



**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**SCHOOL OF ARTS AND SOCIAL SCIENCE**

**COURSE CODE: PCR 819**

**COURSE TITLE: HUMAN RIGHTS AND DIPLOMACY**



**PCR819**  
**HUMAN RIGHTS AND DIPLOMACY**

Course Team

Prof. Jonathan C. Agwunobi (Developer/Writer) - NOUN  
Mr. Oyedolapo B. Durojaye (Editor/Coordinator) -NOUN



**NATIONAL OPEN UNIVERSITY OF NIGERIA**

National Open University of Nigeria  
Headquarters  
14/16 Ahmadu Bello Way  
Victoria Island  
Lagos

Abuja Office  
5, Dar es Salaam Street  
Off Aminu Kano Crescent  
Wuse II, Abuja  
Nigeria

e-mail: [centralinfo@noun.edu.ng](mailto:centralinfo@noun.edu.ng)

URL: [www.noun.edu.ng](http://www.noun.edu.ng)

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## **Introduction**

PCR819 is a three-credit unit postgraduate course. It is designed for students whose major discipline is Peace and Conflict Resolution. The course consists of twenty two units that present the new trends in Human Rights and Diplomacy. The material has been developed with examples suitable for Nigerian students. You are advised to attend the tutorial classes to discuss your difficulties with your tutors.

## **Course Aims**

There are objectives to be achieved in each unit of the course. Read these objectives and know them before studying each unit.

## **Working through This Course**

To finish this course successfully, you are advised to study the units, locate the recommended textbooks as well as other materials and read them. Do not forget other materials provided by NOUN. At particular points in each unit, you will find self-assessment exercises. You are advised to do them because they are geared towards testing your understanding of the topic discussed.

You will also find tutor-marked assignments at the end of each unit. You are required to submit these assignments to your tutor for assessment purposes. These tutor-marked assignments will count towards your overall performance in the course. There will be a final examination at the end of the course. The course will take you about seventeen weeks to complete. You have to allocate your time to each unit in order to complete the course successfully and on time. Do not jump units; study all of them because they have been developed hierarchically.

## **Course Materials**

The major components of the course are:

- (a) Study units
- (b) References
- (c) Assignments file
- (d) Presentation schedule

## Study Units

There are twenty two study units in this course. They are as follows:

### Module 1

- Unit 1 The Definition and Origin of Human Rights
- Unit 2 Philosophers and the Concepts of Human Rights
- Unit 3 UNO and Human Rights
- Unit 4 Universal Declaration of Human Rights

### Module 2

- Unit 1 International Human Rights Laws
- Unit 2 Human Rights in a Globalized World
- Unit 3 African Charter of Human Rights and People's Rights
- Unit 4 Human Rights in Africa

### Module 3

- Unit 1 The Beijing Declaration on Women's Rights
- Unit 2 The Rights of the Child
- Unit 3 AU Charter on the Rights and Welfare of the child
- Unit 4 Fundamental Human Rights

### Module 4

- Unit 1 Enforcement of Human Rights
- Unit 2 Human Rights Violations
- Unit 3 The Definition and Concepts of Diplomacy
- Unit 4 Diplomatic Duties and Actions

### Module 5

- Unit 1 Citizenship and Rights of Citizens
- Unit 2 Rule of Law and Human Rights
- Unit 3 Civic Duties and Citizenship Responsibilities
- Unit 4 From Human Rights to Animal Rights

### Module 6

- Unit 1 Human Rights Education
- Unit 2 Human Rights and Good Governance

## **Assessment**

This course is assessed in two ways: tutor-marked assignments and a final examination. In doing these assignments, you are expected to utilize the knowledge gathered during the course. As the university is now largely automated in its operations, the tutor-marked assignments are now done online and the grading immediate. This has largely helped in reducing the burden of slowness in accessing results by students. You are thus advised to adhere strictly to the deadlines given for their completion. You are expected to do four Tutor-Marked Assignments (TMAs) and the best three of these would be used for you. The tutor marked assignments will carry 30% of your total course grade. You are also expected to take an end of semester examination which is 70% of your total mark. This examination is also currently done on the electronic platform. It is thus obvious that you need to master your computer skills and become very techno-friendly.

## **Tutor-Marked Assignment**

Nonetheless, you are encouraged to attempt the Tutor-Marked Assignments found at the end of each unit. Doing this will greatly help your understanding of the course material. Even though your assessment will now be electronic, you should not sacrifice the better understanding that attempting these TMAs would grant on the altar of indolence. As noted above, TMAs carry 30% of your final assessment.

## **Final Examination and Grading**

The final examination of PCR819 will carry 70% of the total course grade. The examinations will comprise questions reflecting the kinds of the Tutor-Marked Assignment problems you have previously encountered in the course work. Expect questions from any part of the course. You are advised to go through your self-assessment using the Tutor-Marked Assignments before the examination. Make sure you have enough time in revising the entire course.

## **Facilitators/Tutors and Tutorials**

There are arrangements of tutorials provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the name and phone number of your tutorial facilitator as soon as you are assigned to a tutorial group. Your tutorial facilitator will mark and comment on your assignments, keep a close watch on your progress, and on any difficulties you might encounter as well as provide assistance to you during the course. Do not hesitate to contact your tutor

by telephone or e-mail if you need help. Contact your tutorial facilitator if:

- 1.0 You do not understand any part of the study units or the assigned readings;
- 2.0 You have difficulty with the Assignments; and
- 3.0 You have a question or a problem with an assignment.

You should try your best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.



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National Open University of Nigeria  
Headquarters  
14/16 Ahmadu Bello Way  
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Abuja Office  
5, Dar es Salaam Street  
Off Aminu Kano Crescent  
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e-mail: [centralinfo@noun.edu.ng](mailto:centralinfo@noun.edu.ng)

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**MODULE 1**

Unit 1	The Definition and Origin of Human Rights
Unit 2	Philosophers and the Concept of Human Rights
Unit 3	UNO and Human Rights
Unit 4	Universal Declaration of Human Rights

**UNIT 1 THE DEFINITION AND ORIGIN OF HUMAN RIGHTS****CONTENTS**

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	Definition of Human Rights
3.2	Types of Human Rights
3.3	Safeguards and Limitations of Rights
3.4	Origin of Human Rights
3.5	Scope of Human Rights
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

**1.0 INTRODUCTION**

Naturally human beings have certain inalienable rights which they must enjoy as they are all created equal by God. However, it is the duty of the state to protect these rights and guarantee their limitations, i.e that human beings must enjoy these rights equally without encroaching on others' rights.

Keeping this insight constantly in mind and carefully reading through this unit you should strive by discussion and education to project functional awareness and respect for human rights and freedoms in order to secure their universal and effective recognition among the people of any given society.

## **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- define human rights
- state the different types of human rights
- trace and explain the origin of human rights
- identify the scope of human rights
- list those who should enjoy human rights
- explain human rights activities in the society.

