

Nexus between Generation of Rights and Fundamental Human Rights Provisions in the 1999 Constitution of the Federal Republic of Nigeria

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ABSTRACT: This article x-rays the correlation-ship between Generation *of Rights* identified by famous human rights theorists and the *Fundamental Human Rights* provisions in The 1999 Constitution of the Federal Republic of Nigeria. The aim and objective is to ascertain the extent to which the Generation of human *Rights influenced the Fundamental Human Rights* provisions in The 1999 Constitution of the Federal Republic of Nigeria. A priori expectation is that a positive and significant relationship exists between the Generation *of Rights* and the *Fundamental Human Rights* provisions in The 1999 Constitution of the Federal Republic of Nigeria. The research reveals that, in fact, the human rights provisions were domesticated from the first generation of rights as categorized by Vasak.

INTRODUCTION

The Universal Declaration of Human Rights which was adopted in 1948¹ represents a landmark development in international human rights jurisprudence. Influenced by the devastating effects of the Second World War, and the need to move away from the massive human suffering that it engendered, the Declaration states in its preamble that ‘disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.’² It notes further that: the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.³

The Declaration is thus proclaimed as “a common standard of achievement for all peoples and all nations...”⁴. The UDHR as agreed by the nations of the world on 10 December, 1948, sets out the basic rights and freedom of all men, women and children⁵. Since then, human rights standards have developed and have been incorporated into international laws and treaties among which is the International Covenant on Civil and Political Rights (ICCPR, 1966), International Covenant on Economic Torture (CAT) and other cruel inhuman or degrading treatment or punishment. (1987), Covenant Against Genocide (1951),

¹ 146; UDHR available at (www.un.org/en/document/.../historyof UDHR 1948) United for human rights information kits (www.humanrights.com/...humanrights/...) (Accessed on 8/8/2014).

² Preamble to the Universal Declaration of Human Rights, (UDHR) 1948.

³ Preamble UDHR (1948).

⁴ *Ibid.*

⁵ The Universal Declaration of Human Rights. Available at <https://en.m.wikipedia.org/wiki/universal-declaration-of-human-rights> (Accessed on 15/10/2015).

Conventions on the Rights of the Child (CRC) (1989), Conventions on Elimination of Discrimination against Women (CEDAW) (1981).

Civil Political Rights

This is an attempt to protect the individual from the misuse of political power and recognize a person's right to participate in their country's political process. They include freedom from slavery, torture and arbitrary arrest, freedom of thought, opinion and religion, the right to a fair trial and equality before the law.⁶

Economic, social and cultural rights

This requires a government to ensure that its people share in the economic wealth of the country and can participate in its social and cultural life and as well have access to adequate health care, education, social support and a clean environment and develop to their full potential.⁷ While not a treaty itself, the declaration was explicitly adopted for the purpose of defining the meaning of the words "Fundamental Freedom" and "Human Rights" appearing in the United Nations Charter, which is binding on all members' states. For this reason, the Universal Declaration is a fundamental constitutive document of the United Nations. In addition, many international lawyers believe that the Declaration forms part of customary international law⁸ and is a powerful tool in applying diplomatic and moral pressure to governments that violates any of its articles. The 1968 United Nations International Conference⁹ on human rights advised that the Declaration "constitutes an obligation for the members of the international community" to all persons.

The Declaration has served as the foundation for two binding United Nations human rights covenants: the ICCPR and ICESCR. The Declaration continued to be widely cited by governments, academics, advocates, Constitutions, Courts and individuals¹⁰. The Universal Declaration is said to be the "foundational international legal instrument",¹¹ It is the bedrock of international human rights regime. The universalism of human rights was given impetus, strength and emphasis by the Vienna Declaration and Programme of Action.¹² It provides as follows: The World Conference on Human Rights reaffirm the solemn commitment of all states to fulfill their obligations to promote universal respect for, and observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law.

This description of UDHR is not left without criticism hence, the American Anthropological Association (AAA) published a written statement wherein it rejected the universality of international human rights norms. It was argued that the rights and freedoms articulated in UDHR were non-universal, culturally, ideologically and politically. The Association viewed with concern the hypocrisy of the colonial regime which packaged and signed UDHR while they committed gross violations of the rights of the colonized people.¹³ With this detailed background, this paper investigates the nexus between generation of rights and fundamental human rights provisions in the 1999 constitution of the Federal Republic of Nigeria

⁶ The Universal Declaration of Human Rights from 1948 – 2008. United Nations at www.un.org/en/events/humanrights/udhr60/. (Accessed on 15/10/2015).

⁷ Leckie *et al*, Economic, Social and Cultural Rights: a Legal Resource Guide. (University of Pennsylvania Press) (2006), p. 14.

⁸ Office of the High Commissioner for Human Rights: Digital Record of UDHR. At <https://en.m.wikipedia.org/wiki/universal-declaration-of-human-rights> (Accessed on 15/10/2015).

⁹ Ibid.

¹⁰ Office of the High Commissioner for Human Rights- Op cit.

¹¹ "The Relative Universality of Human Rights" Human Rights and Human Welfare Working Paper No 33 <http://www.du.edu/gsis/hrhw/working/2006/33-donnely-2006.pdf> (Accessed on 15 March, 2015).

¹² Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna Vol. 14, No. 25 June (1993), p.15.

¹³ Fox, D.J. "Women's Human Rights in Africa: Beyond the Debate over the, Universality or Relativity of Human Rights (New York: Edwin Meden press, 2013), p.8.

