

THE PROMISE OF CONSTITUTIONALISM AND THE CHALLENGE OF MILITARISM: CONSTRAINTS AND POSSIBILITIES OF THE HUMAN RIGHTS MOVEMENT IN NIGERIA

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French Summary

'La promesse du constitutionalisme et le défi du militarisme : les contraintes et les opportunités pour les mouvements des droits de l'homme au Nigeria.'

Trois époques principales sont identifiables dans l'évaluation des droits de l'homme au Nigeria. En premier lieu, la lutte contre la domination coloniale ; deuxièmement, l'émergence d'une idéologie libertine qui marqua la période de l'indépendance et en fin, la formation des organisations non-gouvernementales face à l'échec des états au lendemain des indépendances. Dans chaque époque, les mouvements des droits de l'homme ont incarné les défis particuliers de chaque gouvernement. Néanmoins, au Nigeria comme dans le reste du continent africain, ces mouvements ont été atteints par des crises de légitimité et de bienséance. Quels ont été les succès et les restrictions des mouvements des droits de l'homme pendant les différentes étapes de l'évolution politique au Nigeria et comment ont-elles fait face aux dynamiques du colonialisme, du constitutionalisme et du militarisme ? Les mouvements de droits de l'homme au Nigeria, sont-ils viables par rapport aux réalités socio-politiques du pays ? Cette thèse essaie d'examiner ces questions.

Le nationalisme nigérian et les divisions régionales et ethniques qu'elle engendre ont été en soi une lutte pour l'égalité et les droits de l'homme. Les deux guerres mondiales et les idéologies égalitaires qui ont surgie à l'époque ont eu des réverbérations au Nigeria, où des associations politiques ont demandé l'abolition de la discrimination raciale dans l'administration coloniale britannique et la réforme du système judiciaire. Pour les peuples africains, la publication de 'l'atlantic charter', dans une certaine mesure le précurseur de la Déclaration Universelle des Droits de l'Homme en 1933, avait renforcé l'idée que tout le monde a le droit de choisir son gouvernement, même si, selon Churchill et Roosevelt, cette loi ne s'appliquait qu'aux peuples Occidentaux. Cependant, au moment même où les mouvements des droits de l'homme déclaraient leurs aspirations pour l'indépendance, ils faisaient face à une crise de légitimité. Tout d'abord, la classe politique qui était composé

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d'une minorité 'évoluée' et urbaine bénéficiait de peu de soutien au niveau du peuple. Par ailleurs, cette classe élite avait une idéologie conservatrice qui était le reflet de l'impérialisme britannique et qui alors ne signifiait pas une transformation fondamentale de la condition du peuple en général. L'échec de cette première génération de nationalistes pourrait donc être attribué à ce conservatisme et à cet attachement psychologique au système gouvernemental britannique.

Bien que l'indépendance était le premier pas vers une garantie constitutionnelle pour les droits fondamentaux des Nigériens, l'élitisme du nouveau gouvernement indépendant s'assurait que le peuple restait soumis. Comme son prédécesseur colonial, le gouvernement de la période post-indépendance utilisait une législation coercitive et répressive pour maintenir le contrôle politique. En 1962, les abus des droits de l'homme avaient augmenté lorsque l'état donna des pouvoirs illimités aux agents de sécurité et à la police. Tout au long de la première république, il n'existait aucune organisation cohérente qui plaidait pour les droits de l'homme. L'activisme des ONGs que plus tard incarnaient les mouvements des droits de l'homme n'ont vu le jour qu'aux années 80, quand la dictature militaire devenait de plus en plus répressive. En 1966, le Nigeria avait connu son premier coup d'état. Le nouveau leader militaire, Général Ironsi, avait promis un retour à l'égalité et aux droits de l'homme, mais cela n'avait pas duré. Jusqu'en 1979, les coups d'états successifs qui avaient suivi le régime d'Ironsi s'assuraient que la question des droits de l'homme serait reléguée à l'arrière plan et ne faisaient même plus partie de la rhétorique politique. Mais en 1979, le rétablissement de l'autorité démocratique civil après dix ans de dictature militaire avait introduit une nouvelle période de constitutionalisme au Nigeria. L'activisme du judiciaire pendant la deuxième république avait abouti à des progrès substantiels pour les droits de l'homme. Mais en 1983, le retour du pouvoir militaire de Buhari avait effacé les progrès acquis sous le régime précédent. Des lois répressives et arbitraires avaient été re-introduites en contravention des droits fondamentaux prévus dans la constitution de 1979. C'était en réaction à cette situation de répression que le coup d'état militaire de Babangida avait eu lieu en 1985. En promettant de restaurer les droits de tous les Nigériens, Babangida s'assurait une légitimité immédiate.

Désormais, les réformes économiques instituées par son gouvernement sous instruction de la Banque Mondiale et du FMI avaient provoqué une grande opposition. Le régime de Babangida avait eu recours à l'oppression de toute opposition et avait interdit la liberté des médias et des syndicats populaires. Les lois répressives du régime précédant de Buhari avaient été re-instaurées et même intensifiées. Néanmoins, le développement, accompagné de la résurgence des notions des droits de l'homme après la guerre froide dans l'agenda politique international, avait abouti à une période sans précédent d'activisme en faveur des droits de l'homme. Entre 1987-1989, plusieurs organisations des droits de l'homme avaient vu le jour et en 1992, pendant la dictature de Sani Abacha, elles avaient mis sur pied une coalition sous l'égide du CD (Campaign for Democracy). Le CD avait fourni une plate-forme pour qu'un front uni puisse être le porte-parole de tous ces mouvements. En outre, pour la première fois dans l'histoire du pays, le CD avait mis au point un programme cohérent et collectif pour les mouvements des droits de l'homme au Nigeria.

Néanmoins, les organisations des droits de l'homme en Afrique font face à deux problèmes sérieux - le manque de légitimité et de bienséance. Cela est dû au fait que la plupart des

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organisations des droits de l'homme ont des fortes alliances politiques et ne se soucient pas autant aux questions pressantes d'ordre économique, social et culturel qui sont importants dans ces pays appauvris. De plus, la plupart de ces organisations manquent du soutien des communautés à la base. Elles sont souvent financées par des fondateurs ou ONG étrangers. Cette dépendance de l'Occident limite l'indépendance de leurs initiatives et implique une relation neo-imperialiste donnant lieu à la suspicion. Par exemple, beaucoup d'ONG nigériennes ont façonné leurs programmes de manière à ce qu'ils coïncident avec ceux des agences donatrices afin de garantir le flux de l'argent frais. Les régimes militaires au Nigeria ont utilisé cette dépendance pour accuser les mouvements des droits de l'homme d'être des pro-imperialistes. Les mouvements des droits de l'homme expliquent qu'il n'y pas de ressources locales adéquates pour financer leurs projets. En réalité, ils n'en ont pas cherché et il y a une dépendance complaisante de l'Occident. Des organisations de base ont pu pendant longtemps mobilisé le peuple sans soutien externe et il n'y a aucune raison pour que les mouvements des droits de l'homme ne puissent explorer et adopter cette tradition. Un troisième problème découle du fait que peu d'organisations des droits de l'homme centrent leur travail dans des zones rurales, alors qu'elles sont souvent accusées d'élitistes. Un mouvement viable des droits de l'homme ne peut pas être créé si cet éloignement des vrais sources des abus des droits de l'homme persiste. Il n'y a donc aucun avenir pour les mouvements des droits de l'homme s'ils ne bénéficient pas du soutien idéologique et financier local. Leurs objectifs et leurs aspirations doivent refléter les besoins et les perspectives du peuple. Pour s'assurer de la légitimité et de la bienséance, les mouvements des droits de l'homme au Nigeria et dans toute l'Afrique doivent s'évertuer à éviter les pièges des premiers mouvements nationalistes. Leurs projets doivent être en accord avec les besoins populaires en abordant non pas seulement les abus visibles comme la censure de la presse, mais aussi les questions moins visibles, comme la pauvreté, les inégalités basées sur le sexe, et le sous-développement qui continue à violer les droits de l'homme et les libertés de la majorité des pauvres dans le monde rural.

