

Comparative Analysis of the Universal Declaration of Human Rights (1948) and Nigerian Constitution (1999): Implications for Democratic Governance and Citizenship Education in Nigeria

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Abstract. The United Nations' Universal Declaration of Human Rights (UDHR) (1948) is an internationally recognized frame of reference on human right constitutional provisions, observance, violations and advocacy. Therefore, an attempt is made in this paper, to undertake a comparative analysis of the human rights provisions in the Nigerian Constitution (1999) and the UDHR (1948). The paper reveals some similarities and difference between the two documents. It also observes some significant deficiencies in the Nigerian Constitution (1999) with reference to human rights provision in terms of scope of coverage, types of rights, jurisdiction or framework of application, grounds of just violation, and language of entrenchment. The implications of the observed deficiencies were also highlighted for civil liberty and democracy. The paper recommends that the Nigerian constitution be amended to conform with the internationally recognized benchmark of constitutional democracy by amending the Nigerian constitutional (1999) to entrench additional provisions of human right aside the existing civic-political rights; enhanced citizenship education in the school system and adult education programmes as well as socialization into sustainable democratic culture and governance; and improved human rights education in the basic school system and adult education programmes for citizenship education.

Keywords: Universal Declaration of Human Rights, Nigerian Constitution, democracy and citizenship Education.

1. Introduction

The constitution is the fundamental law according to which a state is to be governed. Therefore, it has become an established tradition for each state to have a constitution. This is more particularly true of democracies that are founded on constitution and constitutional government. The constitution is accordingly regarded as the fundamental frame of reference by the ruler and the ruled on how the state is to be administered (Okunloye, 1990). The constitution accordingly states among other things, the structures, functions, and power of government, their structural relationships, citizenship requirements, right as well as duties (Okunloye, 1990).

The constitutional provisions on human rights are the frame of reference for the government as to what it is obligatory on her to offer the citizens and observed in the relationship between the government and the governed as well as what the governed can claim by right. Provisions on fundamental human rights are, therefore, cardinal elements in the constitution of different states. The citizens may run the risk of unjust violations if they are not expressly or sufficiently stated, and guaranteed in the constitution. If they are expressly or sufficiently stated and guaranteed, the government is under legal obligation to respect and observe the rights of the citizens under normal circumstances.

In 1948, a remarkable milestone was achieved in the entrenchment of human rights provisions in the international system when the United

Nations Organization's General Assembly proclaimed by majority vote the Universal Declaration on Human Right (UDHR) (1948) (United Nations Fact Sheet No 1). Since then, the UDHR has progressively served as the international yardsticks for evaluating the adequacy of constitutionally entrenched provisions on human rights, the level of observation or violation of human rights, and advocacy charter of human rights organizations in different countries of the world.

This paper undertakes a comparative analysis of the human rights provisions in the Nigerian Constitution (1999) and the UDHR (1948). This is with a view of ascertaining the extent to which the Nigerian constitution (1999) conforms with or deviated from the international standards set out in UDHR. The paper further examines the implications of the observed degree of conformity or deviation for civil liberty, democracy and citizenship education in Nigeria.

2. Human Rights in the Nigerian Constitution (1999)

Elements of human rights which Nigerians are expected to enjoy as citizens of a democratically governed state are explicitly stated in chapter four, section 33-46 of the constitution. In addition, some provisions in other sections of the constitution have some relevance to human rights. The human rights provisions under section 33-46 of the Nigeria Constitution (1999) include:

Right to life (section 33);
 Right to dignity of human person (section 34);
 Right to personal liberty (section 35);
 Right to fair hearing (section 36);
 Right to private and family life (section 37);
 Right to freedom of thought, conscience and religion (section 38);
 Right to freedom of expression and the press (section 39);
 Right to peaceful assembly and association (section 40);
 Right to freedom of movement (section 41);
 Right to freedom from discrimination (section 42); and
 Right to acquire and own immovable property anywhere in Nigeria (section 43)...

