventions, the *ACHPR*, has the most encompassing provision on third generation rights. The rights are contained in Articles 20 to 24.

The African Charter as the name implies, entrenches the concept of peoples into its provisions. This is an embodiment of the African conception and philosophy of a person in society. In Africa, a person is not considered as a secluded individual, but as an essential member of a group animated by a spirit of unity.

Evolution of Human Rights in Nigeria

Human rights in Nigeria, as it is today in the *Constitution*, have come a long way. It will be proper in discussing its evolution to trace their development right from the pre-colonial, colonial and post-colonial periods.

Pre-colonial Period

Though pre-colonial Africa to which Nigeria belonged, was neither culturally nor politically homogeneous, it still had its own notions of human rights adapted to the political and social situation existing in that epoch²¹⁸.

Osita Eze maintains that these rights, which were, recognize and protected, must be looked at in the context of societies that were atomized and hierarchical by the caste system and also unified by mythological beliefs.²¹⁹

The African societies then recognized the individual as a member of a group as opposed to the European concept of human rights, which favours the individuals against groups.²²⁰ M'baye mentions the rights that existed in traditional African societies as the right to life, freedom of expression, freedom of religion, freedom of association, freedom of movement, the right to work, and the right to education.²²¹

C. A. Oputa, has a contrary view to the fact that human rights existed in pre-colonial Nigeria. In his opinion, the weak had no rights and what existed then was what he termed *might is right*. Commenting on this subject, he said:

²¹⁶ Rich, **Right to Development: A Right of Peoples** *op. cit.* note 246, p. 97.

²¹⁷ See the Declaration of Niger Delta Bill of Rights. Available at: http://www.nigerdeltacongress.com/darticles/declaration_of_niger_delta_bill_.htm.

²¹⁸ O. Eze, *op. cit.* note 18, p. 12

²¹⁹ *Ibid*; see also, O. Eze, **African Concept of Human Rights**, in A. Kalu and Y. Osibajo, (Eds.) *op. cit.* note 47, p. 8.

²²⁰ *Ibid*

²²¹ *Ibid*.

Before then, we had ancient kingdoms like the Benin empire, powerful sultanates of Sokoto, emirates of Kano and Katsina, etc. Obas and Chiefs ruled over kingdoms in the west and in the east of what is now known as Nigeria. These very people were those who sold their fellow Africans into slavery. They first dehumanised them and reduced those sold to the status of things.... It was the might is right. The weak had no rights, human or fundamental. Tsarist Russia was a perfect example of the age we are now talking about. How can anyone talk of human rights in such an age and in such societies?²²²

Oputa's views appear quite similar to that of Schapera, who maintained that in the 18th Century Bechuanaland, the serfs were oppressed and lacked civil and political rights²²³.

Besides the above, there was also the *Osu* caste system, popular in the Eastern part of Nigeria. The killing of twins was also very rampant.²²⁴

These derogations, which were based in idolatry and superstition notwithstanding, there still existed notions of human rights in form of respect for life, right to own property, etc with idolatry and superstition determining the extent of its derogation. Where there is an unwarranted killing or any other abominable act against any person, there were always community outrages. Sanctions like banishment or payment of compensation were meted out on the offender.

Colonial Period

The stance of the British colonial masters was quite contradictory on human rights issues. They appeared to be in sympathy with human rights whereas quite a lot of their *modus operandi* was quite contrary to human rights doctrine. The basic underlying tendency and means of action of colonialism was the subjugation of the colonized peoples to the rule of the colonizers. The fact of colonialism, suggests the erosion of human rights. Such rights as freedom of association, to hold and propagate opinions or to participate in the process of governance were severely curtailed or even not recognized for the colonized people. Justice Oputa aptly put it thus:

Human rights under the slavery of colonization, the exploitation of the native population for the enrichment of the mother country, the alienation of the colonized with scientific arguments clearly used to show up the oppressed group as inferior species, leading up to the loss of their cultural identity and corporate mortality and in particular, to a pejorative judgment with respect to their original forms of existence – if at all in that situation, human rights could exist, they did not exist as rights but as privileges and favours to a favoured few.²²⁵

While propagating these anti-human rights acts, the colonizers went ahead and abolished certain customary practices they considered repugnant to natural justice, equity and good conscience. Such practices as slave raiding, slavery, trial by ordeal, killing of twins, the *Osu*

²²² Oputa, *op. cit.*, note 5, p.54.

²²³ R. Green, **Participatory Pluralism and Pervasive Poverty. Some Reflecting**, *Third World Legal Studies*, 1989, p. 23, in O. Eze **Human Rights in Africa**, *op. cit.* note 18, 14-15.

²²⁴ O. Eze, *ibid*, p. 13.