Introduction

Three significant epochs can be identified in the evolution of the human rights movement in Nigeria. The first was hinged on the fight against colonialism and specifically, the agitation against the abrogation of the right to self-determination and other civil and economic rights by the British colonialists. Although not often realised, the anti-colonial struggle in Nigeria, as elsewhere in Africa, was also a veritable human rights movement though one with an overriding nationalist political agenda (Mutua 1999). The second epoch in the development of the human rights movement in Nigeria grew out of the promise of democracy and constitutionalism which independence ushered. It reflected the nation-building aspirations of the emergent political elite and its idealism towards forging the structures of the new state. The third epoch, characterised by NGO activism, was a response to the failure of these aspirations; the structural inadequacies of the post-colonial state; the break down of constitutional rule and the

authoritarianism in the country.

In each of these epochs, there are movements that have come to the fore that have contributed to the movement with crucial and sometimes with relevance and dispensation at the level of the state.

This paper examines the human rights movement in Nigeria in the national context of viability and socio-political development.

The Nationalist Movement

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¹ It is recognised that certain forces in the Sokoto Jihad in Nigeria. By bringing about the emergence of a Groundwork of

authoritarianism and repression that subsequently became associated with military dictatorship in the country.

In each of these epochs, the human rights movement has reflected the peculiar challenges that have confronted the state, as well as the changing goals and aspirations of each phase of the movement. In each epoch, the human rights movement in Nigeria has also been faced with crucial questions of relevance and legitimacy. In the anti-colonialist struggle, the elitist, and sometimes ethnic character of the nationalist movement raised questions regarding its relevance and cast doubts over the legitimacy of its rights agenda. In the post-independence dispensation, similar questions have been raised bordering on viability, independence, and the level of domestic support which human rights NGOs command.

This paper addresses some of these questions. In comparing the different phases of the human rights movement in Nigeria, it examines the successes, travails and constraints of the human rights movement as it has evolved in Nigeria. It explores the ways in which the movement has contended with the dynamics of colonialism, constitutionalism and militarism in the nation's political development. Overall, it seeks to broadly evaluate the relevance, viability and legitimacy of the human rights movement in Nigeria within the context of changing socio-political realities.

The Nationalist Antecedents

Although the emergence of Nigerian nationalism predated the establishment of effective British rule over the whole country, it was the amalgamation of Northern and Southern Nigeria into a single colonial administrative unit by the British authorities in 1914, which created a common consciousness as the basis of the new state.⁴ The development of a common nationalist consciousness was informed primarily by the desire of local peoples for self-rule and freedom from foreign control; the quest for an end to racial intolerance and discrimination, and the demand for the opening up of opportunities for Nigerians in the colonial economy and administrative machinery. These were issues that affected all Nigerians irrespective of their ethnic origins and social status. The nationalist organisations, which emerged to address these issues, were therefore established with the main purpose of mobilising, not just a particular class or group, but the entire population of Nigeria against what was perceived as oppressive British colonial rule. To do this effectively, a broad agenda, which addressed the issue of the rights and liberties of local people, had to be canvassed alongside the more political campaign for independence. Thus, the nationalist movement, at least in conception, had an ostensible human rights agenda, although the more visible demand for independence and self-rule tended to obscure other salient aspirations of the movement. In articulating their anti-colonial agenda, the urban-based African elites who championed the nationalist movement drew extensively on the language and ideals of the emerging international

⁴ It is recognised that long before the formal imposition of colonial rule at the beginning of the 19th century, certain forces and conditions favouring the emergence of nationalist ideas were already at work. For instance, the Sokoto Jihad had led to the establishment of a Caliphate, which included much of what later became Northern Nigeria. By bringing together such a large area under one single political unit, the Jihad paved the way for the emergence of a greater Nigeria. See G. O. Olusanya, 'The National Movement in Nigeria' in Obaro Ikime (ed.), *Groundwork of Nigerian History*, (Ibadan, 1980), p. 545.

human rights movement. Central to this development was the impact of the First World War allied propaganda that stressed the principle of self-determination and which in turn, provided the basis of the peace settlement, became a rallying point for the nationalist movement. This led to the development of some of the earliest political organisations such as the National Congress of British West Africa (NCBWA). The NCBWA had as one of its demands, 'the abolition of racial discrimination in social life' and the separation of the executive from the judiciary to allow for more efficient administration of justice. Similarly, the Nigerian Youth Movement (NYM), which succeeded the NCBWA, advocated, among other things, universal adult suffrage, the protection of Nigerians against unequal economic competition, the provision of better conditions of service and a reformation of colonial judicial and administrative structures. On its part, the Nigerian National Democratic Party (NNDP) which was to emerge as the most influential nationalist group in the inter war period, campaigned for 'the equal and fair treatment of the native population' (Coleman 1986: 198).

These rights based demands led to some reforms in the colonial judicial system in 1933. Central to these reforms was the extension of the principle of appeal under the colonial judicial system. This provided Nigerians with the right of appeal against the decisions of the native courts - a right which hitherto was not granted the colonial subject.⁵ New high courts were created throughout the protectorate to replace the existing native and provincial courts. The colonial high courts and magistrate courts were also opened to legal practitioners who had previously been barred from appearing in these courts to represent their Nigerian clients. In addition to these, the West African Court of Appeal Ordinance was introduced in 1933, conferring the right to appeal in both criminal and civil cases heard by the Supreme Court and the High Court, on the West African Court of Appeal. By these reforms, the wide and unchecked judicial powers hitherto enjoyed by colonial administrative officers were significantly curtailed.

The 1933 judicial reforms, and particularly, the extension of the principle of legal appeal, marked a significant development in the conditions of individual legal rights and liberties in the colonial era. It opened for the first time to Nigerians, regular legal avenues for the review of colonial administrative and judicial action. For the Nigerian elites in the nationalist movement and the press who had relentlessly criticised the old colonial legal system for its inadequacies in protecting the rights and liberties of the people, these reforms were welcome developments. Commenting on the reforms for instance, the *Daily Times* in an editorial, remarked that 'the changes in the judicial system in Nigeria may be regarded as *the great charter of liberty* for the native peoples of this country, comparable to the Montagu Reforms in India'.⁶

The Second World War served to strengthen the rights agenda of the nationalist movement. As with the First World War, allied propaganda that the war was being waged to preserve democracy and the right of the people to self-determination lent justification to the nationalist cause. The argument that colonial subjects in Africa also had the right to determine their own political and economic destinies began to feature prominently in nationalist discourse. Of

⁵ Section 25(1) of the proposed bill provided that any person aggrieved by the order or decision of a native court of first instance may within 30 days of the date of such an order or decision appeal to native court of appeal or to the court of a magistrate.