STATEMENT OF THE PROBLEM

Human rights which are entrenched and guaranteed in the Constitution of the Federal Republic of Nigeria, 1999, (as Amended) as well as in many international instruments are not merely privileges that could be violated or withdrawn at the whims and caprices of the government of the day, by individuals or group of persons without constituting an affront to justice. That is why human rights cannot be subjected to political power or pressure.¹⁴ Human rights are safeguarded against abuse of political power. It accommodates vulnerable groups (meaning ethnic minority, women, children and people with disabilities).¹⁵ In fact, there has been rise in the activities of Human Rights groups in Nigeria, even in the advent of democratic experience in Nigeria which is aimed at promoting and protecting of human rights of all members of the society to a minimum level of equality particularly in the exercise of their human and fundamental rights. Are the fundamental human rights provisions in Chapter Four of the constitution of the Federal Republic of Nigeria completely domesticated from international instruments or are some of them autochthonous? This is the subject-matter of this research.

Aim and objective of the research

The aim and objective of this research work is to ascertain the extent to which the Generations of human Rights influenced the Fundamental Human Rights provisions in the 1999 Constitution of the Federal Republic of Nigeria. Is there a correlation-ship between the generations of human rights and the Fundamental Human Rights provisions in the 1999 Constitution of the Federal Republic of Nigeria? This is the question this research effort attempts to answer. A priori expectation is that a positive and significant relationship exists between the Generation of human Rights and the Fundamental Human Rights provisions in the 1999 Constitution of the Federal Republic of Nigeria.

Significance of the study

This research work would be very useful to researchers in human rights domain. Besides expanding their horizon on the subject-matter, it provides additional insight into the historical development and philosophical perspective of human rights. Specifically, it beams a beacon into dialectical foundation of the fundamental human rights provision as enshrined in the 1999 constitution of the Federal Republic of Nigeria with a view to investigate its etymological origin.

The scope of the study

Besides building a nexus between the generations of human rights and fundamental human rights provisions in the 1999 constitution of the federal republic of Nigeria, the study also covers other areas like Fundamental Rights under the Nigerian Constitution, Indivisibility, Universalism and Relativism of Human Rights and prescribes the protection and promotion of fundamental human rights as statutory responsibility of the government.

REVIEW OF RELATED LITERATURE

Generations of Human Rights

To understand human rights properly, resort must be had to the different classifications of human rights popularized by Vasak.¹⁶ He conveniently categorized Human Rights into: First Generation, Second and Third Generations.

¹⁴ Jagland T; *Human rights in a globalized world- Challenges for the media*. (Deutsche Welle; Globalized media forum Bonn, 2011) P. 2

¹⁵ Volkback. K, Framework Convention for the Protection of National Minorities and Explanatory Report, February, 1995, Section III, Cert 20, p. 24, available at <http://conventins.coe.int/treaty/en/treaties/html/157.htm> (Accessed on 8/July, 2014).

¹⁶ Vasak, K. "A 30 Years Struggle". UNESCO Courier 1977. 29 in Aduba J.N; et al. *Op Ci.t* at p. 32.

First Generation Rights:

First generation rights are euphemistic expression for civil and political rights which are liberation in character. All civil and political rights are subsumed under this categorization. Under the 1979, 1989 and 1999 Constitutions of the Federal Republic of Nigeria, (CFRN) first generation rights occupy primacy of place. In **CHAPTER FOUR** of the 1999 Constitution aforementioned¹⁷, detailed provisions are made for civil and political rights: Right to life, Right to human dignity, Right to personal liberty, Right to fair hearing, Right to private and family life, Right to freedom of thought, consciences and religion, Right to freedom of expression and the press, Right to peaceful assembly and association, Right to freedom of movement, Right to freedom from discrimination and Right to be compensated or access to court in the case of compulsory acquisition of property. **CHAPTER FOUR** imposes numerous obligations on the government not to violate but protect and enforce the fulfillment or enjoyment of these rights. Derogations from their protection are discouraged or allowed exceptionally¹⁸.

The Second Generation Rights:

The second generation's rights which are egalitarian in nature, consist of economic, social and cultural rights. They are predicated on the material wellbeing of the citizenry with the state playing a pivotal role.¹⁹ Rights such as right to fair remuneration, right to work, right to adequate standard of living, rights to organize and form a trade union et cetera, fall within the purview of the second generation rights. The second generation rights find their origin in the early nineteenth century and variously promoted by revolutionary struggles and welfare movements.²⁰ The Second generation rights are contained in the International Covenant on Economic, Social and Cultural Rights²¹ as well as Chapter II of the Constitution of the Federal Right of Nigeria, 1999, albeit in Chapter II certain foundations which are akin to economic, social and cultural rights are also enumerated along with other formulations and collectively termed Fundamental Objectives and Directive Principles of State Policies.

In Nigeria, the rights in Chapter II of the Constitution of the Federal Republic of Nigeria are non-enforceable by virtue of section 6(6) (c) and section 13 of the 1999 Constitution. They are said to be mere directive or sign post which governments are enjoined to fulfill but not obligatory. Sadly, the International Covenant on Economic, Social and Cultural Rights is in itself inapplicable by virtue of section 12 of the Constitution which requires that for an International instrument to be domesticated, it requires this condition, the ICESCR has not met. Thus, these sets of rights, which are quintessential to human existence and which ought to reinforce the civil and political rights, are despondently not made justice-able in Nigeria.