## **3.0 MAIN CONTENT**

### **3.1 Definition of Human Rights**

Human rights are the inalienable rights to which all human beings are equally entitled, irrespective of creed, nationality, race, political opinions, colour, social affinity or sex. The enjoyment of these rights is however, subject to respecting the rights and freedom of others. The government of a state has a duty to protect and guarantee the rights of her citizens. The constitutions of the different sovereign nations of the world contain the elements of this definition.

Eso (1985:211) states that human right is a right which stands above the ordinary law of the land and which is antecedent to the political society. Human right is a primary condition to a civilized existence.

The elements of human rights range from the inclusion of statements of protection, guarantee and limitations of "Fundamental Human Rights" with a preamble that expresses the equality of man and his inalienable rights. For instance, the 1999 constitution of the Federal Republic of Nigeria like that of any other sovereign nation, provides these rights in chapter iv section 33-43 under "Fundamental Rights." Let us now turn to these rights.

### **3.2 Types of Human Rights**

Although writers and scholars of human rights have grouped different types of rights into what is called "Three Generations of Human Rights," it will be reasonable to specify these rights as we have them in our constitution before briefly explaining what the "Three Generations of Human Rights" stand for. With this in mind, let us now look at the different types of rights inalienable to human beings. These rights are:

- (1) Right to life
- (2) Right to personal liberty
- (3) Right to dignity of human person
- (4) Right to freedom of conscience and religion
- (5) Right

to education (6) Right to work (7) Right to freedom of expression and publication (8) Right to freedom and family life (9) Right to property (10) Right to fair hearing (11) Right to social life and social amenities (12) Right to vote and be voted for at elections (13) Right to stand as candidate at elections (14) Right to serve in any public office (15) Right to criticize the government. We now discuss briefly what we call the three generations of human rights and there are:

- a. The second generation describes the social and economic rights which include the rights to just and favourable conditions of service, namely: fair or minimum living conditions, equal pay for equal work; right to social security; right to an adequate living standard, and right to education. The state has the imposed duty in securing these rights.
- b. The first generation describes the civil and political rights which are the rights that guarantee individual's participation in politics. Such rights include freedom of movement, expression and assembly; freedom to vote and be voted for.
- c. The third generation rights are referred to as collective or solidarity rights. These include rights to peaceful co-existence, rights to social life, right to social, economic and political development as a public good, the attainment of which should be the normative and practical aim of every individual and his society.

Without discussing these rights in detail, let us discuss just the right to life and to establish the inalienability of rights to man.

### **Right to life**

Every being has a right to live; this is the most crucial human right since without life there is no human being. What this means is that if there is no life a human being cannot exist to enjoy any other right. By implication, no individual, group or even government has any right to take the life of any man. Thus by extension, no man has the right to take his own life.

### **Safeguards and Limitations of Rights**

As we begin here by discussing the safeguards of human rights, it is good to admire a long list of inalienable human rights but it is better to ensure that human beings enjoy these rights and that is done through the following means:

1. Free press
2. Constitution
3. Existence of the principle of the rule of law
4. Independence of the judiciary
5. Existence of opposition
6. Vigilance of citizens.
7. Decentralization and separation of power

Taking two (constitution and the rule of law): The constitution carries statements on the safeguard of human rights. What this means is that human rights are safeguarded, entrenched in a written and rigid constitution. Where entrenchment and rigidity mean that provisions on the human rights made in the constitution become difficult for the government to change without the approval of not less than four-fifth (4/5) majority of all the members of each House of the National Assembly, that is the Senate and House of Representatives; and also the resolution of the House of Assembly of not less than two-thirds of all the states.

Under the rule of law, all persons are said to be equal in the eyes of the law and no one in the society is above the law. Hence the law should protect and guarantee human rights while strongly holding to the principle of human equality, dignity and liberty.

Just as there are safeguards for human rights, there are limitations to these rights too. The occasions of limitations are identified as below:

- 1) **National Emergency:** An imposition of curfew or emergency out-breaks of war or violent disturbances can cause a breach of human rights.
- 2) **Community protection:** The movement right of a community or people could be restricted just as threat of the presence of persons of unsound mind, alcoholics and drug addicts could also curtail human movement.
- 3) **Prevention of spread of diseases:** Individual could be denied their rights by restricting them to certain areas in order to prevent them from contacting a disease which breaks out in a community. Persons who contact such a disease could also have their movement restricted to a particular place.
- 4) **Suspicion of criminal offence:** This could lead to necessary arrest in order to locate the victims of the crime. From here our next topic for discussion will be the origin of human rights.



### 3.4 The Origin of Human Rights

Reading with thorough understanding into the works of various scholars in the areas of the origin of human rights shows that the origin of rights could be divine, natural or philosophical, etc.

The origin of human rights is said to be divine, from the fact that God is seen as the supreme law giver and creator of all laws whether divine or natural from which in turn human rights laws are derived.

This is true of the fact that no one living can convincingly refute the divine facts that:

- God created man equal in dignity and rights
- He endowed him with conscience, reason and self-control above that of animals
- He asked him to love his neighbours as himself, meaning he must live in peace with his fellow man.
- He asked him not to commit adultery. Since this should be familiar to us let us turn to the role of natural law in the origin of human rights.

**Natural Law:** As stated above, God-given law allows man to live in absolute peace and love with his fellowmen. But nature's law embodying natural rights drives the individual to protect his own life at any cost or sacrifice believing that

- might makes right
- every man has a right to everything, even to one another's body
- man must have aggressive instinct for self-preservation.

Indeed self-preservation is the first law of nature, which impels man to seek his self-interest at a cost even if he finds it necessary to enslave and kill. Here the aggressive nature of man under the influence of natural law gave rise to a philosophical thinking that will show how self-preservation which is the first natural law can best be attained in the society. And this was located in another law called the social contract, as we shall see in the discussion that follows.

**The Social Contract:** By the location of the social contract as the law that would best accommodate the evils of self-preservation in our society, a new philosophical thinking was injected into the evolution of human rights when great philosophers like Thomas Hobbes said, the social contract essentially means you do to others that which you would have them do to you instead of nature's law that might makes right. Under this philosophical thinking, the individual gains civil rights by entering into a contract with his fellows which is based on the principle

that a man be willing for the sake of peace to lay down his natural right, and be content to limit his liberties to the extent that others are willing to curb theirs.

Other great philosophers like Jean Rousseau and John Locke in support of the social contract concept say that the idea of slavery is repugnant in free society, "for might does not make right" nor does a man have natural authority over his fellow man. And this led to a joint philosophical thinking that created a distinction between the inalienable rights of man as natural right and the modern concept of human rights as those rights granted by a divine Being. What it means is that human rights are "potentially" derived from divine laws or God given laws.

Human rights originating from divine law has been described here as potential because the question of human rights became a functional priority when the UN General Assembly created a commission on Human Rights and Mrs. Roosevelt (the wife of Late President Franklin D. Roosevelt of the United States) became the natural choice as the commission's first Chairman.