⁶ *Daily Times*, March 8, 1933.

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particular relevance in this regard was the publication of the *Atlantic Charter*, (in many respects, the precursor to the Universal Declaration of Human Rights), and the subsequent public discussion that centred on its famous third clause which affirmed 'the right of all people to choose the form of government under which they will live'. In Nigeria and the rest of the colonised world, this affirmation of the *Atlantic Charter* greatly excited the hopes of nationalists. Prime Minister Churchill's subsequent qualifications - that he and President Roosevelt had only European states in mind; that the 'Atlantic Charter is a guide not a rule' and that he had not become prime minister to preside over the liquidation of the British empire - did little to dampen the aspirations towards the rights of the colonised which the charter had aroused (Coleman 1986: 232).

If anything, Churchill's rejection of the suggestion that the charter covered colonial peoples, served only to intensify nationalist indignation with colonial rule. Within the nationalist movement in Nigeria, his remarks were interpreted not only as a betrayal of promise but also as a reaffirmation of imperialism and of the 'white man's burden' concept of empire, at a time when world opinion was rapidly shifting towards a recognition of the universal right of people to self-determination. Arguments were subsequently made by leaders of the Nationalist movement like Nnamdi Azikiwe on the need for the movement to 'prepare our own blueprint [of rights] ourselves, instead of relying on others who are too busy preparing their own' (Azikiwe 1948: 72). In the *Freedom Charter* which was subsequently adopted in 1948, one of the early political organisations, the National Congress of Nigeria and the Cameroons (NCNC),⁷ cited Article 3 of the *Atlantic Charter* as the basis of its campaign for self-government, proclaiming

The argument that colonial subjects in Africa also had the right to determine their own political and economic destinies began to feature prominently in nationalist discourse

that the 'tribes, nations and Peoples of Nigeria and the Cameroons (...) undertake, *as of right*, to arrogate to themselves the status of an independent self-governing political community'.⁸ Although this was not seriously intended to be an immediately operative declaration of independence, it expressed the aspiration towards a new rights agenda within the nationalist movement.

In spite of its successes in articulating a political framework for independence and the promise of preparing its own 'blueprint of rights', the early nationalist movement in Nigeria was beset with fundamental problems of relevance and legitimacy that were to hinder the realisation of these aspirations. Two of these problems can be readily identified. The first derived from the elitist and conservative character of the movement, or more appropriately, the leadership of the movement. Many of the early nationalist organisations lacked grassroots support. They were often urban-based (mainly in Lagos) and dominated by an emergent class

⁷ Later to be known as the National Congress of Nigerian Citizens.

⁸ My emphasis.

of educated African elites whose visions and aspirations did not always reflect those of the vast majority of rural folks across the country. For instance, in spite of its claim to being 'Nigerian' and 'national', the Nigerian National Democratic Party formed in 1923, remained throughout its history an exclusively Lagos organisation.⁹ Its leaders, such as Herbert Macaulay, H.O. Davis, Nnamdi Azikiwe, Ernest Ikoli, and Kofo Abayomi, although committed nationalists, also represented a nascent group of urban-based and status-conscious educated political elites.

The second point has to do with the conservative agenda of the nationalist movement. The nationalist organisations - at least before the Second World War - did not seek to fundamentally challenge or change the structure of the colonial system. Many of the principal actors in the early nationalist movement were content with reforming the colonial system to accommodate the immediate interests of the local elites. As C.O. Olusanya has argued, the first generation of Nigerian nationalists was essentially conservative in their approach. They did not question the goal of British policy in Nigeria *per se*, but only with specific policies and actions of the colonial administration. One of the aims of the Nigerian Youth Movement (NYM) for instance, was to maintain, even in its quest for colonial reforms, an attitude of 'unswerving loyalty to His Majesty the King Emperor' (Olusanya 1980: 558).

It has been suggested that rather than being seen as a limitation of individual actors in the nationalist movement, the conservatism and passionate attachment to British rule which characterised the movement, was essentially a limitation which all members of that generation possessed. Their 'failure' reflects 'the failure of their time'.¹⁰ While this argument may explain and rationalise individual roles in the movement, it is important to note that this failure of the early nationalist movement was a significant constraint on its ability to articulate a relevant and coherent human rights agenda that addressed the salient political and socio-economic issues of the day. The NYM for instance, had by the mid-thirties begun to lose its relevance and popularity partly because it did not seem to react adequately to the new and pressing questions of the period, particularly the problem posed by the economic depression of the thirties.

It is significant that apart from the broad demands for political and judicial reforms of the colonial administrative structure, there were no specific demands for the institution of a bill of rights or charter of liberties among the constitutional reforms demanded by the nationalists. Indeed, it is ironic that the first concrete initiative in the direction of instituting constitutionally guaranteed rights in Nigeria, came, not from the nationalist movement, but from an administrative commission of inquiry set up by the colonial authorities on the eve of independence in 1957.

The Willink Minorities Commission was set up to investigate the expressed fears of political and economic marginalisation of the minority communities in Nigeria and advise the government as to what constitutional safeguards could be provided for them. If no effective remedy could be found, the commission was further mandated to consider the possibility of creating one or more states to assuage the anxieties of the minorities.¹¹ In the event, the commission rejected

⁹ Abortive attempts were made to establish branches of the NNDP in Abeokuta, Ibadan, and Kano in Northern Nigeria.

¹⁰ Ibid.

¹¹ Minority Commission Report. Cmd. 505, p. 97.

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the idea of creating more states and recommended instead, the inclusion of a bill of rights in the independence constitution. The Commission however did not pretend that the inclusion of a bill of rights would solve the problem of minorities in respect of their fears of repression but it stated that the bill should be inserted because 'their presence defines beliefs, widespread among democratic countries and provides a standard to which appeal may be made by those whose rights are infringed'.¹²

Independence and the Promise of Constitutionalism

One significant aspect of the post-independence political dispensation in Nigeria was the formal introduction of guaranteed rights into the constitution. The bill of rights included in the independence constitution of 1960 was based partly on the Universal Declaration of Human Rights, partly on applicable English common law principles inherited from the colonial legal system and partly on the recommendations of the Willink Commission which recommended its inclusion in the constitution (Aguda 1989: 117).

Although political independence offered the first concrete step in the direction of the constitutional guarantees of fundamental rights and freedoms in Nigeria, there remained significant limitations on the protection of these constitutional rights in the new political dispensation. The new political leadership manifested the same elitism and conservative character of the nationalist movement. Many restrictive colonial laws and policies which limited the rights and liberties of the people, and against which the Nigerian political elites who championed the nationalist movement had vigorously campaigned under the colonial dispensation, were retained by the new regime. Some of these laws were the *Official Secret Act* of 1962 and the *Sedition Offences Act*, which became a convenient tool with which the ruling regime sought to suppress opposition and dissent.

