DOMESTIC NORMS OF HUMAN RIGHTS AND IMPLEMENTATION OF VIENNA DECLARATION AND PLAN OF ACTION; COMPARATIVE STUDY ON NIGERIA AND GHANA

BY

DR ALFRED ASHULIMHEN-IYOHA

CHIEF MAGISTRATE, EDO STATE JUDICIARY,BENIN CITY, NIGERIA.

PhD LAW, PhD STRATEGIC STUDIES, DIPLOMA CHRISTIAN THEOLOGY, TEL +2345055968440

2022

Introduction:

The seminar paper seeks to discuss the domestic norms of Human rights, Vienna Declaration and Plan of Action and its purpose, its implementation of the Vienna Declaration and Programme of Action using Nigeria and Ghana as a case study. The article will focus on the definition of rights, classification of rights, the Vienna Declaration and Programme of Action, the purpose of the Vienna Declaration, the domestic norms of Human rights using Nigeria and Ghana as a case study and which of the rights are guaranteed to Vienna Declaration.

What are Human Rights?

Human Rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted.[1]

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights without discrimination.[2]

Human rights are commonly understood as being those rights which are inherent in the mere fact of being human. The concept of human rights is based on the belief that every human being is entitled to enjoy his/her rights without discrimination.

Classification of Rights

There are three types of human rights norms or three generation rights:

a) **Civil and Political rights – liberty rights (First generation):** they deal with liberty and participation in political life. They are strongly individualistic and negatively constructed to protect the individual from the state. These rights have been legitimated and given

[1] What are human rights? <www.equalityhumanrights.com/human-rights/what-are-human-rights> Last accessed: 20th May, 2019

[2] United Nations; <www.un.org/en/sections/issues-depth/human-rights> Last accessed: 20th May, 2019

status in International law by Articles 3 – 21 of the Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political rights.

b) **Economic, social and cultural rights – equality rights (Second generation):** they guarantee equal conditions and treatment. They are not rights directly possessed by individuals but constitute positive duties upon the government to respect and fulfill them. Like the first generation rights, they began to be recognized after World War II. They are embodied in Articles 22 – 27 of the Universal Declaration and are enumerated in the International Covenant on Economic, Social and Cultural rights.

c) **Environmental and solidarity rights – egalitarian (fraternity) rights (Third generation):** collective-developmental rights of people and groups held against their respective states align with the final tenet of fraternity. They constitute a broad class of rights that have gained acknowledgment in international agreements and treaties, but are more contested than the preceding types. They have been expressed largely in documents such as 1992 Rio Declaration on Environment and Development, and 1994 Draft Declaration of Indigenous Peoples' right.

It has been argued by various scholars that these rights are interdependent and do not need to rely on each other to work, even though these rights as clearly seen cannot do without the other. The third generation right has been left for a later date, so the main focus is on the first and second generation rights. Both rights are interdependent, indivisible, interconnected, and all nations of the world must conform to the same rights. It is impossible to choose the first generation right without conforming to the second generation rights. An attempt to re-establish and solidify this rule that all countries are one and must therefore conform to the same rules was made in the Vienna Declaration and Programme of Action.

Vienna Declaration and Programme of Action

The World conference on Human Rights in Vienna in 1993 confirmed the universality of human rights, refuting those who argued that human rights were not universal but historically, socially and politically contextual and contingent. On June 1993, representatives of 171 states adopted the Vienna Declaration and Programme of Action of the World Conference on Human Rights, thereby successfully closing the two-week conference and presenting a plan for the strengthening of human rights work around the world. The Vienna Declaration marked the culmination of a

long process of review over the current status of human rights in the world. It also marked the beginning of a renewed effort to strengthen and further implement human rights instruments that have been constructed on the foundation of the Universal Declaration of Human Rights since 1948.[3]

The Vienna Declaration stated: "the Universal nature of all human rights and fundamental freedoms is beyond question; all human rights are universal, indivisible, interdependent and inter-related."[4] It also confirmed a role for international action to promote and protect human rights.

Building on the Universal Declaration of Human Rights, the VDPA recognized that the promotion and protection of human rights must be a matter of the highest priority for both states and the international community. It envisaged a strengthening of human rights norms and institutions at the national and international levels, and recognized the critical role that human rights defenders have to play in the realization of fundamental rights and freedoms.[5]

The Purpose of the Vienna Declaration and Plan of Action

- The Vienna World Conference on Human Rights was the tipping point in the recognition of women's rights as human rights. Before Vienna, feminists who sought this recognition were often dismissed as annoying or ridiculed when we sought human rights support for abuses like domestic violence, gang rape, or forced pregnancy.
- The call for protection in the VDPA must be seen as not only a call on States but also on the human rights systems, to step in and ensure that States are fully assuming their responsibility to protect, and that human rights defenders are able to fully and freely cooperate with the UN and regional human rights systems.
- The VDPA, in its implementation, marked a key moment in the history of the human rights movement. Take the story of national human rights institution (NHRIs). They were not invented at Vienna but they did receive a transformative injection of authority and status that, in turn triggered an astonishing growth worldwide. The VDPA, in its

[3] BBC World Service <www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/treaties_vienna.shtml > Last accessed: 20th May, 2019
[4] Vienna Declaration and Programme of Action 1993 Art 5
[5] Vienna Declaration And Programme Of Action + 20 page 1

own words reaffirmed, "the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights".