Provision in sections 44, 45 and 46 are not prima-facie statement of human rights. They actually stated the condition under which some provisions on human right can be violated for justifiable reasons and how rights are to be protected or asserted under the Nigerian legal system.

3. Universal Declaration of Human Rights (UDHR) (1948)

The UDHR is made up of a preamble and Articles 1-30. These are rendered in abridged form in this paper for reason of space limit. These include:

All human beings are born free and equal in dignity and rights (Article 1);
 Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind (Article 2);
 Everyone has the right to life, liberty and security of person (Article 3);
 No one shall be held in slavery, or servitude, slavery and slave trade shall be prohibited in all their forms (Article 4);
 Everyone has the right to life. No one shall be subjected to torture or degrading treatment or punishment (Article 5);
 Everyone has the right to recognition everywhere as a person before the law (Article 6);
 All are equal before the law (Article 7);
 Everyone has the right to seek an effective legal redress for acts violating rights granted by constitution or law (Article 8);
 No one shall be subjected to arbitrary arrest, detention, or exile (Article 9);
 Everyone is entitled to fair and public hearing by an independent and impartial tribunal (Article 10);
 Everyone charged with a penal offence has the right to be presumed innocent until proved otherwise according to law' in public trial (Article 11);
 No one's privacy, family, home or correspondence, honour and reputation shall be subjected to arbitrary interference (Article 12);
 Everyone has the right to freedom of movement and residence within each state or leave his or

any country, and return to his country (Article 13);

Everyone has the right to seek and to enjoy in other countries asylum from persecution (except for non-political crimes or acts contrary to the United Nations purposes and principles (Article 14);

Everyone has the right to a Nationality (Article 15);

Men and women of full age have the right to marry, entitled to equal rights as to marriage, during marriage and its dissolution (Article 16);

Everyone has the right to own property individually or in association with others (Article 17);

Everyone has the right to freedom of thought, conscience and religion (Article 18);

Everyone has the right to freedom of opinion and expression (Article 19);

Everyone has the right to freedom of peaceful assembly and association (Article 20);

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives (Article 21 (1);

Everyone has the right to equal access to public service in his country (Article 21 (2);

Everyone as a member of society has the right to social security and is entitled to realization, through national effort and international co-operation (Article 22);

Everyone has the right to work, to just and favourable conditions of work, and to protection against unemployment (Article 23);

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (Article 24);

Everyone has the right to a standard of living adequate for self and family, including right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (Article 25 (1);

Motherhood and childhood are entitled to special care and assistance (Article 25 (2);

Everyone has the right to education. Education shall be free and compulsory at least in the elementary and fundamental stages. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit (Article 26 (1);

Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits (Article 27 (1);

Everyone has the right to the protection of the moral material interests resulting from any scientific, literary or artistic production of which he is the author (Article 27 (2); and

Everyone is entitled to a social and international order in which the rights and freedoms set forth in UDHR can be fully realized (Article 28); and everyone has duties to the community in which alone the free and full development of his personality is possible (Article 29 (1); and

Article 29 (2) of the UDHR further states lawful conditions for limiting these rights, including the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 30 of the UDHR expressly declared that nothing in the UDHR may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. (Garling, 1979; 289).

4. Comparative Analysis of the Nigerian Constitution (1999) and the UDHR (1948)

A comparative analysis of the human rights provisions in the Nigerian Constitution (1999) and the UDHR (1948) is based on six interrelated factors in both documents. These include preambles or introductory statements, the scope of coverage or comprehensiveness, the types or nature of human rights, the jurisdiction or framework of application, the recognized grounds of just violations of human rights and the language of entrenchment of human rights provisions. Each of these is examined in greater details.