In one famous instance, a prominent nationalist politician and renowned mathematician, Chike Obi, was charged for publishing a pamphlet in which he criticised the corruption and intolerance of the ruling government of Abubakar Tafawa Balewa.¹³ He was promptly arrested, tried, and convicted for sedition. His appeal on the grounds that his fundamental rights to freedom of expression as enshrined in the Nigerian constitution had been violated by the conviction, was dismissed by the Chief Justice who ruled that the conviction 'was reasonably justifiable in a democratic society'.¹⁴

It was, however, the political crisis that engulfed parts of the country in 1962, which raised the most serious human rights concerns after independence. Specifically, the state of emergency declared in the Western Region in 1962 following a political crisis, triggered a spate of human rights violations in the post-independence era. A minority government, in

¹² Ibid.

¹³ What Chike Obi actually wrote in the offending booklet titled *The People: Facts You Must Know*, was actually no more than an innocuous tirade against the government. *He has written among other things*, 'Down with enemies of the people, exploiters of the weak and oppressors of the poor (...) The days of those who have enriched themselves at the expense of the poor are numbered. The common man in Nigeria can today no longer be fooled by sweet talk at election time only to be exploited and treated like dirt after the booty office had been shared among the politicians.' See *DPP vs. Chike Obi* (1961) 1 All Nigeria Law Report (ANLR), 186.

¹⁴ Ibid.

spite of public protestations, sat tight in power sustaining its hold by widespread rigging of elections, the intimidation of political opponents, and the harassment of the press and the judiciary. As reminiscent of colonial rule, coercive and repressive legislation were widely employed to sustain political control. Laws like the *Emergency Powers (General) Regulations*, the *Emergency Powers (Requisition) Regulations* and the *Emergency Powers (Protected Places) Regulations* of 1962, gave the police and other security agents unlimited powers to summarily arrest and detain persons who were considered threats to public order and security.

Thus, the inauguration of democratic constitutional rule and an indigenous representative government at independence did not necessarily usher in the anticipated advances in the general conditions of individual rights and liberties in the country. It is also significant that in spite of state violation of the human rights guarantees in the Independence Constitution during the First Republic, there were no significant efforts at NGO campaign and advocacy against government's excesses on a human rights platform. This kind of NGO activism that was to later characterise the human rights movement did not emerge until the worst period of military dictatorship in the 1980s.

Indeed, apart for the role of the radical students union movement under the auspices of the National Union of Nigerian Students (NUNS), the trade union movement, and the isolated individual efforts of some social critics, there was no coherent articulation at an organisational level, of a popular agenda for human rights advocacy during the First Republic. One explanation for this may be that the Nigerian elite as successors to the colonial throne were more preoccupied with the quest for political and economic ascendancy and less interested in raising critical voices over issues of rights, which went beyond their quest for dominance. This may also explain the development of vibrant political opposition parties like the Action Group, under the charismatic leadership of Obafemi Awolowo; the emergence of a radical trade union movement; the growth of influential professional organisations such as the Nigerian Bar Association and the Nigerian Medical Association, but not a rights-based advocacy movement.

The Challenge of Militarism

In 1966, Nigeria witnessed its first military coup d'état. There was widespread relief with the military takeover of power and the overthrow of Nigeria's crisis-ridden first republic. For one, the new military regime pledged a commitment to promoting fundamental rights and freedoms and as a demonstration of this, the new military ruler General Aguiy Ironsi, within a few days of assuming office promulgated the *Circulation of Newspaper Decree*. By the provisions of the decree, the various laws banning certain 'opposition' newspapers, which were enacted by the previous civilian regime, were repealed and punishment was prescribed for interfering with the distribution and sale of any newspaper in Nigeria (Ojo 1987: 249).

In spite of its initial pledge to guarantee fundamental rights however, the authoritarian and arbitrary character of the military regime was to have profound effects on the conditions of rights and liberties in the country, particularly with the counter-coup of July 1966, which brought General Yakubu Gowon to power. Soon after the first military intervention, a *Constitution (Suspension and Modification) Decree*, which effectively abrogated constitutional rule in the country, was promulgated. With this decree, much of the powers separated under the preceding democratic constitutional dispensation between the various arms of government - the legislature,

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the judiciary and the executive - were vested in one body of military officers known as the Supreme Military Council, headed by the military head of state.

Even with these developments, it was generally assumed that the fundamental constitutional principles, on which the nation was founded at independence, were still operative. The first major test of this assumption came in a case in which a citizen challenged as unconstitutional, the *Forfeiture of Assets Validation Decree* made by the military regime in 1968. After the case had dragged on in the lower courts, the Supreme Court in a landmark decision annulled the decree. The court ruled that by making a law, which arrogated to it, absolute powers to confiscate private property, the military regime had engaged in an act of 'legislative judgment' which was contrary to the principle of fair hearing.

Barely two weeks after this ruling was made in 1970, the Supreme Military Council sought to counter it by issuing the *Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970*. The new decree asserted the absolute supremacy of military decrees over any other laws or judicial decisions in the country's legal system. The decree stated that the military 'revolution', which took place in 1966, abrogated the whole pre-existing constitutional order in Nigeria with the exception of what had been preserved by the military regime under the *Constitution (Suspension and Modification) Decree* of 1966. It added that 'each military revolution involved an abrupt political change which [is] not within the contemplation of the constitution of the federation'.¹⁵ In effect, the decree declared null and void, any decisions made by the courts in exercise of any powers under the constitution, which challenged the validity of a decree of the military regime. Thus, the military regime having suspended the constitution, chose what to obey of what was left, and made what was left of the constitution subject to decrees issued subsequently (Ajomo and Okagbue 1991). This decree effectively ushered in a super-state under the military.

The outbreak of the Nigerian civil war in 1968 provided further excuse for the introduction of more repressive laws by the military regime. The rights to fair hearing, free movement and personal liberty hitherto guaranteed in the operational parts of the 'suspended and modified' constitution were now further limited by such war-time laws as the *Armed Forces and Police (Special Powers) Decree*¹⁶ which conferred special powers on the Inspector General of Police or the Chief of Staff of the Armed Forces to detain any person, if satisfied that such a person 'is or recently has been concerned in acts prejudicial to public order'.¹⁷ The decree also conferred special powers on the police or members of the Armed Forces to arrest any person without warrant or to enter any premises, search and seize prohibited goods such as explosives, ammunition and firearms. In practice, these laws became grounds for widespread arbitrary arrests and detentions.

¹⁵ Quoted in Kayode Eso, 'Nigerian Grundnorm', Idigbe Memorial Lecture, (Lagos, 1986).

¹⁶ Ibid.

¹⁷ See Chapter 62, Sections 166, 167, 218(1)(2), 219(1) and (2), for example.