The suggestion of this article to the above is that, since these rights are contingent to reclaiming human rights promotion in Nigeria and worldwide, it is important to make it justice-able in Nigeria as same is ratified in South Africa and India²². This suggestion is predicated on the contemporary agitation of human rights tenets

¹⁷ Constitution of the Federal Republic of Nigeria CFRN, 1999 (as amended).

¹⁸ Section 33-42 of the Commission of the Federal Republic of Nigeria (1999) (as amended).

¹⁹ Shikyil, S.S. "The Generations of Human Rights" [1998] Vol. 4. No. 4 current Jos Law Journal, p.32.

²⁰ Vasack. *Op .cit.* p. 35.

²¹ The United Nations Human Rights Treatises include International Covenant on Civil and Political Rights (ICCPR); International Current on Economic Social and Cultural Rights (ICESCR) on the Elimination of An forms of Racial Discrimination (CERD). Convention of the Elimination of Discrimination against Women (CEDAW). Convention on the Right of the Child (CRC). Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment (CAT). ([www.equalityhumanrights.com.about-us/ourwork/humanrights/inveritonal-frame](http://www.equalityhumanrights.com/about-us/ourwork/humanrights/inveritonal-frame) (Accessed on 4/9/2015).

²² In the *Minerva Mills v. Union of India* 1980 AR 1789, 1981 SCR (1) 206 at 1843. Justice Bhaguati emphasizes the relevance of socio-economic rights in his notable pronouncement to the effect that: "... "to a large majority of people who are living in almost subhuman existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notions of individual, freedom and liberty, though representing some of the cherished values of a free society would sound as empty words

which goes beyond first generation. Today, there are avalanche of reasons to condemn the non-justifiability of the second generation rights in Nigeria, hence, public consciousness calls for the enforcement of this second generation rights which is aimed at advancing the dignity of humanity worldwide.²³

The Third Generation Rights:

These rights deal with the question of solidarity; they have emerged out of the plight of the third world countries which have been exploited for many decades.²⁴ They relate to the organic and corporate existence and working of the society. They include the right to safety and healthy environment, the right to development and the right to share in the common heritage of mankind. These rights are still in the process of progressive development and it is hoped that the cooperative synthesis which forms the anchor point of this generation of human rights will be concretized. It is important to reveal that, the categorization of human rights into generations is not intended to engender generational conflicts. It is, therefore, necessary to appreciate the fact that all the generations of human rights are inter – related and inter dependent.²⁵

Fundamental Human Rights under the Nigerian Constitution

Human rights cannot exist in isolation. Therefore, its conceptualization is aimed at meeting the corresponding responsibilities that go with them. This can only be made possible when a government realizes that it has particular responsibility to ensure that people are able to enjoy their rights. The responsibility of government to safeguards human rights is derived from the Constitution of each nation. Thus, the Nigerian Bill of Rights is contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 as amended in 2011 which made provisions for fundamental rights.

The Constitution of Nigeria is the *Supreme Law* of the land and includes specific provisions protecting human rights and fundamental freedoms.²⁶ In particular, the Bill of rights contained in Chapter IV of the Constitution (Section 33-46) provides for (1) rights to life; (2) right to dignity of human person; (3) right to personal liberty; (4) right to fair hearing; (5) right to private and family life; (6) right to freedom of thought, conscience and religion; (7) right to freedom of expression and the press, (8) right to peaceful assembly and association; (9) right to freedom of movement, (10) right to freedom from discrimination (11) right to acquire and own immovable property anywhere in Nigeria; (12) Compulsory acquisition of property (13) restriction and derogation from fundamental rights (14) special jurisdiction of High Courts and legal aid.

The Constitution also contains provisions on economic, social and cultural rights. However, the Constitution qualifies them as non-justiciable, in contradiction to international and regional human rights treaties. Furthermore, not all civil and political rights enjoy full protection in practice. For example, while the right to embark on strike action is guaranteed, strikes in solidarity with other workers are prohibited.²⁷ One is tempted to ask this question; what then are fundamental rights and what is the relationship between them and human rights? Some scholars and jurists have tried to define fundamental rights. It has to be pointed out that the definition of fundamental rights is less problematic than that of human rights and the jurisprudential polemics are not as intense as in the case of human rights

bandied about in the daring rooms of the rich and well-to-do, and the only solution for making this rights meaningful to them (is) to make the material conditions and usher in a new social order where socio-economic justice (will) inform all institutions of public life, so that the pre-conditions of fundamental liberties for all may be secured”.

²³ South Africa Ratifies the International Covenant on Economic, Social and Cultural Rights on 12th January, 2015. www.right-to-education.org/news/south-africa-ratifies-international-covenant-economic. (Accessed on 22 - 07 – 2015).

²⁴ Tarhule, V.V. Human Rights, Self-Determination and Peoples Rights, Seminar Paper Presented to the Faculty of Law Benue State University 1999, pp.5 – 7.

²⁵ Basic Characteristic of Human Rights; [Accessed from www.uber.digest.infor/2011/12/uhata... on 15th November, 2014.]

²⁶ Constitution of the Federal Republic of Nigeria (CFRN) 1999, Sections 33-44.

²⁷ Trade Union (Amendment) Act Chapter T14. Laws of the Federation of Nigeria 2004.