Introductory Statements or Preambles of the Nigerian Constitution and UDHR

The Nigerian Constitution (1999) and UDHR are similar by virtue of having introductory

statements or preambles that addressed the origin and fundamental beliefs of the people(s) expected to benefit from the stated human rights provisions in both documents. The members of the United Nations (UN) through the General Assembly affirmed their belief in dignity, equality and inalienable rights of all human beings and accordingly proclaim the UDHR. Similarly, the Nigerian Constitution (1999) expressly declares in its preamble that “we the people of the Federal Republic of Nigeria... do hereby make, enact and give to ourselves the following constitution” (p. 869) (emphasis researchers)

The Nigerian citizens are by these preambles recognized as the maker, beneficiaries and ultimate custodian of the constitution (Okunloye, 2017). This is an equivalent of the UDHR (1948) statement which recognized the United Nation member states as represented in the General Assembly as the maker of the UDHR.

5. Scope of Coverage or Comprehensiveness

The provisions of human rights in the Nigerian constitution (1999) are narrow in scope. This is because they are essentially restricted to civic-political rights of the citizens. The provisions in the UDHR are very broad and all encompassing, extending beyond the civic-political, to economic, social and cultural rights. Hence, there are provisions relating to social security, motherhood, employment, condition of service, pension, royalty or copyrights, gender equality in marriage, and related elements in the UDHR (1948), which are nonexistent in the Nigerian constitution (1999) (Okunloye, 2017).

The difference in scope of coverage or comprehensiveness between the UDHR (1948) and Nigerian Constitution (1999) is also evident in the number of human rights subject matters addressed in both documents. Whereas the latter addressed 11 major human rights subject matters, the former addressed 35 of such subject matters.

This numerical difference in human rights subject matter coverage is partly due to some

omitted provisions in the Nigerian Constitution (1999). Six of such omitted provisions include, provisions on the rights of equality of marriage partners (Article 16 (1) UDHR); social security (Article 22, UDHR); employment protection or work related provisions such as equal pay for work, just favourable and decent pay (Article 23, UDHR); Leisure (Article 24, UDHR); special care and assistance to motherhood and childhood (Article 25, UDHR); free and compulsory education of elementary and fundamental stages as well as equal access to higher education (Article 26, UDHR).

Nature or Types of Human Rights

The Nigerian Constitution (1999) and UDHR (1948) are also broadly similar in terms of provisions on civic-political rights, such as the right to freedom of association, assembly, movement, fair hearing, among others. However, they differ with respect to other human rights that are social, economic and cultural in nature as earlier highlighted to be nonexistent in the Nigerian Constitution (1999). This discrepancy is a serious defect in the Nigerian Constitution because of the nature of humans. Humans are not just, in Aristotelian perspective, political beings, but also socio-cultural and economic beings (Okunloye, 1996). In the same vein, all human rights are complementary and as such the existence or infringement of one may affect the other. Economically empowered citizens under a regime of observed economic rights have the tendency of exercising their civic-political rights of voting rationally in democratic elections and also asserting as well claiming other rights effectively in democracies (Okunloye, 1990 Okunloye, 2017).

6. Jurisdiction or Framework of Application

Another frame of reference for comparative analysis of the UDHR (1948) and Nigerian Constitution (1999) is the jurisdiction or framework of application of human rights provision in the two documents. The UDHR (1948) human rights provisions, on the one hand, have cross national or international application, especially for the 192 member states

of the UN of which Nigeria is one. On the other hand, the jurisdiction of the Nigerian Constitution (1999) is strictly limited to citizens or inhabitants, bodies, agencies or institutions within the Nigerian territorial boundary. Although, the provisions on human rights in the UDHR are not superior to those entrenched in the constitutions of member states, it has nevertheless become the reference point for ascertaining the level of entrenchment, recognition, observation or violation of human rights in the contemporary world. This is largely connected with the nature of the UN as a universal organization (Okunloye, 2011). Member States are accordingly under obligation to respect and comply with the treaty that established the UN since 1945. Moreover, conformist tendencies may be attributed to the principle of reciprocity and the threat or fear of sanction(s) and other punitive consequences for violations of the treaty. These have contributed immensely to accord the UDHR (1948) international recognition and compliance as UN-based declaration.