Throughout this phase of military dictatorship between 1966 and 1979, there were no significant organisational platforms for the articulation of the salient human rights issues of the period. The nationalist groups which had advanced human rights causes in the colonial era and which developed into political parties at independence, were all proscribed with the military intervention of 1966. Human rights activism was therefore limited to the individual efforts of a few social critics like the radical lawyer Gani Fawehimi; the musician Fela Anikulapo-Kuti; Wole Soyinka, a university professor; Olu Onagoruwa, a constitutional lawyer, and Tai Solarin, a school teacher. Even then, their efforts were presented and perceived more as issues of social justice rather than human rights issues *per se*. For instance, in 1972, when a journalist was publicly assaulted and brutalised on the orders of a military governor, it was left to vocal advocates of social justice like Gani Fawehinmi to champion the case and to do their best to defend other citizens so slighted by military power.¹⁸

In another prominent incident, soldiers attacked and assaulted the popular musician, Fela Kuti and burnt down his residence, after he had released a song that ridiculed Nigerian soldiers as mindless zombies. Although it was common knowledge that the attack was ordered by top officers in the military, a commission of enquiry set up to investigate the incident concluded that the assault had been carried out by 'unknown soldiers'. Eventually, no redress was offered to the musician whose property was subsequently forcibly acquired by the government. In spite of the unprecedented and extensive public outcry which this and similar incidents of human rights violation generated, active condemnation and opposition to the government - on the human rights front - took no organised form and were limited to the individual efforts of a few social critics and uncoordinated public protestations.

Human Rights in the Second Republic

The re-establishment of democratic civilian rule in October 1979 after a decade of military dictatorship ushered in a new era of constitutionalism in Nigerian. As in the First Republic, the hand over of power by the military regime under the new democratic dispensation was backed by a presidential constitution, which restored full constitutional rule and made elaborate constitutional provisions for the protection of fundamental human rights.

One of the unique features of the human rights provisions of the 1979 constitution however, was that unlike the Independence Constitution of 1960 and the republican version of 1963, the language appeared much more positive, thereby giving the impression of a 'bill of rights' rather than a 'bill of exceptions'. For instance, where the independence constitution provided that 'No person shall be deprived intentionally of his life...',¹⁹ the 1979 constitution positively affirms that 'Every person has a right to life'.²⁰ Another feature of the fundamental human

¹⁸ The journalist, Minere Amakiri, reportedly had his hair shaved with broken bottles and given 24 strokes of the cane on his bare back in Port-Harcourt, Rivers State, for writing a story that was considered unpleasant to the state governor, Alfred Diette-Spiff. Amakiri had reported in his newspaper that teachers in Rivers State had contemplated resigning en masse in protest against their poor conditions of service. His offence in so publishing was that the report of the proposed teachers' strike was put out on the Military Governor's birthday. The case eventually went to court and the journalist was awarded punitive damages against the Military Governor's ADC. See the case of *Amakiri vs. Iwowari*, 1972 (unreported).

¹⁹ Section 18[1] of the Constitution of the Federal Republic of Nigeria, 1963.

²⁰ Section 32[1] of the Constitution of the Federal Republic of Nigeria, 1979.

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rights provisions in the 1979 constitution was that its provisions were more comprehensive, especially those relating to the scope of individual liberties. The inclusion of the right to legal aid was also innovative although in practice, the constitutional provision for legal aid did little in actually redressing the problems associated with the administration of justice in the country (Nwankwo et al. 1996).

What marked the most significant advance recorded in human rights promotion and the rule of law during this era of constitutional rule was the activism of the Nigerian judiciary. The judiciary was particularly active in protecting both the absolute and qualified rights guaranteed in the 1979 Constitution. In various landmark judicial decisions, the courts upheld the sanctity of the constitutional protection of fundamental human rights. Notable among such decisions was the celebrated case of the malicious and politically motivated deportation of a legislator in the Borno State House of Assembly, Shugaba Abdulrahman Darman. In that case, Shugaba Darman, a member of an opposition political party, was summarily deported from the country by the ruling government on the allegation that he was not a Nigerian. It was subsequently ruled by the court that the summary deportation constituted a violation of the right to fair hearing, even if, as it was alleged, the person involved was a security risk to the state.

Another example of the judicial activism which characterised the human rights condition in the country during this period was the case of *Tony Momoh vs. Senate of the National Assembly* in which the applicant, an editor of the *Daily Times*, published a story in the newspaper about national legislators 'begging' for government contracts. The aggrieved senators subsequently passed a resolution inviting the applicant to give details of the impropriety alleged in the newspaper article. The applicant sought an order of the court to restrain the senate from compelling him to appear and disclose his source of information on the grounds that it would constitute a breach of the guarantees of freedom of expression and the press under the constitution.

In its judgement, the court held that a newspaper editor is protected and enjoys the immunity of non-disclosure of the source of his information, particularly if public interest so demands. The Court took the view that the Constitution protects any medium for the dissemination of information, ideas, and opinion and that this would include a newspaper publications. Any attempt to force a person such as the applicant (Tony Momoh) who disseminates through the medium of a newspaper, to disclose the source of his information, apparently given in confidence, would be an interference with the freedom of expression granted by the 1979 Constitution.²¹

Comparatively therefore, the Second Republic, at least in terms of the role of the judiciary, ushered in significant advances in the conditions of human rights in the country. The ruling National Party of Nigeria (NPN) often prided itself on the fact that throughout the four-year term of the Shehu Shagari-led NPN government, there were no political prisoners or 'prisoners of conscience' in the country - a record which, it was further claimed, was matched by few African countries. These gains in human rights were to mark a sharp contrast with subsequent political developments in the country following the re-intervention of the military in 1983.

²¹ See *Tony Momoh vs. Senate of the National Assembly*, (1981) 1 *Nigeria Constitutional Law Report* (NCLR), p. 105.

Return to Militarism

The military coup which toppled the Second Republic was a direct affront on constitutional rule. The military takeover of government contravened the express provisions of Section 1(2) of the 1979 constitution which provided that 'the Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this constitution.'²² On the face of it therefore, the 1983 coup was a violation of the constitution, although it has been argued by several apologists of military rule that the coup d'etat of 1983 was in many respects, redemptive. It is suggested that the corruption and mismanagement of national resources that characterised the Second Republic, threatened the stability of the country and made the military intervention of 1983 timely and inevitable (Oyovbaire and Olagunju 1992: 10).

In specific relation to human rights, the return of the military to governance marked a new phase in the human rights situation in Nigeria. By the *Constitution (Suspension and Modification) Decree No. 1 of 1984*, some fundamental rights guaranteed in the 1979 presidential constitution were either suspended or modified. For instance, the restricted definition of 'period of emergency' in section 41 of the bill of rights dealing with restrictions on and derogation from fundamental rights was suspended. Left intact though were the constitutional guarantees of such basic rights as the right to life, the right to dignity of the human person, and the right to freedom of thought, conscience and religion.