Justice Kayode Eso J.S.C (of the blessed memory) posits that fundamental rights “are not just mere rights. They are fundamental. They belong to the citizens. The Rights have always existed even before orderliness prescribed rules for the manner they are to be sought”.²⁸ It is important to state again that not all the rights belong to citizens; some are for the benefits of “any person” or “person” or “every person.” Adio J.S.C is of the view that a fundamental right is a right guaranteed in the Nigerian Constitution and that it is a right which every person is entitled to when he is not subject to the disabilities prescribed in the Constitution, “to enjoy by virtue of being a human being.

They are so basic and fundamental that they are entrenched in a particular Chapter of the Constitution”.²⁹ “Fundamental Human Rights rights,” according to Justice Niki Tobi,³⁰ “are rights inherent in man because they are part of man.” In the case of *Ransome-Kuti v A-G, Federation*, Eso J.S.C had this to say of the nature of fundamental right: “...it is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence...”³¹

Justice Chike Idigbe started by posing the question: “what then is a fundamental right? In his explicit words: As we all know, a legal right is that which the law protects and which can be enforced in courts of law; in other words, it is protected and enforced by the ordinary law of the land i.e. the law created by the political sovereign which is Parliament. But there exist other rights which stand above the ordinary laws of the land and which are antecedent to the political society itself. These rights are indeed, primary conditions to any civilized existence. In societies governed under a written constitution, these rights are termed fundamental rights because not only, as the very term “fundamental” suggests, they are the primary conditions to civilized existence but, unlike the ordinary laws of the land which can be freely altered or changed by the Legislature (i.e. in the ordinary process of legislation), they cannot easily be altered by Parliament (i.e. the legislature).³²

Obiaraeri argues that “they (fundamental rights) are fundamental because they have been guaranteed by the fundamental law of the land, that is to say the constitution. Human rights are of much wider concept and apply at the international level. Human rights include much more than the domestically guaranteed rights”.³³

Okpara argues that: “ordinarily, fundamental rights are so called because they are entrenched in the Constitution.”³⁴ He later said that the notion of fundamental rights is limited in scope and is confined within the realm of domestic law.”³⁵ Perrott posits that: such rights are properly called fundamental when they are expressed in, or guaranteed by laws which are basic or pre-eminent laws of the legal system in question, e.g. rights specified in a written constitution, or in judgments of a superior court interpreting the constitution, or in enactments of a legislature designed to render the constitution more specific in a certain area.³⁶

²⁸ *Saudu v. Abdullahi* (1989) 4 NWLR (Pt. 116) 387 at p.419 para C.

²⁹ *Odugu v. A-G Federation* (1989) 4 NWLR (pt. 116) at p.419 para C. Harmathy A, “Report on issue of fundamental rights in the Practice of the Court of Justice and the Constitutional Courts (of the Slovak Republic)”, Strasbourg 29 June 2006 CCS 2006/05, said: “...Fundamental rights form an important part of the identity of the different societies rooted in history, social and political culture. The choice of human rights is about the choice of fundamental values.” It is clear that this definition sees “fundamental rights” from the perspective of “fundamental values”.

³⁰ *F.R.N. v. Udensi Ifegwu* (2003) 15 NWLR (Pt. 842) p.113 at p.217 para A.

³¹ *Ransome Kuti v. A-G, Federation* (1985) 2 NWLR (pt. 10), p. 211 at pp.229-230; See also *Badejor v. Minister of Education* (1996) 9-10 SCNJ p.51. fundamental rights have also been described as “those Human Rights which are selected from the plethora of Human Rights and entrenched, guaranteed and protected by the Constitution which is the fundamental law of the land”: Nnabue U., *Rights of the Child in Nigeria* (2002) 16.

³² Idigbe, C. “Fundamental Rights Provisions in the Constitution” in All Nigeria Judges Conference Papers 8th- 16th March 1982 (1983) pp.41-42.

³³ Obiaraeri, N.O. *Human Rights in Nigeria–Millenium Perspective* (2001) 30. in Okogbule *Op. Cit.* p. 50

³⁴ Okpara “Nature of Human Rights” *op. cit.* p. 44.

³⁵ *Ibid.*

³⁶ Perrott, D.L. “The Logic of Fundamental Rights” (London: Sweet & Maxwell, 1973), p.100.

Perrott's description is flawed. Judgments of a superior court interpreting the Constitution are not and cannot be regarded as being part of the "basic or pre-eminent laws of the legal system."³⁷ Having regard to the foregoing definitions or descriptions of fundamental rights, the nature or the character of fundamental rights would suggest that they are human rights specially and domestically protected by the fundamental, basic, supreme law or constitution of a nation. They are justiciable and enforceable in the manner set out and guaranteed by law.

In *Uzoukwu v. Ezeonu II*,³⁸ the President of the Court of Appeal, Justice Nasir in the lead judgment explained: Due to the development of constitutional law in this field (of human rights) distinct difference has emerged between Fundamental Rights and Human Rights. It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as human being. These were termed human rights. When the United Nations made its declaration, it was in respect of Human Rights as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of International Law.³⁹

In respect of fundamental rights, Nasir, P.C.A. further stated that "Fundamental Rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country: that is the Constitution".⁴⁰ The distinction Justice Nasir sought to make between human rights and fundamental rights pales into insignificance. This is because; human rights and fundamental rights are interconnected, interrelated and interdependent. Fundamental rights are part of a whole, that is, part of the jurisprudence on human rights. Both have their origin in the concept of natural rights.