The commission was mandated to produce a draft of a declaration that would embody all aspects of individual's rights and freedoms. Indeed the result was an extra ordinary document that brought about the Universal Declaration of Human Rights, which was adopted by a wide majority of nations in the General Assembly on December 10th, 1948. This is considered to be one of the greatest achievements of the United Nations, setting forth for the first time the functional awareness of "Fundamental Freedom for all without distinctions as to race, sex, language or religion."

From what we have discussed thus far under the origin of human rights, it is reasonable to say that human rights are potentially derived from divine laws and made universally functional by the United Nations General Assembly.

### **3.5 Scope of Human Rights**

By the scope of human rights we are looking at the universal or global coverage of human rights or otherwise. And for a start in confirming the Universality of human rights for the people of the world let us go through this UN Declaration of Human Rights which reads:

*The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations on 10th December, 1948, as a "Common Standard of achievement" for all people and all nations of the world, to the end that every individual and*

*every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures national and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction. In another confirmation, the UN General Assembly had in 1949 in a resolution entitled "Essentials of Peace" called upon every nation of the world to promote, in recognition of the paramount importance of preserving the dignity and worth of the human person full freedom for the peaceful expression of political opposition, full opportunity for the exercise in the Universal Declaration of Human Rights.*

While Article II of the Universal Declaration of human rights continues to confirm the universality of human rights that says: Everyone is entitled to all rights and freedoms set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, property, birth or other status, Article III concludes that “Everyone has the right to life, liberty and security of persons.” We have cited all these directly from the pages of the Universal Declaration of Human Rights as to convincingly establish the fact that human rights is for every human being on the surface of the earth.

#### **4.0 CONCLUSION**

Readings into human rights literature show that human rights are inevitable factors to the dignity of man crying for functional awareness among the majority of the peoples of the world today. Indeed, the public including the educated, government and NGOs should strive by discussion, education, funding to project a desired functional awareness for human rights and freedoms in any given society.

#### **5.0 SUMMARY**

In summary, human rights as a concept, defines man as "equal in dignity and rights". This is derived potentially from the divine laws, and made universally functional by the UN charter on Universal Declaration of human rights. Beyond this, we have shown in this unit the UN common standard definition, origin, safeguards, limitations, and scope of human rights as could be confirmed in the UN Universal Declaration of human rights.

## 6.0 TUTOR-MARKED ASSIGNMENT

1. What are fundamental human rights? Briefly discuss their limitations and safeguards.
2. The origin of human rights could be described as divine, natural or philosophical. Discuss.
3. Human rights are not universal in scope. Discuss.

## 7.0 REFERENCES/FURTHER READING

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Declaration of Human Right Articles of UN Universal Declaration of Human Rights. In *UN Human Rights Reference Handbook*.

## **UNIT 2     PHILOSOPHIES AND CONCEPTS OF HUMAN RIGHTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Definition of Philosophy
  - 3.2 The Philosophy of John Locke
  - 3.3 The Philosophy of Thomas Hobbes
  - 3.4 The Philosophy of Jean Rousseau
  - 3.5 Justice and Social Responsibility as Important Concepts of Human Rights
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

In the previous unit you were taken through a brief explanation of the philosophical origin of human right. In this unit, we will examine the concept of philosophy as dimension of human right and how it opened a vista of opportunities for great philosophical thinkers to crave for a good society and just laws that created room for desired and possible human rights.

Given this, the development of political and legal philosophy in the world today can be traced back as early as 427-347 BC to Plato. Since the Platonic period, philosophers like John Locke, Thomas Hobbes, Jean Rousseau, etc as we shall see in this unit, sought to determine the nature and meaning of the good society and just laws.

### **2.0 OBJECTIVES**

At the end of this unit, you will be able to:

- define and understand the meaning of the term philosophy
- trace and explain the philosophical dimension of human rights
- discuss the works of great philosophical thinkers and their effort in exposing and establishing this philosophical dimension
- explain the issue of philosophical concepts of human rights.

### 3.0 MAIN CONTENT

#### 3.1 Definition of Philosophy

The word philosophy is technically defined as the critical evaluation of all the facts of experience. Here the term critical implies that the philosopher must view all data and propositions with searching scrutiny, rejecting bias or prejudice of any kind. The key task of the philosopher is evaluation. Indeed this is to evaluate. And this differentiates him greatly from the scientist whose task is merely to describe selected facts or experience within his special field. For instance, while the psychologist describes human behaviour, as life worth living from one which is not worthwhile, the philosopher through

This search for wisdom, truth and reality, evaluates it in order to differentiate good from evil behavior; indeed, a life worth living from that which is not worth living. Hence, a life of human rights has been evaluated as worth living in this unit. Let us now look at the philosopher's search for wisdom, truth and reality.

- (1) The philosopher is prone to the search for wisdom as this perhaps is the first meaning the Greek gave to philosophy when that word wisdom was coined from two distinct words (philein-friend, Sophia - wisdom). To the ancient Greek who lived about 500 years before the birth of Christ on the islands of Miletus and Ionia, seeking knowledge may be a common inherent quality of man, but there are few who seek wisdom (which is invariably higher than mere knowledge) not just for personal gains but because they love wisdom. Wisdom, for the Greeks consists in the ability to draw meaning from experience, to judge experience wisely, to see beyond what merely meets the eyes. In those days, philosophy included all knowledge not because philosophy means science. Wisdom needs knowledge as basis because an ignorant person, a man who knows little or nothing about the facts of nature and existence, can hardly be wise in relating facts to each other. Logic, mathematics, physics, medicine, cosmology were all areas in which the philosopher was involved and interested.

The point is that the philosopher hopes to transcend these empirically limited judgements and experiences to a higher realm where the philosopher becomes like a seer and understands better than most men. Thales, Anaximenes, Anaximander, Democritus, Plato and Aristotle are a few of the Greeks historically recorded as the first philosophers in the West.

- (2) The philosopher is also prone to the search for the truth as he speaks of reality in the sense of being something substantial, something to be described or at least grasped by way of identifying some inherent qualities i.e. characteristics is possesses by its own nature. Reality is thus generally regarded as something that has its own independent existence. This means that those who regard matter as reality believe that its own existence does not depend on the prior existence of any other thing.

But there are many aspects of knowledge which do not directly relate to existence. When one says, for example, "it is raining outside" and another person, at the same place and time says "it is not raining outside", we want to know who of the two is making statement whose description corresponds with actual state of affairs outside.

Now, this is not talking of existence as such, but the relationship between an empirical situation that we label as true or false, which ever we regard as appropriate.

There is no doubt that many philosophers are engaged in this type of exercise. So when philosophy is defined as the search for Truth, it is basically this type of exercise that we have in mind. But philosophy goes beyond this elementary determination of the truth and falsity of empirical judgments. In fact, this exercise almost exclusively falls within the realm of the empirical sciences.

