European and Inter America Mechanism for the Promotion and Protection of Human rights, limitations, shortcomings, tensions across International Approaches and Application of Universally Recognised Human Rights Norms.

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Introduction

This paper will look at how human rights are protected and promoted. It will consider the challenges to protection and promotion of rights the specific areas of challenge, the remedies available and the main challenges to people living

in dignity, freedom, equality, justice and peace in Europe and the Americas including a touch on the African Sub region,. The obstruction of Human Rights promotion and protection. It will address the sovereignty, non-interference in internal matters, poverty and illiteracy, war and conflicts. It will seek to compare the Islamic Human Rights as a challenge both in Egypt where Mohammed Morsi was this week killed having been denied access to medical treatment in breach of his human rights just like Moshood Abiola in Nigeria in 1993. as a challenge and discuss the problems of UN Rights Council and its Special Investigator, Agnes Callamard in relation to recent killing of Jamal Khashoggi, Saudi Journalist, in Turkey and the damning UN Report especially indicting Saudi Crown Prince and Arabs deadly justice system.

The international benchmark for the protection and promotion of human rights rest with the United Nations. Indeed and according to the United Nations, human rights "ensure that a human being will be able to fully develop and use human qualities such as intelligence, talent, and conscience and satisfy his or her spiritual and other human characteristics.[1]

An understanding of the term ""human rights"" may not be complete without reference to the 1948 Universal Declaration. This was ratified by the UN General Assembly on 10 December 1948. It was an early attempt to prevent further atrocities, wars and strife that precipitated the 2 World Wars. Subsequently the International Bill of Rights containing a comprehensive list of human rights that governments must respect, protect and fulfil were vested

[1] International Human Rights in a Nutshell by Thomas Buergenthal, Dinah Shelton and, David Stewart. (St. Paul:West-Group,2002)

in Universal Declaration for Human Rights (UDHR), International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic, Social and Cultural Rights (ICESCR). The 5 basic human rights of marriage and family, right to own your own things, freedom of thought, freedom of expression, the right to public assembly are intrinsic and may not be compromised.[2]

Through the UN General Assembly Resolution 2200A (XX1) of 16th December 1966, major document ICCPR and ICESCR both became international law on 25th March 1976 in accordance with Article 9 of the Convention (International Convention on Civil and Political Right). ICCPR is the key international human rights treaty, providing a range of protection and political right. The ICCPR together with Universal Declaration of Human Right and International Convention on Economic, Social and Cultural Right (ICESCR) which focuses on food, education, health and shelter. They are all considered International Bill of Human Right. Although ICCPR is a legally binding treaty, but only to those states who ratify it. [3]

In other words, if state A is in signatory to it, it cannot invoke those obligations against another state B that is not a signatory and had not ratified the treaty.[4]

In 1992, the US finally ratified ICCPR sixteen years after it became international law and despite US been one of the key players in drafting the

[2] UN.OHCHR. ''International Human Rights Law".http://www.ohchr.org/EN/Professionalinterest/Pages/InternationalLaw.aspx
[3] UN.OHCHR. :"What are Human Rights?" http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx
[4] NESRI. Government Obligations Under Human Rights standards"". http://www.nesri.org/economic_social_rights/gov_obligation.html.

covenant. Before 8th June 1992, US was the only Western country that has deprived its citizens the opportunity to serve on the UN Human Rights Committee. It would appear that hitherto the US was creating doubt about its dedication and adherence to the covenant by cherry picking and choosing which provisions to adhere. For instance President Bush officially took exception to some covenant provisions that conflicts with UN domestic law including one on juvenile execution.[5]

That the US has yet to ratify ICESR would appear a misnomer, however UN cannot mandate it to do so. To the US, human right abuses by Iraq was not of apparent interest to them until the invasion of Kuwait. Bush and subsequent US Presidents continue to propose very generous trade package to China despite its failure to improve appalling human rights record. Double standard in dealing with human rights in the US, Rodney King 1991 comes to mind, the decimation of Syria and Libya etc. US' claim to be championing and campaigning for democracy and justice across the world is suspect if one were to review their foreign policy as a permanent member of UN Security Council.[6]

Foreign aid, grants, arms and ammunition supplies by the Western super powers to the third world are sometimes a barrier to the effectiveness of human rights effectiveness in its compliance. Whenever there is a problem occasioned by the super power, they are able to put a gloss over the issues and drop a few aid to ameliorate the harshness of their policy. Niger Delta and Shell

[5] United States Senate.
"Treaties."http://senate.gov/artandhistory/history/common/briefing/Treaties.htm
[6] Public International Law in a Nutshell by Thomas Buergenthal, Sean D. Murphy. (St. Paul: Thompson/West2007

environmental hazards come to mind. Despite campaigns, activists were killed, no thanks to the collusion of the corrupt leadership Nigeria at the time. In 2011, UN environmental programme assessment of Niger Delta found ongoing pollution across the area and accused shell of concealing damage to health from oil spills. Question then is whether this situation was rectified, Shell simply threw money at the problem and the corrupt and greedy officials pocketed the grant therefore continuing the poverty of the area where the people were ravaged and unable to carry out their farming. Extensive long term oil clean up exercise of the area were never undertaken. Lack of political will and ineffective Corporate Social responsibility of these conglomerates, Illiteracy and greed, poverty and lack of awareness continue to be the problem face. UN enforcement powers have failed to have any deterrent except at the (ICC) International Criminal Court where we see that more often than not, only African leaders and third world leaders are prosecuted.[7]