But as rightly pointed out by Nwabueze, human rights cannot be asserted as legal claims against any one, be it the state or the individual by virtue of the law of nature or divine law of God.⁴¹ Both are primary conditions for civilized existence. They are universal in nature inherent in human kind though there are exceptions; some rights like the right to fair hearing are also available to non-human beings like corporate entities. In some cases, both are available to all persons; in other cases they are available to citizens only, like the right to vote, right to join political parties and right to contest election. Fundamental rights are guaranteed and protected by the Constitution. Human rights are protected by international human rights instruments and in some cases they are domesticated by municipal law.

With the transaction of human rights into domestic constitutional language, resulting in regimes of constitutional guarantee for human rights, the seemingly hierarchical classification of right was carried into domestic constitutions. Thus, in Nigeria, the 1999 Constitution of the Federal Republic of Nigeria (1999) (as amended 2011) is an excellent example of the national constitution that distinguish between these categories of rights. Chapter 11 of the 1999 Nigerian Constitution which deals with the Fundamental Objectives and Directives Principles of State Policy are not amenable to judicial enforcement, proponents of this argument have taken this position further and have suggested that by including them in its chapter II, the 1999 Nigerian Constitution positively prohibits the justiciability of economic, social and cultural rights in Nigeria thereby making litigation relating to these rights impossible.

³⁷ Ibid.

³⁸ *Uzoukwu v Ezeonu* 11 (1991) 6 NWLR (Pt. 200) p.708.

³⁹ *Supra*

⁴⁰ *Supra* at 761 para A.

⁴¹ Nwabueze, B.O. *Constitutional Democracy in Africa*. (Ibadan: Spectrum Books, 2003), p.49.

Notwithstanding, this popular view, Odinkalu⁴² vehemently challenged this traditional conception by asserting that even though the Constitution oust the jurisdiction of the Court with respect to its Chapter II, the Nigerian Constitution does not prohibit the justiciability of social, economic and cultural rights as such rights can be litigated upon, depending on the normative basis chosen by a prospective litigants. He further argued that, the African Charter on Human and People's Rights constitutes a veritable normative framework for the realization of certain socio-economic rights in Nigeria and that a claim brought under this Charter can be vindicated either before the national Courts in Nigeria or the ECOWAS Community Court of Justice.⁴³

In some international affirmations, and statements, there is a synthesis of the two concepts into what is called –Fundamental Human Rights. Some Nigerian courts, including the Supreme Court, have adopted that terminology.⁴⁴ In *F.R.N. v. Ifegwu*,⁴⁵ Uwaifo, J.S.C., boldly pronounced that “Fundamental rights are regarded as part of human rights.”⁴⁶ Understandably so, as fundamental rights guaranteed by the Nigerian Constitution do not cover all human rights. Economic, social and cultural rights which are human rights, though expressly recognized by the Constitution, are made non-justiciable.

The fundamental rights provisions in the Nigerian Constitution do not encompass all the human rights mentioned in the Universal Declaration of Human Rights and the elaborate provisions of the International Convention on Civil and Political Rights as well as the International Convention on Economic, Social and Cultural Rights. Some of the rights not covered are set out in Chapter II of the Constitution, as the Fundamental Objectives and Directive Principles of State Policy. Falana therefore opines that in the Nigerian context, “the terms ‘human rights’ and ‘fundamental rights’ are always used interchangeably.”⁴⁷ Okpara is of the same view.⁴⁸ Similarly, Ogbu contends that, “Human rights remain so, whether they occur in international plane or within municipal confines and whether they are called ‘human rights’ or ‘fundamental rights’ or ‘fundamental human rights.’”⁴⁹ In this study, fundamental rights are regarded as part of human rights and both terms are in certain circumstances used interchangeably.

Indivisibility, Universalism and Relativism of Human Rights

In spite of the categorization of human rights into civil and political rights, and social, economic and cultural rights, there is no water-tight division between them. They complement each other in the sense that the enjoyment of political rights cannot be isolated from that of socio-economic rights. They are interconnected and interdependent and they cannot be graduated in order of importance. The right to life means nothing in the absence of the right to food. A person who has nothing to eat or who is faced with acute starvation can hardly enjoy the right to life.

In 1993, the World Conference on Human Rights declared and affirmed that “...all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”.⁵⁰ The international Covenant on Civil and Political Rights (ICCPR) recognizes: “The ideal of free human being enjoying civil and political freedom from fear and want can only be achieved if conditions are created

⁴² Odinkalu C. A, Implementing Economic, Social and Cultural Rights under the African Charter in Human and People's Rights in Evan, M. & Murray R, (eds). The African Charter on Human and People's Rights (Cambridge University Press, 2004). p.181.

⁴³ Ibid.

⁴⁴ See for example, *F.R.N V Ifegwu* (2003) 15 NWLR (Pt 842) p.113, p.199 paras E-F.

⁴⁵ Op cit p.95.

⁴⁶ Ibid.

⁴⁷ Falana, F. Fundamental Right Enforcement (Lagos: legal text publishing ltd, 2004), p.15.

⁴⁸ Okpara *op.cit* p. 35.

⁴⁹ Ogbu, O.N. Human Rights Law and Practice in Nigeria: An Introduction. (Enugu: CIDJAP publishers, 1999), p.2.