The truth that the philosopher seeks also has to do with the comparison of truths arrive at through different process - Physics, Biology, Medicine, Social Sciences, and Religion. In short, there is a sense in which philosophy as the search for truth tries to establish a Truth or even the Truth which is supposed to supersede all other truths in different spheres of man's rational endeavours. In fact, some will go as far as saying that the search for Reality is also the search for Truth because what is taken to be Reality is also regarded as the Truth.

- (3) The philosopher is prone to rational explanation of nature when Thales and other Ionian philosophers tried to find the basic stuff out of which objects in the world were made (not in the sense of Biblical creation, mind you) we are told they used human reason and relied mainly on the facts of experience. Before them, Homer and other Greek poets used both intuition and supernatural notions to explain nature. The idea of gods and goddess, of spirits that populate the world and control human affairs were the popular myths. Thales, Anaximanes and their associates wanted to explain nature in such a way that we need not go beyond into, the supernatural to explain experiences as change, motion and

permanence which are the most common features of human experience.

To give a rational explanation of nature is to postulate hypotheses and theories in which the supernatural play little or no role at all. So when Thales said "Everything is water" he remained within the human realm of understanding. May be it is important to note for the sake of history that none of the Ionian philosophers completely got rid of religious and supernatural ideas from their writing. What is true is that they refused to accept the purely religious explanations for the empirical conditions of things in the universe.

Today, Physics, Chemistry, Biology, Medicine etc as practiced in the West are heirs of this rationalistic approach of explaining nature. The point is not that any of these disciplines is philosophy of itself. The fact is that each of them is pursued from the orthodox point of view that nature is completely explainable in rational terms (at least until very recently). The philosopher comes in, for example, in the form of Albert Einstein who postulate that Physics can proceed on the assumptions that Time and Space are Rational while Max Planck's Quantum Theory illustrates how both of them can be multi dimensional. Let us now look at how some philosophers have been able to trace a better society, through their philosophical expectations.

### **3.2 John Locke's Philosophy**

Several philosophical thoughts have been advanced to explain how and why human rights became part of the philosophical expectations. One of these is that of John Locke whose philosophical work entitled the Second Treatise of civil government from where Thomas Jefferson, the first president of the United States of America took his independence declaration speech when he said:

*Men were created with certain natural and inalienable rights and most important being of life, liberty and the pursuit of happiness. And to protect these rights men had set up government whose authority rested on their consent. And when a government ceased to do what it had been set up for, its citizens had a right to change its order to once again provide for their safety and happiness.*

Here, Locke sees a free, equal and independent people agreed to be governed in return for certain secure enjoyment for their individual rights, which the courts and police powers of a government enforced. Here individuals have a moral right to be protected from the interference by governments or other individuals of their sacred rights. This is the



legal philosophy of man's equality in dignity and rights and inevitable justifications for its protection by a limited government.

Beyond this anyone will be right to say that American constitution was founded by John Locke's philosophy.

### **3.3 The Philosophy of Thomas Hobbes**

The philosophy of Thomas Hobbes (1588-1679) is founded on a social contract theory, which contributed theoretical foundations for modern democracies. He saw happy men in a society visibly gripped with the fear of violent death at the hands of another.

Given this, Hobbes declared that man is fundamentally an untrustworthy corrupt person who has to protect himself from his fellow men just as beasts in the jungle do. Beyond this he saw that man was not only corrupt but also quarrelsome and belligerent that, except for very brief intervals between quarrels, he is constantly fighting others.

For Hobbes there are three main reasons for human aggressiveness namely, competition for self-gain, distrust of others based on the need for self-preservation and thirst for self-glory the need to be looked up to or respected. Competition he says impels men towards violence, distrust of others calls for a strategy of self-defense, and the thirst for glory requires subtle diplomatic tactics.

In all these Hobbes saw natural law as how a natural human being, seeking to survive and prosper, would act. And concluded that the only way natural justice could work in such a hostile society is for human beings to yield to the demands of a social contract, whereby all gathered their will and consent together and handed it over to a powerful ruler who in turn, gave them protection and security. This is true of the foundations of the theory of a social contract between the ruled and ruler.

### **3.4 The Philosophy of Jean Jacques Rousseau**

Rousseau philosophy saw man as being born free but everywhere in chains. And this led him into suggesting the existence of a social contract, which he authored in a book, entitled the social contract in (1762). And in it he proclaimed that the only moral political system is the one in which the community and its people were sovereign and free. Rousseau favoured a community where a group of free individuals agree for the sake of their common (Social contract) good and protection to form institutions to govern themselves. Indeed a community on social contract. What we now know as Rousseau's philosophy supports what

we had earlier discussed on Thomas Hobbes as we heard him say that there is a contract between the government and the governed, which of course led to John Locke's theory that failure of the government to protect the rights of the people is indeed a failure which justifies the removal of the government. This justifies the people's rebellion against bad government.

Thus far we have heard John Locke, Thomas Hobbes Jean Rousseau speak philosophy into human rights operations. This is indeed the philosophy of social contract, of limited government of popular control, of natural rights, of justification for rebellion. The philosophers are saying that all men rich or poor are equal under the law. And all men are endowed with certain rights which belong to them as human beings and these rights cannot be denied them because man has created a limited government for the practical purpose of protecting these rights. Given this, Americans are always proud to say that their constitution and its operations were steeped in the philosophy of the social contract as proffered by these great philosophers. The same philosophy has relevance for us today because we also run the same type of constitutional government.

### **3.5 Justice and Social Responsibility as concepts of Human Rights**

An important concept within human rights is that of justice. This is the heartbeat of all human rights. Indeed human right is meaningless without justice. This is because justice is so vital to human rights. That it must control the legal, judicial, social, economic and political aspects of our activities in the society. It is indeed the righteous growth of any society.

Justice indeed demands that we should uphold the dignity and ensure the security and integrity of all persons; encourage and promote a law-abiding state; and institute an impartial administration of justice to safeguard the rights of the vulnerable members of the society.

It also demands that we help people to have access to fundamental sources in the areas of health and education, equal opportunities and protection for low class human being. This makes **Social Responsibility** another very important concept of human rights. This is true because social responsibility as a concept of human right demands that we strongly stand on behalf of those who suffer and are victims of injustice. And that we should defend the victims of injustice in championing their causes and help them out of injustice. Indeed let there be justice in human dignity and worth. The worst society of man is tied to the wickedness of injustice.

## 4.0 CONCLUSION

With what have been discussed in this unit, the reader is now able to understand the meaning of the word philosophy and at the same time extensively explain how and why human rights became part of philosophical expectations, while creating a vital link into justice and social responsibility.

## 5.0 SUMMARY

The philosophical thinking into the relationship between the society and individuals in the guaranteeing and protecting individual human rights by great philosophers like John Locke, Thomas Hobbes, and Jean Rousseau has exposed us to the place of philosophy, of social contract, the philosophy of limited government, of justification to rebellion and the philosophy of popular control in human right building.