- The Vienna Declaration and Plan of Action (VDPA) are milestones in united efforts to give human rights and fundamental freedoms their due place in today's world. They represent a reference point, providing grounding for arguments to advance human rights in practice, more particularly the rights of children, indigenous people and women.
- The Vienna Plan of Action was put in place to strengthen the enjoyment of economic, social and cultural rights; additional approaches should be examined, such as a system of indicators to measure progress in the realization of the rights set forth in the International Covenant on economic, Social and Cultural Rights. There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.[6]

In order to remain true to the VDPA, the universal application of human rights must continue to be the cornerstone of cooperation between the UN and regional systems. The UN has an important role to play safeguarding international standards and regional mechanisms must abide by them.

Domestic Norms of Human Rights: A Comparative Study on Nigeria and Ghana.

Nigeria:

It can be rightly asserted that one of the greatest objectives of the post independence Nigerian Constitutions is the protection and promotion of human rights. Chapters two and four of the Constitution extensively deal with human rights issues. While chapter two is captioned, Fundamental Objectives and Directive Principles of State Policy, chapter four is entitled, "fundamental rights". Under the Fundamental Objective and Direct Principles of State Policy, the second generation rights, consisting of economic, social and cultural rights are extensively set out in sections 13 to 21. These rights which are essentially equalitarian and egalitarian in

[6] World Health Organization www.who.int/hac/techguidance/hbp/instruments_human_rights/en/index

character are rooted on the belief that the attainment of certain level of social and economic standard is a necessary condition for the enjoyment of the civil and political rights.[7]

Section 13 provides that: "It shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of, (the fundamental objectives and Directive Principles of State Policy)."[8] The first fundamental objective enacted in chapter 2 is the political objective which is that Nigeria shall be a state based on the principles of democracy and social justice.[9]

The fundamental rights guaranteed under chapter iv are essentially, the civil and political rights guaranteed in major international human rights instruments. The civil and political rights form the bedrock of the first Generation Rights. These rights are libertarian in character as they relate to the sanctity of the individual and his rights within the socio-political milieu in which he is located. The rights seek to protect and safeguard the individuals, whether alone or as a group, against the abuse of power, especially by political authority. Since what is involved is comparable with the rights guaranteed in the UDHR and International Covenant on Civil and Political Rights 1966, it will suffice to simply enumerate these rights without amplification as follows:

- Right to life[10]
- Right to dignity of the human person[11]
- Right to personal liberty[12]
- Right to fair hearing[13]
- Right to private and family life[14]
- Right to freedom of thought, conscience and religion[15]
- Right to freedom of expression and the press[16]

[7] K.Kartasshkin, "Economic, Social and Cultural Rights" in The International Dimensions of Human Rights, K. Vasak (ed) UNESCO, Paris Greenwood press, Westport Connecticut, 1982 at 111-133.
[8] Section 13 of The Constitution of the FRN, 1999 as amended.
[9] Section 14 and 15 CFRN, 1999
[10] Section 33 CFRN, 1999
[11] Section 34
[12] Section 35
[13] Section 36
[14] Section 37
[15] Section 38

- Right to peaceful assembly and association[17]
- Right to freedom of movement[18]
- Right to freedom from discrimination[19]
- Right to acquire and own immovable property anywhere in Nigeria[20]
- Right to receive prompt compensation for compulsory acquisition of property[21]

Issues on the enforcement of Human Rights in the Nigerian Constitution

- The Nigerian Constitution makes unmistakable distinction between civil and political rights on the one hand and economic, social and cultural Rights on the other hand. According to the Vienna Declaration: "all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."[22]

  This approach is inconsistent with what obtains at the international level. The UDHR recognizes the two sets of human rights. In the hierarchy of human rights, civil and political right have taken primacy being usually referred to as the "first generation rights" and the economic, social and cultural rights constitute the second generation rights. However, in transforming the Declaration's provisions into legally binding obligations, the United Nations adopted two separate International Covenants, which, taken together, constitute the bedrock of the international normative regime in relation to human rights. The problem created in the Nigerian Constitution between the rights, is that while the provisions of chapter IV containing the civil and political rights are justifiable, the

[16] Section 39
[17] Section 40
[18] Section 41
[19] Section 42
[20] Section 43
[21] Section 44
[22] I(5) Vienna Declaration and Programme of Action; Adopted by the World Conference on Human Rights in Vienna on 25 June 1993

provisions of chapter 11 dealing with social, economic and cultural rights are declared non-justifiable by the Constitution.