Ground of just Violation of Human Rights

Human rights provisions in constitutions are not absolute statements that must be rigidly observed in all circumstances (Okunloye, 1990). Indeed, different constitutions stipulate just, reasonable and legitimate grounds of violation (Okunloye 1990). The UDHR and Nigeria Constitution (1999) contain relevant provisions under which specific entrenched provisions of human rights can be justly violated.

In the same vein, both documents portray the relativity of human right by stating and giving recognition to tenable conditions under which specific provisions can be violated. These elements of relativity of human rights and the grounds of just violations are consistent with Haiman (1951) declaration that “there is no such thing as absolute freedom. People inevitably have an effect upon one another. Freedom in any society is relative, a matter of degree” (p.7) Okunloye (1996) illustrated the relativity of human right thus: “the right of arm swinger ends where the other man’s nose begins” (p.168). The two documents, accordingly, stipulate security of the right of others, public good, public order

and general welfare, among others as grounds of just violation of human rights provisions. The only difference between both documents regarding grounds of violation lies in the scope of coverage of the entrenched provisions of human rights. The UDHR (1948) contains more provisions on grounds of just violations than the Nigerian Constitution (1999) because the former include provisions on human rights outside the civic-political rights. The UDHR (1948) also has provision for the domestication of all human rights stated in the document in member states.

7. Language of Entrenchment of Human Rights Provisions

In the same vein human rights provisions in both documents are broadly similar in terms of the language of entrenchment. The human rights provisions are stated in four ways. First, explicit state provisions secondly implicitly stated provisions, thirdly, idealistically stated provision and finally, the vaguely stated provisions. Explicit statements of human rights provisions are very categorical and specific in nature and this enables both the ruler and the ruled to correctly perceive the meaning and guide their conduct. Implicit statements of human rights are implied or inferential statements from other statements. This may be difficult to pin down to specific meaning or application. Human rights activists who may be going beyond the limits intended by the constitution maker or operator in their advocacy for or enforcement of Human rights. The implicit statements of human rights therefore create room for these conceptions about specific human rights.

Futuristic or idealistic statements of human rights express the ultimate ideal state or future time frame when such rights on expected to be operational or become achievable. Some provisions, starting with ‘shall’ exhibit this feature in both documents. These are also contemptuous provisions because the citizens or human right activists may think the time frame for them to be realized or asserted is ripe whereas the government may think otherwise. These types of clauses implicitly endowed the operators of the constitution (government) with a lot of discretionary power as to when citizens

will enjoy certain rights. In the process, human rights provisions bearing such futuristic phases tend to be misconstrued by the regime of government in power as privileges that can be granted citizens as acts of benevolence.

The vaguely stated provisions on human rights are general statements with elements of Lacuna which give the government a lot of discretionary power on human rights and have tendency of making the citizens to be at the mercy of the government in power when it comes to asserting their rights. For example, Section 39 (3) 3 A, of the Nigerian Constitution (1999) states that: "Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society for the purpose of disclosure of information received in confidence" (p.90).

8. Implications and Challenges for Democracy and Citizenship Education

Civil liberties or human rights are cardinal principles and essence of democracy. The universal principles and norms of democracy are all human rights-based. These include popular sovereignty, political equality, popular consultation, majority rule and minority rights, rule of law and fundamental human rights and basic freedom (Appadoria, 1975; Centre for Democratic Studies (CDS) 1990; & Nzongola – Ntalaja, 1997).