## 6.0 TUTOR-MARKED ASSIGNMENT

1. Define the word philosophy.
2. Define the philosophical positions of John Locke, Thomas Hobbes and Jean Rousseau in their efforts to establish a society that guarantees and protects human rights.
3. Briefly explain what is justice and social responsibility.

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## **UNIT 3 THE UNITED NATIONS AND HUMAN RIGHTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objective
- 3.0 Main Content
  - 3.1 United Nations Concept for Human Rights
  - 3.2 Clauses Concerning Human Rights
  - 3.3 International Bill of Human Rights
  - 3.4 International Covenants on Human Rights
  - 3.5 Human Rights Council
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

The failure of the League of Nations to prevent global wars, huge loss of life and gross abuse of human rights led to the 1945 Yalta Conference where Allied powers agreed to create a new world organization called the United Nations Organization to take over from the League of Nations. This unit exposes the reader to the effective concern the United Nations had in the global promotion of human rights.

### **2.0 OBJECTIVE**

At the end of this unit you should be able to:

- discuss the genuine concern for effective promotion of human rights by the United Nations Organization

### **3.0 MAIN CONTENT**

#### **3.1 United Nations Concern for Human Rights**

Information from the United Nations office of public information New York in 1978 reveals that the concern for the promotion and protection of universal respect for and observance of human rights by the United Nations is an expression of ever increasing interest of the global outcry for the urgent need to promote human rights in a hostile world.

The roots of this concern could be traced from the horror of the world wars, and the huge losses of life and hostile gross abuses of human rights that followed the failure of the League of Nations. In response to

this the United Nations and its members developed much of the discourse and the bodies of law, by which human rights law is defined as a system of laws, both domestic and international designed to promote human rights. This includes a number of treaties which are intended to punish some violations of human rights such as war crimes, crimes against humanity and genocide.

### **3.2 Clauses Concerning Human Rights in the UN Charter**

United Nations concern for global promotion and protection of human rights did not end in discourse and body of laws. Indeed it featured effectively among the purposes of the United Nations as seen in the approval by the San Francisco Conference of June 25th, 1945 during which the United Nations charter scaled the effective universal promotion and protection of human rights in a number of clauses namely:

The peoples of the United Nations express their determination to "reaffirm faith in fundamental human rights in dignity and worth of the human person, in the equal rights of men and women and of nations large and small"

And in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion". These clauses were due above all to events, which occurred immediately before and during the Second World War. What these and other human rights clauses in the charter of the United Nations reflect is the reaction of the international community to the horrors of the World War II and the wickedness of the regimes that carried out such war.

From what we discussed thus far, it is true to say that the experience of the after-effect of world war and the failure of the League of Nations to prevent the international Agency or body for the promotion and protection of human rights was one of the essential and inevitable conditions of international peace and progress, and of course this conviction led the United Nations into making a number of statements, declarations and proposals that today made the United Nations a very effective organ for the promotion and protection of human rights in the world.

### **3.3 International bill of human rights**

As the United Nations concern for the promotion and protection of human rights continued, a proposal for international bill of human rights was made and considered a draft declaration of fundamental Human Rights that prepared the way into Universal Declaration.

Given this, several drafting sessions were held by commissioned committees. And in one of the sessions in the late 1947 the commission decided to apply the term

International Bill of human rights" to a declaration of human rights, a convention of human rights, and measures of implementation and to call the convention "The covenant of Human Rights". This led to the adoption and proclamation of Universal Declaration of Human Rights in 1948.

### **3.4 International covenants on human rights**

These are instruments of the Universal Declaration of Human Rights that make up the International Bill of Human Rights. These instruments are:

1. The International covenant on economics, social and cultural rights.
2. The international covenant on civil and political rights.
3. The optional protocol to the international covenant on the civil and political rights.

The two covenants and the optional protocol, were adopted and opened for signature and ratification by the UN General Assembly on 19 December, 1966 and on the 3rd January, 1976 the International covenant on economic, social and cultural rights entered into force. This was simultaneously covenant on civil and political rights, and the optional protocol. And as of January 1st, 1978, 46 states have ratified the International covenant on Economic, social and cultural rights, the international covenant on civil and political rights got 44 states while the optional protocol got 16 states.

What is important to note here is that international covenants on human rights is a major United Nations concern-instruments projected to make sure that individuals state or institutions create enabling conditions whereby everyone will enjoy his civil and political rights as well as his economic, social and cultural rights "as stipulated in the Articles of each covenant. For instance Article 1 of each covenant states that the right to self-determination is universal and calls upon states to promote the realization of and to respect that right. Each covenant projects the obligation of member state to strive for the promotion and observation of human rights.

### **3.5 Human rights council**

The functions of Geneva based human rights council created by the United Nations at the 2005 world summit to replace the discredited United Nations Commission on Human Rights is a practical projection of the United Nations, further concern for the promotion and protection of human rights.

The major task of the council is to investigate human rights violations through independent experts retained by the council for sole purpose of investigating human rights violations.

The council may ask the UN Security Council to take direct action, sanctions or refer cases to the International Criminal Court (ICC) when human rights violations occur.

The council is based in Geneva and meets three times a year and could meet any time in order to respond to urgent needs.

### **4.0 CONCLUSION**

In conclusion, our discussion in this unit speaks of the result-oriented concern mechanisms put in place by the United Nations Organization in order to promote and protect human rights as soon as it came on board in 1945.

As the reader must have also noticed in our discussion, this is indeed in response to the failure of the League of Nations to stop world wars and the gross abuses of human rights that followed especially the Second World War.

### **5.0 SUMMARY**

In summary, the effective concern to promote and protect human right by the United Nations Organization was immediately expressed into action as soon as it took over from the failed League of Nations in 1945. That expression seriously found itself into instruments for effective human rights embodied into "The covenant on Human Rights" that led to the adoption and proclamation of the Universal Declaration of Human Rights in 1948.

## 6.0 TUTOR-MARKED ASSIGNMENT

1. United Nations instrumental concern for human rights was the result of a functional failure of the League of Nations. Discuss.
2. Write briefly on the International Bill of Human Rights and “The Covenants on human rights”.
3. What is human rights council for?

## 7.0 REFERENCES/FURTHER READING

Chaulan O.P. (2004). *Human Rights: Promotion and Protection*. Anmol Publications.

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Graham, J.; *et al.* (1996). *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*. Manchester University Press.





### 3.0 MAIN CONTENT

#### 3.1 Universal Declaration

On December 10th, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories”.

*Whereas* recognition of the inherent dignity and of the equal inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

*Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

*Whereas* it is essential to promote the development of friendly relations between nations,

*Whereas* the peoples of the United Nations the ..... Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

*Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, 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, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction.

### **Article I**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### **Article II**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other political status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### **Article III**

Everyone has the right to life, liberty and security of person.