In pursuit of its declared agenda of 'sanitizing the nation', the military regime led by Muhammadu Buhari, further introduced such repressive laws as the *State Security (Detention of Persons) Decree No. 2* and the *Recovery of Public Property (Special Military Tribunals) Decree No 3* which established special tribunals for the trial of former public officers suspected of wrong doing. The wide and arbitrary use of these decrees and tribunals by the military regime spelt adverse implications for human rights conditions in Nigeria in the period between 1983 and 1985 - a period which saw the complete militarisation of national administration. The military regime showed preference for the use of *ad hoc* tribunals, rather than the regular courts, for trying a large number of offences created by its decrees. *The Public Officers (Protection against False Accusation) Decree*,²³ *The Exchange Control (Anti Sabotage) Decree*,²⁴ and *The Robbery and Firearms (Special Provisions) Decree*,²⁵ all provided for the trial of offences created by them, by tribunals specially created for the purpose. The operations of these decrees and tribunals, which were not subject to appeal in the regular courts, constituted a flagrant contravention of some of the fundamental rights and freedoms guaranteed in the 1979 constitution.

By including 'ouster clauses' in many of its laws, the military regime barred the courts from questioning the validity of a federal government decree or state government edict. This also precluded the courts from inquiring into the validity of administrative and executive actions done pursuant to such a decree or edict (Alabi 1993: 206). For instance, Section 12(6)

²² See Constitution of the Federal Republic of Nigeria, 1979.

²³ No. 4 of 1984, Sec. 3.

²⁴ No. 7 of 1984, Sec. 4.

²⁵ No. 5 of 1984, Sec. 6.

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of the *Recovery of Public Property (Special Military Tribunal) Decree* provided categorically that 'no appeal shall lie from a decision of any tribunal under the decree,' thus putting a limit on the constitutional right of appeal to the highest courts of the land.

Subsequent decrees issued by the military regime continued to negate the constitutional and republican aspirations of the country. One notorious example of this was the *Public Officers (Protection Against False Accusation) Decree* of 1984. By the terms of the decree, it became an offence for anybody to publish any statement, whether 'true or false', which brings a public officer - meaning any member of the military administration - into disrepute. The offence was punishable by two years' imprisonment without option of fine.²⁶ Two journalists were subsequently sentenced to jail for contravening this decree over the publication of an apparently innocuous news report about the government's diplomatic postings.

Perhaps the most obnoxious manifestation of human rights abuse through arbitrary legislation during the Buhari regime came with the enactment of the *Special Tribunal (Miscellaneous Offences) Decree, No. 20* of 1984. Among a battery of other offences, the decree made it punishable with death by firing squad, for any person without lawful authority to import, export, sell, offer for sale, distribute or otherwise deal with any crude oil or petroleum product in Nigeria. The decree also provided for the execution by firing squad, for any person who without lawful authority deals in hard drugs. Under this decree, drug related offences attracted retroactive punishment and three drug-related offenders were subsequently publicly executed by firing squad.

Expectedly, the wave of public opinion towards these decrees was one of resentment and disapproval. In one of the many demonstrations of opposition to the arbitrary use of decrees and tribunals by the Buhari military regime, the Nigerian Bar Association in 1984 took the official stand to boycott proceedings of the tribunal constituted under the *Recovery of Public Property (Special Military Tribunal) Decree No. 3* of 1984. The Nigerian Labor Congress (NLC), the Nigerian Medical Association (NMA), and other professional associations also similarly expressed opposition to the use of repressive decrees by the regime.

In all, under the Buhari regime, Nigerians found themselves under an authoritarian military regime whose absolute rulership was unprecedented and left no room for redress. The arbitrary use of decrees and edicts as state legislative instruments under this era of military rule strengthened the combination of absolute executive and legislative powers under which the usurpation of judicial powers was a matter of course. It was under these tense and repressive circumstances that another military coup toppled the Buhari regime in 1985, setting the stage for a new phase of military dictatorship and an era of increased human rights consciousness and activism in the country.

Structural Adjustment, Military Authoritarianism and Human Rights

On assuming power after a palace coup in 1985, the new military ruler, Ibrahim Babangida, announced that his government would be anchored on respect for the fundamental human rights of all Nigerians. He vowed that he would not preside over a country where individuals

²⁶ See Section (1), *Public Officers (Protection Against False Publications) Decree No. 4* of 1984.

are under the fear of expressing themselves and promised that his government would be open and transparent. As part of the new crusade for human rights, some of the repressive decrees promulgated by the ousted Buhari regime were immediately repealed. One of these was the notorious Decree No. 4 of 1984, under which two journalists, Nduka Irabor and Tunde Thompson, had been detained. As a further demonstration of its commitment to promote human rights and the rule of law, the Babangida regime reviewed the cases of several Nigerian politicians who had been convicted by military tribunals set up by the Buhari regime to investigate their conduct in government (Agbese 1994: 147-148).

These measures won the Babangida regime instant legitimacy. Rather than the limitation of the right to free expression, which characterised the preceding Buhari regime, the Babangida government pledged to allow Nigerians to openly debate major national and political issues. Within weeks of the *coup d'état* which brought him to power, Babangida inaugurated a nationwide 'IMF debate' as a popular outlet for discussing in particular, the impasse over Nigeria's negotiations with the International Monetary Fund over a \$2.5 billion loan and in general, the nation's economic future. The apparent aim of the debates was to empower the ordinary Nigerian and make him feel a sense of involvement in the governance of the country.

The debates, which were extensively conducted in the press and other public forums, conveyed an unmistakable public antipathy and rejection of IMF and World Bank conditionalities. In apparent deference to public opinion, Babangida publicly repudiated the IMF and declared that Nigeria would, instead, opt for a 'home grown' solution to her economic difficulties (Olukoshi 1991). However, less than a month later, the president unveiled an economic package including the deregulation of the exchange rate, higher agricultural prices, financial liberalisation, and partial privatisation. Although this package was presented as 'home grown', it was actually negotiated with World Bank officials and was premised upon supplementary finance from the Bank (Mosely 1992). One year later, a full Structural Adjustment Programme (SAP) was introduced which elaborated and extended earlier adjustment reforms.

In 1989, when the full inflationary effect of devaluation and de-subsidisation became more evident in the rising cost of living, public restiveness over SAP erupted. 'SAP riots' engulfed universities and major cities across the country. The overwhelming public opposition to Babangida's economic reforms was followed by a dramatic change in the declared policy of the regime towards human rights. After the brief period of tolerance and flirtation with respect for human rights, the Babangida regime resorted to overt repression involving extensive police action, the ban of newspapers and popular trade unions, and the arbitrary arrests of perceived opponents of the regime's economic policy, to stem the tide of anti-SAP protestations. Many of the repressive laws enacted by the Buhari regime which had earlier been repealed to win the regime some legitimacy, were replaced by new and even more repressive decrees that provided the regime with even wider powers of detention. The notorious Nigerian Security Organization (NSO) which had been scrapped as part of the regime's human rights promotion initiative was replaced by an even more obnoxious organisation - the State Security Service (SSS).