⁵⁰ The Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna 14-25 June 1993, UN Doc. A / Conf. 157/23, of 12 July (1993), para 5. See also para 1.

whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.”⁵¹

The New Delhi Statement on the justiciability of economic, social and cultural rights in South Asia recognized that human rights are indivisible and interdependent and that the rights entrenched in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, where relevant, the Directive/Fundamental Principles of State Policy contained in some national constitutions represent statements of clear legal obligations for the States concerned. It further proclaims that the principles anticipated in those documents give direction to the states concerned in addition to giving content and meaning to fundamental rights enshrined in those constitutions.⁵²

The Harare Declaration on Human Rights notes that “there is a close inter-linkage between civil and political rights and economic and social rights; neither category of human rights can be fully realized without the enjoyment of the other.”⁵³ The Supreme Court of India said that both are complementary, “neither part being superior to the other.”⁵⁴

Thus, in *New Patriotic Party v. Inspector-General of Police, Accra*,⁵⁵ the Supreme Court of Ghana held: All human rights and fundamental freedom are indivisible and interdependent: equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. In the last resort, they are all-exercisable within a societal context and impose obligations on the state and its agencies as well as on the individual not to derogate from these rights and freedom.

Some writers have also recognized the interconnectivity, interdependence and indivisibility of human rights. Amartya⁵⁶, for example, emphasizes the “extensive interconnections between freedoms and the understanding and fulfillment of economic needs.”⁵⁷ Keller argues that civil and political rights and economic, social and cultural rights “are inextricably intertwined.”⁵⁸ Directive Principles of State Policy have direct relationship with economic, social and cultural rights specified in the ICESCR⁵⁹. They also enjoy interconnectivity and interdependence with political rights. Further-still, the African Charter on Human and Peoples’ Rights, in its preamble, states: “...that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights”.⁶⁰

Notwithstanding that various international instruments, declarations and statements have not only recognized but proclaimed that civil and political rights and economic, social and cultural rights are interconnected, interdependent, interrelated and indivisible, they still accord primacy to political rights over economic rights.

⁵¹ See its Preamble. ICESCR has an almost identical paragraph in its preamble too.

⁵² Statement of Conclusions, Workshop organized by the UN Office of the High Commissioner for Human Rights on the Justiciability of Economic, Social and Cultural Rights in South Asia New Delhi 17-18 November, 2001, para 10.

⁵³ Harare Declaration on Human Rights, being the Concluding Statement of the Judicial Colloquium on the domestic application of international human rights norms held in Harare, Zimbabwe, 19-22 April, 1989.

⁵⁴ State of Kerala v. N.M. Thomas (1976) 2 SCC p.310 at p.367.

⁵⁵ (2000) 2 HRLRA p.1 at p.79, para A-B. The Supreme Court thereby adopted the Statement by the Committee of Experts in the Report on the Proposals for a Draft Constitution of Ghana at P. 62 para 128.

⁵⁶ Amartya, S. Development as Freedom. (Oxford: Oxford University Press, 1999).p. 147.

⁵⁷ Ibid.

⁵⁸ Keller, L.M. ‘The Indivisibility of Economic and Political Rights’, *Human Rights and Human Welfare Vol. 1, No.: 3*, (University of Denver, July 2001), p.13.

⁵⁹ See Final Report of the Committee on Review of Indian Constitution. Chapter 3.

⁶⁰ African Charter on Human and Peoples’ Right (ACHPR) (also known as the Banjū) adopted June 27, 1981.

Article 2(1) of ICESCR⁶¹ enjoins each state party “to take steps... to the maximum of its *available resources*, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” Alston and Quinn noted that the provisions should not be seen “as an escape hatch for states whose performance failed to match their abilities or as a lessening of state obligations. It should be viewed and defended simply as a necessary accommodation to the vagaries of economic circumstances”.⁶²

In practice, states use the provision as “escape hatch” to create a dichotomy between political and economic rights; subordinating the latter to the former and escaping from their obligations under the Covenant. The Covenant qualified their obligations and they are taking advantage of same.

Arambulo rightly states that “...despite its prominence in many human rights documents as a permanent fixture in preambular paragraphs, the general understanding of the notion of indivisibility has remained superficial and vague, and in practice, the divisions between human rights continue to be sustained in the UN organs, including the treaty bodies themselves”.⁶³

Arambulo went on to argue that in order to appreciate what the notion of indivisibility means in practical terms, there is the need to move beyond theory and conceptual analysis. Indivisibility, he opines, necessarily means the application of holistic rights-based approach to activities geared towards the protection and promotion of human rights, including economic, social and cultural right⁶⁴.

The Responsibility to Protect Human Rights

Vienna Declaration and Programme of Action, also known as VDPA⁶⁵ provides “We affirm our commitment to the purposes and principles of the Charter of United Nations, which have proved timeless and universal...” it is a truth widely if not yet universally acknowledged that the protection of human rights is one of the main aims of global governance – not the only aim for sure but one of the main reasons for thinking that governance must exist on a global and not merely a national level.⁶⁶ When states are unable to protect the human rights of their citizens or indeed are actively involved in violating those rights on a significant scale, then the world community has a responsibility to step in and ensure that these rights are protected. One of the best-known formulation of this idea is “The Responsibility to Protect”.⁶⁷

⁶¹ International Covenant on Economic, Social and Cultural Rights.

⁶² Alston, P. *et al* “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights” *Human Rights Quarterly* (1987) (9) pp.156-229.