### **Article IV**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### **Article V**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **Article VI**

Everyone has the right to recognize everywhere as a person before the law.

**Article VII**

All are equal before the law and entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article VIII**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article IX**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article X**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article XI**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article XII**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article XIII**

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article XIV**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from contrary to the purposes and principles of the United Nations.

**Article XV**

1. Everyone has the right to a nationality
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article XVI**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article XVII**

1. Everyone has the right to own property alone as well as in association with other.
2. No one shall be arbitrarily deprived of his property.

**Article XVIII**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or believe, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article XIX**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article XX**

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

**Article XXI**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be basis of authority of government; this will be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article XXII**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article XXIII**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interest.

**Article XXIV**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether gotten in or out of wedlock, shall enjoy the same social protection.

**Article XXVI**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article XXVII**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific or artistic production of which he is the author.

**Article XXVIII**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article XXIX**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

### **Article XXX**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

### **3.3 Importance of the Declaration**

The importance of the Declaration of Human Rights since its proclamation in 1984 is clearly seen in the fact that:

1. They have been cited and incorporated in national constitutions, municipal legislation and court decision.
2. It has exercised a powerful influence throughout the world both internationally and nationally in creating awareness towards the importance of Human Rights.
3. Its provisions have been cited as justification for actions taken by the United Nations and many other international organizations and have inspired the preparation of international human rights instruments both within and outside the United Nations system.
4. The declaration is seen and referred to by the UN General Assembly as a “COMMON STANDARD OF ACHIEVEMENT” and as a basis for decisions calling upon Governments to take the necessary measures to promote respect for and observance of, human rights and fundamental freedoms.
5. It has clauses as a standard of conduct or as a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards.
6. Many of its provisions, have often been invoked in judicial proceedings and cited in decisions and opinions of many tribunals.
7. The international court of justice makes judicial use of the declaration in its advisory opinions and other decisions.
8. It has created regional conversations and constitutional provisions to ensure the enjoyment of human rights and fundamental freedoms by all individuals living in particular parts of the world.



The European convention for the protection of human rights signed at Rome on the November, 1950 is such an instrument.

### **3.4 Influence of the Declaration**

The proclamation of universal Declaration of Human Rights in December 10, 1948 came with a far reaching influence on the promotion and protection of human rights throughout the world as evidenced below:

- a. In 1972, it condemned the repressive measures which had been taken against American labourers in Namibia and called upon the Government of South Africa “to end immediately these repressive measures and to abolish any labour system which may be in conflict with the basic provisions of the universal Declaration of Human Rights”.
- b. Member nations have been influenced to make provisions in their national constitutions for the promotion of Human Rights, for instance, the constitution of Rwanda of 1962 stated that fundamental freedom as set forth in the Universal Declaration of Human Rights, shall be guaranteed to all citizens. And also the constitutions of Cameroon (1972) Ivory Coast, Niger and Mali (1960) Burundi (1962) Upper Volta and Dahomey (1970) Madagascar (1959) Gabon and Mauritania (1961) Republic of Congo, Senegal and Togo (1963) Guinea (1958) and Zaire (1967) have devotedly carried out the principles set out in the Declaration. In Bolivia its constitution carries in its preamble that national education shall be inspired by the Universal Declaration of Human Rights.
- c. It is also important to note that a number of decrees and municipal laws have been promulgated since the proclamation of Universal Declaration of Human Rights in 1948 for the purpose of eliminating discrimination refer to the principle of equality and non-discrimination set out in the Universal Declaration of Human Rights. For example in Panama a law enacted in 1956 to prohibit discrimination provides that discrimination on account of colour or race is a flagrant violation “of the national constitution” and of the Universal Declaration of Human Rights.

### **3.5 Observation of anniversaries of the declaration**

In order to show the great importance, the United Nations attached to the protection of human right, it declared December 10th of every year since

1950 as Human Rights Day. Individuals, organizations and interested states join the United Nations to celebrate this great day.

The celebration is always full of exciting events such as special message concerning human rights from the Secretary-General. And commemorative meetings always held by the General Assembly and in such commemorative meeting held in 1968 the General Assembly declared it as International Year for Human Rights and its main feature was the International Conference of Human Rights held at Teheran.

Also to further show how important Human Rights is to the United Nations prizes have been awarded at five-year intervals for outstanding achievements in the field of human rights. A committee composed of the presidents of the General Assembly and of the Economic and Social council and the presiding officers of the commission on Human Rights, the commission on the status of women and the subcommission on prevention of Discrimination and protection of minorities select the award winners.

#### **4.0 CONCLUSION**

The unit has informed us that the United Nations organization did not only take over from the point where the League of Nations failed, but unlike the League of Nations it made a Universal Declaration of Human Rights possible. And above all it requested her member states to visibly promote and protect human rights as a foundation of freedom, justice and peace in the world for all human beings irrespective of race, colour or creed.

#### **5.0 SUMMARY**

The message of the Universal Declaration of Human Rights is to recognize, establish and accept the inalienable dignity of man. Hence the declaration says that all human beings are born free and equal in dignity and rights.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

If the United Nations organization through its general Assembly made universal Declaration of human rights possible then convince your reader that it has also successfully influenced her member-state into successfully promoting and protecting human Rights in their respective states.

## 7.0 REFERENCES/FURTHER READING

Chaulan O.P. (2004). *Human Rights: Promotion and Protection*. Anmol Publications.

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## MODULE 2

Unit 1	International Human Rights Laws
Unit 2	Human Rights in a Globalized World
Unit 3	African Charter of Human Rights and People's Rights
Unit 4	Human Rights in Africa

### UNIT 1 INTERNATIONAL HUMAN RIGHTS LAWS

#### CONTENTS

1.0	Introduction
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3.1	The Meaning of International Human Rights Law
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#### 1.0 INTRODUCTION

This unit will attempt to explore the meaning and historical development of international human rights law within the context of global observation of human rights. Hence the reader should seek to appreciate the functional place of international human rights law in a global setting.

#### 2.0 OBJECTIVE

At the end of this unit, you should be able to:

- educate the public on what international human rights law is and how it can be appreciated in a global setting.

#### 3.0 MAIN CONTENT

##### 3.1 The Meaning of International Human Rights Law

Professor D. Shelton of Notre Dame Law School says international human rights law is an instrument that protects individuals and groups from abusive action by states and state agents.

International human rights law has been so defined because the coming of globalization and its components of failed states, trade liberalization, economic deregulation and privatization across borders led to the emergence of powerful non-state actors who have resources sometimes greater than those of many states. Hence these international human rights law has been designed and defined to restrain abuses by the agents in a global setting. The functional usefulness or international human rights law in a global observation of human rights is seen in the fact that while globalization has enhanced the ability of civil society to function across borders and promotes human rights, other actors have gained the power to violate human rights in unforeseen ways. The demand here is that globalization should be adequately governed by existing international human rights laws.