In its bid to assert control over an increasingly restive and dissatisfied civil population, the Babangida administration, by a special decree in 1986, excised the Academic Staff Union of Universities (ASUU) and other senior staff associations, from membership of the Nigerian Labor Congress (NLC). The regime also banned students' unions in all institutions of higher

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learning in Nigeria. The peak of the Babangida regime's deteriorating human rights record came in 1987 with the proscription of the *Newswatch* magazine. The regime explained that *Newswatch* illegally obtained and published the report of the Political Bureau, which was being studied by government. As punishment for this 'illegality', the magazine was banned for six months. A special decree was subsequently promulgated, with retrospective effect, to confer the necessary legality on the ban.²⁷

These developments, coupled with the post-cold war resurgence of human rights in the international political agenda, led to increased domestic and international concern for the human rights conditions in the country. The crippling economic effects of SAP also lent renewed urgency to human rights awareness. These combined to set the stage for an unprecedented era of human rights awareness and activism in the country.

The Rise of NGO Activism

Popular resistance to adjustment reforms in Nigeria and the unprecedented scope and intensity of the repression employed by the state to sustain its economic policies, triggered the emergence of a new wave of human rights activism in the country. The period between 1987 and 1989, (when SAP was actively being promoted by the Babangida regime though repression and intimidation of dissenting groups), coincided with the emergence of several human rights organisations such as the Civil Liberties Organization (CLO), the Committee for the Defence of Human Rights (CDHR), and the Constitutional Rights Project (CRP).

The first of these organisations was the Civil Liberties Organization (CLO) whose formation was a direct response to the growing incidents of human rights violations under the Babangida regime. The main objective of its founders was to establish an organisation that would hold the government accountable for its human rights abuses and work towards the establishment of a culture of human rights in Nigeria.²⁸ The key personalities behind the formation of the CLO were two lawyers - Olisa Agbakoba and Clement Nwankwo. Olisa Agbakoba, a maritime lawyer, ran a law chambers in Lagos while Clement Nwankwo who had previous experience in legal aid practice, was a lawyer in Agbakoba's chambers. They were, to use their words, 'sensitized and motivated by the cases of human rights abuses which they encountered daily in their law practice'.²⁹ Abdul Oroh, a journalist covering the judiciary, prisons and police for a leading Nigerian newspaper, came in shortly afterwards to join the CLO. The CLO team thereafter grew rapidly, attracting several other committed lawyers, journalists, students, and workers.

Although the CLO was the first major human rights organisation in Nigeria, some attempts had earlier been made to organise similar forums for human rights advocacy, research and documentation. For instance, in 1983, the National Council for Human Rights was formed by Abdul Rasak, a lawyer based in Lagos. However, such earlier attempts at establishing human rights organisations hardly went beyond the initial conceptual stages. There were also other organisations, which though not primarily concerned with human rights advocacy, included

²⁷ Ibid. p. 205.

²⁸ Civil Liberties Organization, *Annual Report, 1994*, p. 7. Corroborated with personal interviews with Olisa Agbakoba and Clement Nwankwo in Lagos, March 1996.

²⁹ Personal interviews with Olisa Agbakoba and Clement Nwankwo in Lagos, March 1996.

human rights issues as part of a broader public awareness agenda. Women in Nigeria (WIN), an organisation of women groups which was set up in 1982 with the purpose of organising women towards improving their conditions of living, had been involved in women and children's rights work at an organisational level. A similar organisation was the National Association of Democratic Lawyers formed in 1984, in reaction to the passivity of the Nigerian Bar Association in the face of unprecedented repression unleashed by the military regime.³⁰

At its inception in 1987, the principal objectives of the CLO as a voluntary, non-partisan and non-governmental organisation were to defend and promote the principles and practice of fundamental rights as enshrined in the Nigerian constitution; to monitor the extent of compliance with the universal principles and practice of human rights in Nigeria by the government and its agencies; to conduct research into the sources and impact of abuses of human rights in Nigeria; and to inform and raise the conscience of the citizenry through workshops, seminars, lectures, rallies aimed at enhancing their ability to defend and exercise their democratic and inalienable rights.³¹ The establishment of the CLO opened a floodgate with respect to the establishment of other human rights organisations. Two years after the CLO was established, the Committee for the Defence of Human Rights, (CDHR), came into being with a medical practitioner, Dr. Beko Ransome-Kuti, as its national president. CDHR's aims and objectives were similar to those of the CLO and included working for the defence, sustenance, and promotion of fundamental human rights guaranteed in the Nigerian Constitution, the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and other international conventions and covenants on human rights. In the same year, the Gani Fawehinmi Solidarity Association (GFSA) was formed in solidarity with the human rights lawyer and campaigner, Gani Fawehinmi who was regularly hounded by successive military regimes. In 1990, the Constitutional Rights Project (CRP) was formed by Clement Nwankwo, a lawyer and one of the founding members of the CLO. The Universal Defenders of Democracy (UDD) was founded in 1992, also by lawyer, Mike Ozekhome, to 'champion and crusade for the observance, realisation and practice of human rights, democracy and rule of law on a global scale with particular emphasis on Nigeria'.

With the proliferation of human rights NGOs between 1987 and 1992, it was soon realised by activists within the NGO community that to be effective in their campaign and advocacy for human rights and democracy in the country, there was a need for NGOs to cooperate and coordinate their activities at a central level and pool their collective efforts towards their goals. There was the concern that unless there was a forum for coordinating the human rights and democratic aspirations of the NGO community in the country, these organisations would find themselves working at cross-purposes thereby making them more vulnerable to the repression and intimidation of the military regimes. There was also the realisation that the re-establishment of democratic civilian rule in the country offered the best prospects for an enduring solution to the deteriorating human rights situation in the country, and that this was the most urgent task, which confronted the human rights movement. These realisations led to the formation in 1992, of the Campaign for Democracy (CD), an umbrella organisation for 42 human rights organisations and pressure groups working for the enthronement of democracy

³⁰ The NADL was affiliated to the International Association of Democratic Lawyers based in Brussels.

³¹ Civil Liberties Organization, *Annual Report 1994*, p. 7.

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in Nigeria. Dr. Beko Ransome-Kuti, a medical doctor and leader of the Nigerian Medical Association, emerged as its national president. The declared objectives of the CD included the restoration of 'the sovereignty of the Nigerian people to self-determination, to choose how to be governed and who to govern; to promote the right of people to form their own political parties without interference; to campaign for the termination of military rule for all times, the respect of fundamental human rights and the rule of law, and the abrogation of all military decrees.'

Throughout the dictatorship of the Sani Abacha regime which saw the state execution of the environmental rights activist Ken Saro Wiwa and the international condemnation which the execution generated, the Campaign for Democracy (CD) provided the platform on which Nigerian human rights organisations and other pressure groups advanced a united front in their campaign for the termination of military dictatorship, the protection of human rights, and the restoration of democratic rule in the country. Although differences often arose among member NGOs in the CD over the strategies to be adopted in their campaign for democracy, there was a clear unanimity of fundamental purpose of the organisation. To a large extent, the CD proved quite effective not only in coordinating human rights and pro-democracy advocacy during this period of military dictatorship but also in articulating and advancing for the first time, a coherent and collective agenda for the human rights movement in Nigeria.