⁶³ Arambulo, K. “Giving Meaning to Economic, Social and Cultural rights: A Continuing Struggle” (Colorado University of Denver, 2003), p.117. Sandra Liebenberg similarly argues that the normative separation of the two groups of rights has been reinforced by the provision of different enforcement mechanisms. Consequently, an independent, expert body was created under ICCPR called the Human Rights Committee, and which has the mandate to supervise States parties’ obligations under the covenant. This is further to a periodic reporting procedure; an optional protocol was adopted to the ICCPR which allowed the Human Rights Commission to consider communications of individual’s claiming to be victims of the rights violations contained in the Covenant. According to her, this supervision of States parties obligations under the ICESCR was left to a working Group appointed by the UN Economic and Social Council. Okagbule *OP. Cit.* p.60.

⁶⁴ *Ibid.*

⁶⁵ Vienna World Conference (OHCHR’s Official Site). Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25th June, 1993.

⁶⁶ Miller, D. The Responsibility to Protect Human Rights memo for the Workshop on Global Governance, (American University), (2006) p.19.

⁶⁷ Report of the International Commission on Intervention and State sovereignty (International Development Research Centre, Ottawa, 2001).

The responsibility to protect is a proposed norm that sovereignty is not an absolute right, and that states can forfeit aspects of their sovereignty when they fail to protect their population from mass atrocity, crimes and human rights violations (namely; genocide, crimes against humanity, war crimes and ethnic cleansing).⁶⁸

The Responsibility to Protect has three pillars:⁶⁹

1. A state has a responsibility to protect from genocide, war crimes, crimes against humanity and ethnic cleansing.
2. The international community has a responsibility to assist the state to fulfill its primary responsibility.
3. If the state manifestly fails to protect its citizens from the four above mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions; military intervention is considered the last resort.⁷⁰

The norm was borne out of the international community's failure to respond to tragedies such as the Rwandan genocide in 1994 and the Srebrenica massacre in 1995.⁷¹ Many critics of the Responsibility to Protect third pillar claim that responsibility to protect is a Western concept, but it was the African Union (AU) that pioneered the concept that the international community has a responsibility to intervene in crisis situations if a state is failing to protect its population from mass atrocity crimes.⁷² In 2000, the AU incorporated the rights to intervene in a member state, as enshrined in Article 4(h) of its constitutive namely; war crimes, genocide and crimes against humanity.⁷³ The AU also adopted the Ezulwini Consensus in 2005, which welcomed responsibility to protect as a tool for the prevention of mass atrocities⁷⁴.

In considering the human rights situation in Nigeria, it will not be out of place to say that human rights violation has escalated beyond measure due to the radicalization by the Boko Haram. Particularly the abduction of more than 200 Chibok girls in Borno State of Nigeria, since 14 April, 2014. Thus, the then Speaker of the House of Representative, Hon. Aminu Waziri Tambual, stated on 11/3/2014 that Federal Lawmakers must be prepared to act in order to end the violence. As "Nigeria is running out of excuses for our failure to live up to our responsibility to protect our citizens". In reaction to this apparent failure of human rights protection in Nigeria and the swell in Boko Haram activities, Nigeria in collaboration with France, the Republic of Benin, Cameroon, Chad and Niger entered into an agreement to mount a massive joint offensive attack against the insurgents. Hence, a force of troops is deemed to be stationed along the Nigerian border in order to curtail Boko Haram's nefarious activities. In reaction to this plan, Chad killed more than 200 Boko Haram⁷⁵.

⁶⁸Owen, J. *et al*, Responsibility to Protect: More than a Slogan at https://en.m.wikipedia.org/... (Accessed on 10/10/2015). "Emerging from a Canadian-Funded Commission in 2001 into how the international community should react when faced with mass atrocity, war crimes, ethnic cleansing, and crimes against humanity. The concepts is intended to put a degree of conditionality on the notion of sovereignty to fulfil the element of Responsibility to protect any given population within the sovereign state. Consequently, guaranteeing the protection of civilians against large-scale slaughters. If a state is unable or unwilling to protect its people, the international community has a responsibility to step in, using peaceful or coercive means.

⁶⁹Aidaw H. The Responsibility to Protect: Rhetoric Reality and the Future of Humanitarian International. (Palgrave Macmillan, 2012) p. 1.

⁷⁰ *Ibid*.

⁷¹ *Ibid*.

⁷²Davidson W. "African Union Panel is Denied Permission to land in Libya", at <http://www.bloomberg.com/news/2011-03-21/african-union-regotiating-committee-is-denied-permission-to-laid-in-libya.html> (Accessed on 15/11/2015).

⁷³ "Constitutive Acts of the African Union" Documents and Speeches. African Union Summit, South African. 2002 at <http://summits.au.int/en/9/summit> (Accessed on 15/11/2015).

⁷⁴ The Ezulwini Consensus". Executive Council 7th Extraordinary Session, March, 7 & 8 2005, Addis Ababa, Ethiopia at [http://www.africanunion.org/Ex/CI/2 \(vii\) African Union](http://www.africanunion.org/Ex/CI/2%20(vii)%20African%20Union%20Consensus.pdf) (Accessed on 15/10/2015).

⁷⁵ Ezulwini *ibid*.