### **3.2 Historical Development of International Human Rights Law**

The useful link that exists today between international human rights law and globalization is a historical one. The movement against slave trade, which was largely a private enterprise led to the removal of destructive forms of weaponry such as gas warfare and dum-dum bullets used for human dehumanization. This movement exposed the positive side of international trade and technology.

During this period, the telephone, the telegraph, and radio transmissions opened up the world to rapid trans-border communications, the development of steamship and railroads allowed free movement of goods and services from one market to another across nations while the abuses that came with industrialization provoked efforts to improve working conditions and the standard of living in many countries.

Given the need and desire to improve the peoples working conditions and standard of living broader efforts were made to establish international protection for human rights from where further efforts were made to avoid competitive distortion and enhance the protection of fundamental rights of workers through the establishment of international labour standards which of course, gave birth to the establishment of labour organization (ILO) in 1919. The coming of ILO ensured the participation of business, labour, and governments in developing workers rights and minimum labour standards for member states. And the standards adopted are addressed to member states for implementation and compliance.

This led to the emergence of international protection of civil and political rights, from where international human rights law today existed internationally and treats the states as the principal threat to individual

freedom and well being. It also seeks to protect persons and group of persons from abusive action by states and state agents, for example from slavery, trade agreement violations, genocide and forced labour.

### **3.3 The Protection of International Human Rights Law**

Our knowledge of the historical development of International human rights law will not be complete without a clear understanding of how international human rights law are protectively applied.

Indeed while domestic human rights law speaks of its application and protection as solely a state affair, the application and protection of International human rights law remains a contentious issue. This is so because the non-interference concept of sovereignty and divergent cultural heritage found among independent nations of the world potentially hampers the application of International human rights law. Hence there is no common principle or standard application or protection measures that can be acceptable of to all member nations of the world.

To this end the UN Universal Declaration of Human Rights (UDHR) in 1948 which directed the member nations of the United Nations to promote and protect "a number of human, civil, political, economic and social rights, asserting these rights are part of the foundation of freedom, justice, and peace in the world" stands in the gap for the missing common principle as we shall see in our discussion of UN as a universal authority in monitoring international human rights abuses.

Indeed these declaration was the first international legal effort to limit the behaviour of states and press upon their duties to their citizens concerning their International human rights law is reflected in the third clause of the preamble to the universal declaration of human rights of December 10th 1948, thus,

“Whereas it is essential if man is not to be compelled recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”

Reminding us of what I said earlier in this unit concerning how the universal Declaration of Human Rights has directly or indirectly overtaken the problem of lack of any common principle that should guide nations in promoting and protecting international human rights law, we can look at the role of the Universal Declaration of Human Rights in this direction.

This is true of the fact that the UN, Universal Declaration of Human Rights empowered the United Nations as the only multilateral governmental agency with universally accepted international jurisdiction for universal human rights legislation. And by this empowerment the United Nations, Human Rights Council, created at the 2005 world summit to replace the discredited United National Commission on Human Rights has a mandate to investigate violations, of human rights, among member nations.

The effectiveness of the Human Rights Council to carry out this universal task is seen in:-

1. Member nations seriously committing themselves to the promotion and protection of human rights in their state after ratification of the UN Charter for universal declaration of human rights.
2. A number of treaty-based bodies to monitor and promote violation - free human rights, in member states.

This is seen in a committee of independent experts set up by Human Rights Council to monitor the implementation of the core international human rights treaties such as:

1. **Human Rights Committee:** The eighteen-member committee expresses opinions on member countries and pronounces judgments on individual complaints against countries which have ratified the treaty.
2. **The committee against torture:** Receives states' reports on their performance every four years and comments on them. It is free to visit and inspect individual countries with their consent.
3. **The committee on the rights of the child:** Makes comments on the reports submitted by states every five years.
4. **The committee on the Elimination of Racial Discrimination** conducts regular reviews of countries' performances. And can make judgments on complaints. And can also issue warnings to attempt to prevent serious contraventions of the convention.
5. **The committee on Economic, cultural and social rights:** makes general comments on ratifying committee performance. No power to receive complaints.
6. **The committee on the Elimination of discrimination against women:** It receives states reports on their performance and comments on them, judgments on complaints against countries which have opted into the 1999 optional protocol.

Beyond this, Human Rights council which is rightly described as the sub-commission on the promotion and protection of human rights has globally undertaken studies on the "Transnational corporations and the Impact of Globalization on the Enjoyment of Human Rights and in their findings came out with the following established international application of human rights guarantees to non state actors.

1. The relationship between the enjoyment of human rights and income distributions.
2. The impact of globalization on racism and xenophobia
3. Trade liberalization and its impact on human rights that have pressed on all governments and forums of economic policy to take fully into consideration the obligations and principles of human rights in the formulation of international economic policy.

Apart from all that have been said about UN Human Rights Council as a human rights monitoring instruments there are also nongovernmental organizations such as Human Rights Watch, World Organization against torture, Amnesty International, Anti-Slavery International and Freedom House that collect evidence and documentation of alleged human rights abuses and apply pressure to enforce human rights laws, across the world.

Despite any scholarly argument that may emphasis on international human rights law not showing any "common principle" for promoting and protecting human rights among member nations of the United Nations. This unit has made attempts to let the reader know these international human rights law monitoring instruments such as the UN Human Rights Council and non-governmental organizations such as Amnesty International, Human Rights Watch etc that have overtaken the problem of lack of common principle issue.

#### **4.0 CONCLUSION**

With the bringing of nation together into what is today called global village through globalization there is emergence of powerful non-state actors who have resources sometimes greater than those of many states. And with such powers these non-state actors have been able to violate human rights in unforeseen ways. Hence international human rights law became established in order to protect individuals and groups from abusive actions by non-state actors.



## **5.0 SUMMARY**

International human rights law is designed to restrain powerful states and state agents from abusing individual and groups rights within the political, economic and social operation of the global village.

## **6.0 TUTOR-MARKED ASSIGNMENT**

International human rights law is designed to restrain abuses to powerful states and state agents in a global setting. Explain.

## **7.0 REFERENCES/FURTHER READING**

Falk, R. (1998). *Law in an Emerging Global Village: A Post - Westphalia Perspective*, at xxiv.

Steiner, H. & Aliston, P. (2000). 'International Human Right in context 940' (2nd ed.)

## **UNIT 2 HUMAN RIGHTS IN A GLOBALIZED WORLD**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 The Meaning of Globalization
  - 3.2 The Characteristics of Globalization
  - 3.3 Non-State Actors
  - 3.4 Globalization and Human Rights Law
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

This unit seeks to establish the place of human right in a globalized world. And as we read through this unit, we should appreciate the fact that every person in the world today possesses basic rights and basic freedom. And indeed, this is a major reason in the creation of the United Nations under the United Nations Organization hence the uniting of nations under the United Nations Organization is to create a situation in which human rights are no longer purely a matter for individual nations, but rather a matter for the international community of states. This is true of the writing in an agreement drawn up between nations, seen in the charter of the United Nations, signed on 26th June 1945.