Also, because of this problem, the economic, social and cultural rights remain neglected in the country, which is one of the reasons Nigeria is currently living in abject poverty and hunger. A state with civil and political rights cannot be enjoyed thoroughly without the economic, social and cultural rights.

- Some of the rights in the Constitution of Nigeria seem discriminatory. For instance, right to acquire and own immovable property anywhere in Nigeria.[23] There is no clause stating that non-Nigerians can acquire a land in Nigeria. It states only that a citizen of Nigeria can acquire a land in the country. Articles 2 of the UDHR, 1948, provides that: "everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The Vienna Declaration and Plan of Action was put in place that these rights be followed, therefore, the constitutional provisions which limits the enjoyment of certain rights to Nigerians are unreasonable and unjustifiable, and not guaranteed by the Vienna Declaration.

Ghana:

Ghana is one of the more developed countries in Africa. It is a constitutional democracy with a strong presidency. Since the introduction of the Constitution of Ghana in 1992, fundamental and basic rights, namely human rights of every human being, have been recognized. The constitution of Ghana is the supreme law of the state and it established a structure for the government and defines fundamental political principles. It also guaranteed fundamental rights to every individual in Ghana for the first time. Chapter 5 is entitled Fundamental Human Rights and Freedoms[24] and provides for rights such as right to life, economic rights and women's right. Chapter 6 contains the economic, social and cultural rights.[25] Stating these rights in the Constitution was an important step forward for Ghana, as it meant that there could no longer be

[23] Section 43 CFRN, 1999 as amended
[24] Chapter 5 Constitution of the Republic of Ghana, 1996 as amended
[25] Chapter 6

excuses for the violation of human rights – neither by the government or customary or traditional reasons.

However, in practice, it is not usually the case. The constitution suffers from implementation problem, and a number of rights which are not enshrined by it, such as the Right to Health. Since 1992, power has been transferred between leaders of opposing parties several times, and peaceful changes of government occurred. Both factors indicate a stable democracy. Even though none of Ghana's leaders can boast of clean human rights record in Ghana during their leadership, the country and the government in general regarded in International circles to be moving in the right direction.[26]

Some of the shortcomings of the Constitution include:

- Death penalty
- Corporal punishments
- Article 13 of the constitution which guarantees right to life, provides for much wider grounds for the use of lethal force than is permissible under international standards, including to effect a lawful arrest or to prevent the escape of a person lawfully detained, for the purposes of suppressing a riot, or in order to prevent the commission of a crime by that person.
- There is no adequate protection against forced eviction in national law and there is no reference to housing rights in the constitution.

Rights Guaranteed Under Nigeria and Ghana

Both Nigeria and Ghana have their first generation rights justifiable if breached. The civil and political rights are followed judiciously with the absence of the second generation rights – economic, social and cultural rights. It is true that these rights are included in the Constitution of both countries, but there is a serious problem with the enforcement of the second generation rights. It makes it worse that these rights are affecting both countries, especially since both rights are expected to be one. Without food, shelter, job, it is difficult to have the most important right which is right to life. They need one another.

[26] Human Rights Advocacy Centre; History of Human Rights in Ghana www.hracghana.org/node/2986

Clearly, these two countries are having a difficult time enforcing the rights; especially the second generation rights. The United Nations have put out a sustainable development plan 2030 for issues pertaining to poverty, job security, women and children's rights and lots more especially in Africa where the second generation rights seem unenforceable.

Conclusion:

Achieving the goals of sustainable development in developing countries is a herculean task. Ordinary citizens in developing countries continue to face socio-legal challenges such as separation of powers, accountability of government agencies, amongst others, all of which stifle the realization of the right to development. Several factors such as poverty, lack of education, institutional capacity, cultural practices, education, attitudes towards endemic corruption to mention a few, also worsen living conditions of people living in developing countries.

Without doubt, concern for human rights is universal, which is why the concept of human rights has gained remarkable appeal and significance in our world of pluralism, diversity, and interdependence. Regrettably, the enjoyment of human rights in Nigeria, Ghana and other countries across the globe, has been hit by various impediments. This is why atrocious violations of human rights still exist in Nigeria and Ghana today. It is therefore imperative for each national government to take all legislative, judicial, and administrative measures in order to prevent, prohibit, and eradicate all human rights violations. It should not merely be fashionable to accept and adopt international human rights instruments. Rather, practical commitment ought and should be demonstrated at all times towards the realization of their noble objectives. It must also be noted that without a consensus among the political office holders and the legislature, the challenges in the realization of sustainable development in developing countries would continue until the people are determined to approach them collectively.[27]

[27] Olaitan Olusegun & Oyeniyi Ajigboye; Realizing The Right To Development In Nigeria: An Examination Of Legal Barriers And Challenges, 2015 167-168