Similarly, the AU mission in March 2013, initiated a regional security efforts aimed at combating terrorism. Recognizing the fact that combating violence of this nature extends beyond the efforts of a single country.⁷⁶ In the same vein, the International Criminal Court (ICC) prosecutor on 5th August, 2013, indicted Boko Haram, stating that the activities of the group have risen to what can be seen and believed as “*Crimes against Humanity*”.⁷⁷ As a corollary to the above, in May, 2014, ICC prosecutor, Fatou Bensouda, announced that crimes committed by Boko Haram fall within the jurisdiction of the Court. Considering the attack on the city of Baga and the use of women and children as suicide bombers in 2015, she concluded by reminding Nigerians that, since Nigeria is a state party to the Rome Statute, it must maintain an obligation to ensure that crimes that “shock the conscience of humanity” do not go unpunished, adding that the ICC is conducting an examination of the situation in the country⁷⁸.

Nexus between generation of rights and fundamental human rights provisions in the 1999 constitution of the federal republic of Nigeria/ Conclusion

Nigeria has signed, ratified or acceded to the most important international and regional human rights instruments. Millstones regarding the incorporation of United Nations and regional human rights treaties include the domestication of the African Charter on Human and People’s Rights. These treaties include but are not limited to the following:

- A. The United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
- B. The United Nations Convention on Rights of the Child (CRC)
- C. The Africa Charter on Human and People’s Rights.
- D. The United Nations Convention on the Status of Refugees
- E. The African Charter on the Rights and Welfare of Children Organization of African Unity’s Convention governing the Specific Aspects of Refugee Problems in Africa
- F. The International Covenant on Civil and Political Rights
- G. The International Covenant on Economic, Social and Cultural Rights
- H. The Convention on the Elimination of All Forms of Racial Discrimination
- I. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture)
- J. The Convention on the Political Rights of Women

In summary, the international human rights systems seeks to persuade or put pressure on member states to meet their international obligations under human rights instruments that they have ratified or to which they have acceded.

This is because international treaties will continue to be mere documents in countries who are signatories to them if their significance is not felt by the people in those countries. It is not enough for a sovereign state to ratify a treaty in the international community framework. It is more important for such state to adopt the international treaty into her domestic legal system, integrate the treaty into her national standard and make it domestic law.

There are only two ways through which states can comply with their international legal obligations as contained in treaties: firstly, by observing or respecting their national laws (constitution or statute law) which are consistent with international norms. Secondly, by making those international norms or obligations part of

⁷⁶ Ibid.

⁷⁷ Own Op Cit. p. 61.

⁷⁸Taboala, J. Human Rights Abuses: ICC Probes Nigerian Army, Boko Haram. The Vanguard Newspaper. (Nigeria) Vol. 26, No. 63006 as Friday April 15, 2016 p.4.

the national legal or political orders, that is, they become domesticated (internationalized or incorporated).⁷⁹ It is of great interest to know that Nigeria has domesticated some of these international norms or obligations to forestall human rights violation within and across the shores of the country.⁸⁰ Chapter Four of the 1999 constitution of the Federal Republic of Nigeria is a direct domestication of the provisions of the United Nations Universal Declaration of Human Rights, UDHR.

Conclusion

Domestication of treaties is the transformation of treaties into municipal law. In other words, it is subjecting treaties made on behalf of the federation to the Legislative process, as is the case with other municipal legislation.⁸¹ The theories of monism and dualism govern domestication of treaties.⁸² Chapter 4 of the 1999 constitution of the Federal Republic of Nigeria is a direct domestication of the United Nations Universal Declaration of Human rights, UDHR as earlier pointed out.

Dualism

Dualists view international and municipal legal orders as mutually exclusive, each possessing its sources, and subject matter.⁸³ Dualism is largely based on the concept of the state as sovereign and the highest good in society.⁸⁴ The dualist identified two differences, they consider fundamental differences between international and municipal laws. Firstly, they argue that whilst the subjects of municipal law are individuals, the subject of international law derives its source from the will of the state itself, international law has its source rooted in the common will of states. According to Auzilotlis⁸⁵ prominent proponent of dualism, municipal law operates on the fundamental principle, that state legislation is imperative while international law operates on the principle of *Pacta Sunt Servanda*. He therefore concluded that the two systems are so distinct that they cannot conflict with each other. The Dualists thus conclude that since neither legal order can operate in the sphere of the other, international law can neither bind individuals nor confer rights on them directly. International law can only apply within the sphere of municipal law after domestication. Furthermore, they conclude that if ever there is a conflict between international law and municipal law, the Courts are to apply the latter.

RECOMMENDATION

1. The articles recommends that second and third generation of human rights as contained in CHAPTER 2 of the 1999 constitution of the federal Republic of Nigeria titled “fundamental objectives and directive principles of state policy be made justiciable through a constitutional amendment to remove section 6 {6} {c} which ousts the jurisdiction of the court on its provisions. That way, fundamental human rights in Nigeria would incorporate first generation, second generation as well as third generation rights.

⁷⁹ Steiner, H. J. *et al* International Human Rights in Context: Law, Politics Morals (Second Edition), Oxford; Oxford University Press p.987.

⁸⁰ See Chapter Two of the Research from p.135-149.

⁸¹ Shore M. M. International Law, Sixth Edition (Cambridge University Press 2008).

⁸² *Ibid.*

⁸³ Mohr H. “Treaties and the Legal Order”, Paper Presentation of the Graduate Seminar on Legal Research, Policy and Reform at Osgoode Hall Law School, York University, Canada, 1981 p. 7.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*