²²⁵ Oputa *Ibid*, p. 57.

system and witchcraft were abolished.²²⁶ These practices were abolished, as a result of the moral rebellion against these oppressive, dehumanising and subjugating practices.

The first rays of hope for the positivisation of human rights in Nigeria was seen as far back as 1948, when the political parties started calling for the incorporation of fundamental human rights in the Nigerian *Constitution*. Dr. Nnamdi Azikiwe, leader of the former National Council of Nigeria and the Cameroon (NCNC), and Chief Obafemi Awolowo, the leader of the defunct Action Group, spearheaded such calls.²²⁷

The McPherson Constitution of 1951, conceded to Nigeria, the right to run their own affairs under the supervision of the colonial overlords²²⁸.

Successive pre-independence Constitutional Conferences, dating back to 1953, focused attention on the need for the inclusion of certain fundamental rights in future Nigerian Constitutions.²²⁹ Due to the incessant clamour for independence by different interest groups in Nigeria, the colonial government started thinking towards that direction. This necessitated the 1957 Constitutional Conference held in London.²³⁰ At this Conference, the minority ethnic groups raised fears about the prevailing oppressive conduct of the majority ethnic groups in each of the existing regions. The Conference therefore agreed to the setting up of a Commission headed by Sir Henry Willink²³¹.

The request for more states was not obliged, but the Commission recommended the entrenchment of a long list of fundamental human rights in the Independence Constitution to allay the fears of the minorities. The rights in the proposal were similar to the ones in the 1948 Universal Declaration of Human Rights, but were more specifically fashioned after the European Convention on Human Right, which had just been recently adopted.²³²

Following the report of Sir Willink Commission, human rights were entrenched in Chapter III of the 1960 Constitution and made justiceable.²³³ These rights were adopted verbatim in the Republican Constitution of 1963. Subsequent Constitutions in Nigeria have included provisions on fundamental human rights.²³⁴

The 1979 Constitution for the first time in the history of constitutions in Nigeria, under the head, Fundamental Objectives and Directive Principles of State Policy added the economic, social, and cultural rights. These rights are similar to the provisions of the United Nations Declaration of Human Rights of 1948; the United Nations Convention on Civil and Political

²²⁶ O. Eze, *Human Rights in Africa*, *op. cit.* note 18, p. 20.

²²⁷ See **Zik: A Selection from the Speeches of Nnamdi Azikiwe**, 1960, p. 188; Awolowo, *Towards Independence*, 1957, p.s 14-15, noted in Elias T., *Law and Social Change in Nigeria*, (University of Lagos and Evans Bros. Ltd., 1972), p. 228.

²²⁸ A. Bashorun, **Constitutional Rights in Nigeria**, in *Continuing Legal Education in Nigeria*, **Lecture Notes**, no. 4a, 4b, and 4d.

²²⁹ M. Ajomo, *op. cit.* note 112, p. 79.

²³⁰ T. Elias, **Nigeria: The Development of its Laws and Constitution**, Stevens, 1967, London p. 142.

²³¹ *Ibid.* See also A. Guobadia, "Human Rights in Nigeria: A Historical Perspective", in A. Kalu and Y. Osibajo, (Eds.) *op. cit.* note 47, p. 59.

²³² *Ibid.*

²³³ M. Ajomo, *op. cit.* note 112, p. 79.

²³⁴ See Chapter IV of **1979, 1989, and 1999 Constitutions**.

Rights Covenant and the United Nations Convention on Economic, Social and Cultural rights. These rights were also included in the 1989 and 1999 Constitutions.

Conclusion

This article has explored the concept and the development of human rights from its humble natural law origin to the plethora of rights we have in our globalized world today. These rights are validated in several conventions, protocols, declarations, guidelines, principles, recommendations and constitutions. Some of these rights cannot be enforced due to their nature of the instruments granting them, while some of the enforceable ones have not been ratified by some countries. The role of national institutions as promoters and protectors of these rights have been emphasised at various fora²³⁵. It is their duty to promote and ensure the indivisibility and interdependence of all human rights. The universal and comprehensive nature and interdependence among human rights reflects the link between development, democracy, and economic, social, cultural, civil and political rights. Countries are not at liberty to choose one aspect of human rights over another, particularly civil and political rights over economic, social and cultural rights. This is a condition for the development of the peoples and for legitimacy of systems of government.

Human rights no doubt are dynamic and in a continuous evolution. One cannot emphatically say that the classification is closed. Developmental issues and human experiences may yield more classes of rights or add more concepts to the already existing categories in future.

²³⁵ See **The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights: E/C. 12/1998/25; the Limburg Principles on the implementation of ECOSOC Rights, (UN Doc. E/CN. 4/1987/17); the Maastricht Guidelines on Violations of ECOSOC Rights and the Vienna Declaration and Programme of Action, (Adopted at the II World Conference on Human Rights in 1993).**