We have yet to see the ICC prosecute Western leaders yet we see them dump industrial waste in Africa in breach of UN policies and for gross human right abuses like the half-truths that enabled the illegal invasion of Iraq and Libya to take place. Meanwhile all is not doom with UN as we can see from the Mauritius women case (Communication Number 35/1978). In Mauritius until 1977, spouses of Mauritius citizens had the right of free access to Mauritius, they were immune from deportation and were de facto residents of Mauritius. In 1977 new immigration laws were passed limiting the right of the wives of Mauritian citizen only. Foreign husbands lost their residence status and had to

[7] Declaration of independence.http//www.archives.gov/exhibits/charters/declaration_transcript.html

apply for resident permit which could be refused or renewed anytime by the Ministry of Interior. This group of 19 Mauritian women used the first optional protocol to the ICCPR to complain about the discriminatory law to the UN Human Rights Committee. They complained that the law discriminated against them on the ground of sex in their ability to enjoy civil and political rights, including the right to be free from arbitrary and unlawful interference with family.

After considering the response of the Mauritian government, the Human Rights Committee accepted the view that the law made an adverse distinction on the ground of sex on the right to be free from arbitrary and unlawful interference with family and was therefore in breach of the ICCPR. [8]

Responsibility for Upholding Human Rights

Governments have the sole responsibility to protect and promote human rights. UDHR however states that “”Every individual and every organ of society….shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance**”** Universal Declaration of Human Rights (UDHR) clearly extends the ambit to include businesses, civil societies and individuals. That means we are to ensure we are our brothers keepers. Whilst governments must not deprive its citizens of a right or interfere for that matter with persons exercising their right. It can create

[8] Christine Science Monitor (Boston, Massachusetts) June 29,1992
https://shell.com.ng/oil-spills
https://howmuch.ng>articles>uk21

constitutional guarantees of human rights and provide ways for people who have suffered human rights violations to seek legal remedies from domestic and international courts. By signing international human rights treaties a government is showing respect for its citizenry.

Another responsibility of a government is to protect its citizens by ensuring it prevents private actors from violating human rights of others. By ensuring it educates people about human rights and prosecute abusers and domestic violence and crimes against humanity. By facilitating the people's enjoyment of basic human rights. By creating a public defender system, funding education campaigns and access to food.[9]

The Courts and The Parliaments As Institutions to Protect and promote Human Rights

A discourse of this nature will be incomplete without the 1215 Magna Carta, the first human rights treaty. In the story of our freedom 800th anniversary. It chronicles the bad old days of total power of the king being above the law. No rights, can't protest, no power, too many taxes unfair trial. King John was regarded as the ""worst king of England"" for he ignored the laws of the land and the wishes of his subjects. He was always going to the war with France and would lose the war. He keeps taxing the Barons to pay for his armies until one day they had enough. They marched to the fields of Runnymede, near London and forced him to sign Magna Carta. This document guarantees Barons their ancient rights:

[9] UN Charter: http://www1.umn.edu/humanrts/instree/auncharter.html

1. No new taxes unless a common counsel agrees
2. All free men have the right to justice and a fair trial with a jury
3. The monarch does not have absolute power. The Law is above all men and applies to everyone equally
4. Widows who own property do not have to remarry

It may be safe that the Magna Carta was the landmark and bedrock of modern human rights.

A gross violation of fundamental human rights which guarantees to freedom of association and freedom of religion took place only last week when the High Court in Kaduna declared as illegal a proposed Religious Regulatory Bill saying it infringed the fundamental human rights of Pastors to propagate Christianity. The governments proposed plan to issue Permits and License to Pentecostal Fellowship of Nigeria (PFN) Pastors. This was declared as inconsistent with S38 of the constitution of the Federal Republic of Nigeria1999 as amended and therefore illegal, null and void.

In like manner the UK judge issued a declaration of incompatibility against the UK constitutional law such that the Parliamentary Statute is incompatible with the ECHR, under Human Rights Act 1998 which gives effect to human rights set out in the ECHR. The HRA1998 says all courts in the UK must interpret and give effect the law in a way which respects a person's human rights as far as this is possible. Whether laws like delegated or secondary legislation made usually by Ministers {Regulations and Orders} they must not breach HRA. Common law made and developed by the courts are also subject to HRA.