The Human Rights Movement and the Challenge of Relevance and Legitimacy

The point has been repeatedly made that the human rights movement in Africa faces a challenge (if not a crisis), of relevance and legitimacy. Makau Mutua has identified two basic features of the structure and operations of human rights organisations in Africa, which raises to the fore, questions as to their relevance and legitimacy in the African context. First, is that like their predecessors in the West, African human rights organisations are narrowly tailored to focus only on certain aspects of political life.³² Few adequately address issues of economic, social, and cultural rights, which are quite urgent in Africa given the levels of underdevelopment and mass poverty in the continent. Second, most human rights advocacy groups in Africa lack grassroots support. They are often exclusively funded externally by individuals, foundations and charities in the West. Very rarely are such organisations supported by local private finance or grassroots contributions.

This dependency on resources from the West, limits independent initiative and invariably influences the organisations' priorities and programs, thus raising concerns about paternalism, neo-imperialism and breeding suspicion and scepticism in some quarters. Mutua therefore cautions that there will be no future for the human rights movement in Africa unless it can secure domestic ideological, financial, and moral support from interested constituencies. More

³² Mutua argues that human rights organisations in Africa are 'miniature replicas of their more powerful counterparts in the West - Amnesty International, Human Rights Watch and the International Commission of Jurists (ICJ). They are funded by the same sources; they are organised similarly with almost identical mandates and similar strategies for advocacy and work.' Makau Mutua, *African Human Rights Organizations: Questions of Context and Legitimacy*, paper presented at the conference on 'Human Rights and Development in Africa: Establishing the Rule of Law' organised by the University of Illinois, Urbana-Champaign, 8-9 July 1999.

independence and not more dependence as is currently the case must be secured for the survival of the human rights movement in Africa. It is crucial, he argues, that the movement should be part of the people; its leadership and aspirations must reflect the needs and perspective of the ordinary citizens (Mutua 1999).

These observations bear particular relevance to the human rights movement in Nigeria. The first point relates to the question of funding and the independence of human rights organisations. Although some of the early human rights NGOs in Nigeria initially relied on individual funding and local support for their take off, the majority of them have over the years grown to rely mainly or solely, on funding from Western foundations and donor agencies to sustain their activities.³³ The difficult years of the Babangida and Abacha military dictatorship witnessed an unprecedented inflow of Western donor funds into the human rights NGO sector in Nigeria. Much of the funds came from government agencies like the United States Aid Agency (USAID), the Norwegian Human Rights Fund, the Swedish NGO fund, the Danish International Development Agency (DANIDA), the National Endowment for Democracy in the USA, the Canadian Fund for Civil Society and foundations such as Ford Foundation in the USA and the Friedrich Naumann Foundation in Germany.

This overwhelming dependence on external funds has raised questions as to how much control the NGOs have over their own programs and agenda. Donor organisations often tie their funds to particular projects, which reflect their own interests and policy agenda rather than those of the recipient organisations. The experience with the NGO community in Nigeria is that Western donor organisations and charities tend to support or orchestrate advocacy groups that advance the purpose they deem appropriate or essential to their home constituencies rather than the immediate needs of the recipient organisation. For instance, between 1987 and 1995 when many of the new human rights organisations were still trying to establish their offices and recruit staff for their operations, not many donor agencies were willing to commit their funds to such 'non-tangible' capacity building efforts. Many donor agencies were more interested in funding 'tangible' projects, which would more visibly project their activities at a time of increased international interest over the human rights conditions in the country. The funding of a national conference on extra judicial killings, for instance, would surely attract more interest and look more impressive in the annual report of a donor agency than say, the provision of tables and chairs for a rural field office of a human rights NGO.

Expectedly, NGOs have responded to this trend by tailoring their programs and activities to coincide with those of the donor agencies in order to guarantee further funding. This development has raised significant questions of legitimacy and independence for the human rights movement in Nigeria. Successive military regimes in Nigeria, confronted by opposition from pro-democracy and human rights groups, have always found it convenient to point to the dependence of these organisations on external funding to justify the accusation that they are destabilising neo-imperialist agents who neither represent nor speak for the ordinary people. During the Abacha dictatorship, representatives of some of these donor agencies were expelled

³³ In one notable exception to this trend, the Nigerian lawyer and prominent human rights activist, Chief Gani Fawehimi has consistently claimed that he neither seeks nor gets external funding for his human rights work which he funds himself from the proceeds of his lucrative law practice.

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from the country on the grounds that they were, in collusion with Nigerian NGOs, engaged in subversive activities.

Human rights NGOs have responded to these criticisms with the argument that unlike in the West, public awareness within civil society in Nigeria as in many parts of Africa, has not yet developed to a level where local support can sustain NGO activities. They claim that NGOs simply have no local charities and benefactors to turn to. Besides, resources do not exist and even where they do, because of the control that the state has over other sectors of public life, its hostility discourages the support that may have come from private and corporate constituencies.

This argument is tenable but only partly so. The reality within the human rights movement in Nigeria is that many NGOs have not in the first place, seriously and creatively explored means of local support such as membership contributions or the mobilisation of local private finance. If anything, there is pervasive complacent reliance on external support in the mistaken belief that not much can be done to mobilise domestic funding. This attitude clearly does not augur well for the future of the movement. Besides, grassroots organisations such as community development unions and urban-based ethnic associations in Nigeria have functioned well in terms of resource mobilisation and popular advocacy for many years without external support. There is no reason why the emergent human rights movement in Nigeria cannot explore and build on this tradition.

The second question of relevance and legitimacy that has been raised relates to the elitist nature of the human rights movement and the lack of adequate grassroots representation and support within human rights organisations. Such accusations of elitism and alienation from the rural masses were raised against the anti-colonialist agitations of the early nationalist movement and it is ironic that they recur with contemporary NGOs. With the NGOs however, these criticisms of elitism and alienation are even more strident, and perhaps, justifiably so.

Most of the human rights organisations are based in the urban centres and restrict their advocacy work to these urban centres, with about three-quarters of them based in Lagos alone. Although some of these organisations are represented in some rural areas, the main focus of their work continues to be urban-centred civil and political rights issues to the relative neglect of other economic and social rights issues that are more evident in the rural areas. The leadership of the human rights movement in Nigeria is similarly drawn predominantly from a narrow group of privileged urban elites most of whom are detached from the social reality of the poor rural majority. This alienation from the actual potential victims of human rights abuses cannot create a viable human rights movement.

Conclusion

In its quest for legitimacy and relevance, the human rights movement in Nigeria as elsewhere in Africa must strive to avoid the pitfalls of the earlier nationalist movement. Apart from consciously forging a working link with the grassroots, it must also work towards the articulation of a homegrown human rights and pro-democracy agenda suited to the peculiar challenges and aspirations of the Nigerian society. This should be one that resonates with popular needs and demands, addressing not only such 'visible' human rights abuses as arbitrary arrests or press

ensorship in the cities, but also the 'less visible' issues of poverty, culture-based gender inequalities, and underdevelopment which continue to violate the rights and liberties of the vast majority of rural poor.

The emergent human rights movement in Nigeria must also re-evaluate its seeming obsession with civil and political rights. A movement that only addresses these rights is not truly a rights movement but only a civil liberties movement. To be relevant and genuine, the human rights movement in Nigeria as elsewhere in Africa must be people based, people oriented and must address the whole spectrum of civil, economic, political, social, and cultural rights from a perspective that is well suited to the needs and aspirations of the contemporary state.

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