Similarly, two major environmental conditions in which democracy thrives are also human rights-related, namely: the existence of a politically conscious citizenry who know their rights and obligation and willing to participate in the political process; and the presence of a relatively equitable socio-economic condition which enables an average citizen to live a good life (CDS, 1990). These two environmental conditions guarantee the practice of democracy that empowers people to rise up against a decadent or oppressive political order and replace it with one likely to improve their material conditions of life and ensure a better future for their children (Nzongala-Ntalaja, 1979). Restricting the scope of human rights to civic-political rights will certainly deny citizens and other people in Nigeria the benefit of

enjoying other human rights as recognized by the UDHR (1948). Indeed, the interrelated and inseparable nature of all human rights requires that none of the rights should be denied citizens. The denial of one human right may be tantamount to denial of all other human rights.

In the light of the foregoing, it is imperative for Nigerian to expand the scope of the existing human rights in the constitution beyond civic-political scope to social, economic and cultural rights as spelt out in the UDHR. This has become imperative because Nigeria is a member of the UN who pledge with other members and affirms their beliefs in the UN charter to achieve, in co-operation with the United Nations, the promotion of universal respect for and observation of human rights and fundamental freedoms' (Garling, 1997: 285). Again, the use of the word 'pledge' according to Akehurst (1977) implies a legal obligation on the part of member states to work towards the fulfillment of UN charter (human rights inclusive) in the future. That future is now as the original document (UDHR of 1948) has been in use for over sixty nine years (1948 – 2017). There is the need to rework the contemptuous, vaguely stated and futuristic provisions on human rights in the Nigerian Constitution. This is necessary to portray human rights as rights as opposed to discretionary privileges, and by so doing putting the Nigerian government under legal, and political obligation to recognize, respect and observe them in the conduct of government. This will also remove the discretionary outlook of human rights in the Nigerian constitution and put the government – the government of the people at that, at the mercy of the governed or citizens who are the political sovereign in a democracy.

The need to rework or amend the Nigerian constitution is therefore imperative. It has become much more imperative because the fourth republican constitution emerged from the constitutional-evolutionary process of military disengagement from politics.

Indeed all Nigerian constitutions from 1979 – 1999 were promulgated into legal force by the apex organizational institution of military

regimes under Muritala-Obasanjo; Buhari-Idiagbon, Babangida, and Abdulsalami regimes. The ruling military oligarchy in the Supreme Military Council (SMC) or Armed Forces Ruling Council (AFRC) merely acted as the representative of the Nigerian people (though self-imposed) to promulgate the Nigeria constitutions into law, notwithstanding, the Constitution Drafting Committees and Constituent Assemblies involvement. These modes of constitutional enactment have become the bases for agitations for referendum and other popular participatory process to replace the Nigerian constitutions since 2nd Republic to the fourth Republic (1979 – 1999) (Okunloye, 2017). When this is done the sections or provisions on human rights should be more comprehensive and specific about civic-political, social, economic and cultural rights of citizens.

Mere constitutional entrenchment of human rights is, however, not sufficient for citizens to enjoy them. The citizens must be literate enough to know their rights and politically conscious enough to assert them. This explains why Rajeswari (2000) came to the conclusion that “the law by itself may not be able to provide justice to all unless it is educated and executed...” (p.104)

Citizens also need to be taught about the relativity of human rights so that they will not blindly push for or assert human rights in absolute terms. This is necessary for peace and order in human society. Therefore, free education up to senior secondary level (at least) and human rights education within social studies framework, free adult literacy programmes and the mass media should be vigorously pursued. Human rights club should also be set up in secondary school.

9. Conclusion and Recommendations

Given the significant discrepancies inherent in the Nigerian Constitution (1999) when compared with the international standards as represented by the UDHR (1948), it has become imperative that the Nigerian constitution (1999) be amended to recognise socio-economic and cultural rights in addition to the civic-political rights.

Also, considering the prevailing high level of illiteracy and poverty among Nigerians, and their negative implications for democracy, the capacity of Nigeria to function in democracy and sustain it should be enhanced through free basic education, and improved human rights education in the basic school system and adult literacy programme.

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