Australia has no Bill of Rights in a single document like USA. So how does the jurisprudence develop in Australia? The Australian Human Rights Commission Act 1986 is an Agency established to and responsible for monitoring and promoting human rights protection. The Commission has responsibilities under the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992 and the Age Discrimination Act 1996

Limitations of Human Rights Mechanisms and Escalating Tensions through Domestic Policy

International human rights law is contained in many different types of documents, treaties, charters conventions and covenants. Ratifying these mean a country is legally obligated to protect the rights it describes. In the USA, the two thirds majority Senate must vote to ratify a treaty and before US may accede to such treaty. Through the Reservations , that is statement made by a country to modify the legal effect of certain provisions of the treaty, the country effectively is limiting or excluding the parts of the treaty it may not wish to comply with and such that may be inconsistent with its own constitution. So it has watered down the effect of such international treaty[10].

Party Politics play important roles in the scope for Human Rights. In UK for instance, due to fusion of Parliament wherein members of the Cabinet sit in the Parliament and in the cabinet, it is easy to enjoy privileges that would not be available if they were to sit as Executive all day without having the privilege

[10] UDHR. Drafting and Adoption: The Universal Declaration of Human Rights. ”http://www.udhr.org/history/default.htm

information of the Parliamentary debates. The case in point was the Brexit wherein on Thursday 23 June 2016 Britain voted by 51.9% to 48.1% to leave European Union. Thus forcing the resignation of David Cameron and the incumbent, Theresa May has also resigned and will vacate the office this month. The race is now on for the next Conservative leader or government. This stems from the fact that the fundamental right to exercise voting rights were held sacrosanct and respected, although the display of party politics had since meant that tensions at home in Britain continue to have spiral effects on economic ties and political persuasions including trade links around the globe. The campaigns that led to the referendum had been exposed to contain lies and half-truths. UN is unable to wade in as it was a domestic matter. However Brexit continues to have effect on the livelihood of over 250 million people across the globe yet UN is idling and may not be able to hold certain leaders to account for their part in keeping the world peace.

The lack of clear comprehensive strategic approach to the US foreign policy creates aggression and the current imbroglio between Iran and USA brings to fore how political persuasions in one country may affect the fortunes and other deals previously agreed by another administration thus bringing tensions and conflicts to peoples human rights across the globe[11]. US retaliates only yesterday through cyber-attack and disabled Iranians computer systems, thus crippling their weapons system after it claims that US surveillance drone was downed by Iran. US claims it was in international waters, whereas Iran claimed it was right inside its territory when it was shot down. It is instructive to note

[11] United Nations Cyber School Bus.” Understanding Human Rights”. http://www.un.org/cyberschoolbus/humanrights/about/understanding.asp

that tensions like this are harmful not only to Tehran's economy but also to the sub region and the world economy as a whole. Iran would ordinarily sell 3 million barrels a day, but it can only sell half a million barrels now.

Since the increased and escalating tensions, allies begin to be created and no resolution would be in sight. Iran is now prepared to breach the deal on nuclear programme, which deal was agreed to during Obama, US former president, but Trump decided to pull the plug on the deal and changing the goal post because the UN would dare not bite.

It then begs the question, why is US able to do this one may ask. It is because they have no structured comprehensive foreign policy approach and it is partly because of domestic party political leanings and they more or less provide the funding to the UN.

In similar manner we see China breathing down very heavy on its minority Muslims such that it has not only suffocated Islam, it has now wiped off people that are deemed to be criminally minded. These "pre- criminal elements" are brainwashed and detained just like the Muslims whose religious sites are now replaced with commercial developments. As a result separatist violence increases. China has built vast network of secure facilities called Rehabilitation camps called schools where torture, overcrowding, separation from families are the order of the day. The world is aware of these atrocities, but turn a blind eye. Political stability and economic development continue to encapsulate modern China and indeed the world such that human rights of people become secondary.

The human right position of children when it comes to their health and vaccination is another point to note. WHO (World Health Organization) in its effort to ensure that the children human rights are protected confirms that the vaccination in Philippines against pneumonia, measles and fever have reached such an alarming rate due to misinformation and misconception amongst the locals that the vaccine are wrong in their administration and might harm their children. Controversially too the makers of the product i.e. the vaccines, have yet to confirm that the ingredient used in the vaccine did not lead to deaths of Filipino Children. We see a lack of purposeful and proactive prosecution of these companies by the UN or WHO. The infection of misinformation in the Philippines has spread as far as lack of immunization. There is a great trust issues between the multinational companies and the Filipino government on the one hand and the citizens on the other. The UN is struggling to prosecute or to make compliance of its treaty organizations in order to restore faith and confidence in the vaccine. What they have resulted to doing instead of prosecuting is to get UNICEF to get further awareness of the locals and establish other local clinics in the community. The compliance level for the UN treaty organization are seriously inadequate.[12]

The escalating tensions between Iran and USA on the one hand, USA, Turkey and Saudi Arabia on the other must be mentioned. The killing of Saudi dissident in Turkey recently, Khasoggi is a case in point. Whilst every accusing finger points at Saudi Arabia, US continues to shield them from United Nation's prosecution. This escalating tensions do not augur well for the world

[12] Vienna Convention on the Law of Treaties.
http://untreaty.un.org/lc/texts/instruments/english/conventions/1_1_1969.pdf

populace. The aggression are becoming uncontrollable and may not be so controlled because of the fact that he who pays the piper dictates the tune. In other words, US foots the bill of the UN.