This charter declared to the world in 1948 as the Universal Declaration of Human Rights was aimed to eradicate the contradictions between Universal claims and national validity of human rights. And at the same time dispelling the doubt voiced out by critics as to the universality of human rights especially as globalization has given birth to the notion of New World Citizenship arising from global travel, easy global communication and free movement of men, goods and services as we have never witnessed before the coming of globalization. Hence the reader should now begin to appreciate human rights law in a global world as he enters the main body of this unit.

## 2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the place of human rights in a globalized world
- list its effective role in protecting individuals and groups against abuses by powerful state
- list human rights agents in the world.

## 3.0 MAIN CONTENT

### 3.1 The Meaning of Globalization

Globalization, a term conceived by Marshall McLuhan as a village created by a high level of information technology in the late 15th Century with Europeans' discovery of the triangular trade between Africa, Europe and the new world now called America, came into highly recognized powerful existence in 1989 at the collapse of the cold war era; And it was operationally redefined as:

"The coming of nations into rapid trans-boundary exchanges of information, goods and services and interaction of persons due to higher level of information technology that has today made access to people and information-practically anywhere in the world quicker, cheaper and easier through television, Internet, telephone and microchip communication".

### 3.2 The Characteristics of Globalization

The characteristics of a globalized world will enable us understand the legal relationship between human rights and globalization. As we open up the globalized world, we will see the following viz:

- a. It is a borderless world with rapid trans-boundary movements of people, information, goods and services.
- b. It has a free market or liberalized trade economy.
- c. It is visibly and practically interdependent and competitive in operations.
- d. It has room for powerful non-state actors that can pose a threat to human rights.
- e. It is entirely information technology driven.

We should have these characteristics in mind as we look for the place of human rights in a free interdependent world that is borderless and highly competitive (capitalistic) in nature.

### **3.3 Non-State Actors**

When we look at the characteristics of a globalized world and say it has room for powerful non-state actors that can pose a threat to human rights operations, then we are looking at informal groups, (NGOs, political parties, individuals and companies as non-state actors.

For instance, multinational companies as non-state actors play very crucial role in the globalized world and could be responsible for a large number of human rights abuses. Hence such companies are responsible to their shareholders and not to those affected by their actions. These companies are not only responsible to their shareholders but may also be larger than the economies of some of the states within which they operate, and can wield significant economic and political power. The existence of these powerful non-state actors was stressed by Jean Ziegler, in a report of the UN Commission on Human Rights on the right to food in 2003 as thus:

The growing power of transnational corporations and their extension of power through privatization deregulation and the rolling back of the state also mean that it is now time to develop binding legal means that hold corporation to human rights standard and circumscribe potential abuses of their positions of power.

This finding led to Human Rights commission's sub-commission on the promotion and protection of Human Rights to produce draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights in August, 2003, which was considered by the Human Rights Commission in 2004.

What is important here is to let the reader begin to see the crucial need for human rights law in a globalized world as we turn next to Human Rights and globalization.

### **3.4 Globalization and Human Rights Law**

Our first hand knowledge of the place of powerful non-state actors like the multi-nationals has revealed to us the crucial need for human rights law in a globalized world.

Beyond this, let us look at other characteristics of the globalized world, which makes Human Rights law unavoidable in their operations.

When we talk of borderless world with rapid trans-boundary problems of what we experience today in our globalized Nigeria. Think of the movement of Nigerians who have been cut away from Nigeria into hard drug trade and are killed without even divine mercy for violating human

rights law of host nations. The eighty Nigerians killed recently in Indonesia for hard drug trafficking is a case in point.

## **5.0 SUMMARY**

We must be conscious of the best and dangerous roles human rights law play in a globalized world. For people are now linked more deeply, more immediately and more aggressively than before.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Carefully take a look at the place of human rights law in a globalized world and advise the Nigerian public on the fatal dangers of pushing hard drugs.

## **7.0 REFERENCES/FURTHER READING**

Jackson, J. H. (1989). 'The World Trading System Law and Policy on International Economics Relations 8-9.' (2nd ed.)

United Nations Publication on Human Development Report (1999, 2000 – 2001 etc).

## **UNIT 3    AFRICAN CHARTER OF HUMAN AND PEOPLE'S RIGHTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Preamble
  - 3.2 Rights and Duties
  - 3.3 Measures of Safeguard
  - 3.4 Mandate of the Commission
  - 3.5 General Provisions
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

This unit recognizes the very instructive fact that a student of human rights, especially at the post-graduate level should be able to discuss every stated Article in a given charter of Human Rights so far as it falls within the study area of such student.

### **2.0 OBJECTIVE**

At the end of this unit, you should be able to:

- discuss every Article stated in the African Charter of Human and People's rights.

### **3.0 MAIN CONTENT**

#### **3.1 Human and Peoples' Rights by the 18th Conference of - State and Government of the GAD June, 1981, Nairobi, Kenya**

The African States members of the African Union, parties to the present convention entitled African Charter on Human and Peoples' Rights.

**Recalling** Decision 116 (XVI) of the Assembly of Heads of States and Governments at its 16th Ordinary Session held in Monrovia, Liberia, from 17 to 20 July, 1979 on the preparation of a preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for

the establishment of bodies to promote and protect human and peoples' right;

**Considering** the Charter of the African Union, which stipulates that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples;

**Reaffirming** the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declarations of Human Rights;

**Taking** into consideration the virtue of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

**Recognizing** on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand, that the reality and respect of peoples' rights should necessarily guarantee human rights;

**Considering** that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

**Convinced** that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinion;

**Reaffirming** their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the African Union, the Movement of Non-Aligned countries and the United Nations;

**Firmly** convinced of their duty to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

### **3.2 Rights and Duties**

#### **Article I**

The Member States of the African Union parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

#### **Article II**

1. Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this present charter without distinction of any kind such as race, ethnic group/colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

#### **Article III**

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

#### **Article IV**

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### **Article V**

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and deregulation of particularly slavery, slave trade, torture, cruel, inhuman or punishment and treatment shall be prohibited.

#### **Article VI**

Every individual has the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or defamed.



**Article VII**

1. Every individual shall have the right to have his cause heard. This comprises;
  - a. The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
  - c. The right to defence, including the right to be defended by counsel of his choice;
  - d. The right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. Punishment is personal and can be imposed only on the offender.

**Article VIII**

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

**Article IX**

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

**Article X**

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

**Article XI**

Every individual shall have the right to assembly freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

**Article XII**

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethical or religious groups.

**Article XIII**

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

**Article XIV**

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

**Article XV**

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

**Article XVI**

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

### **Article XVII**

1. Every individual shall have the right to education.
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of moral and traditional values recognized by the community shall be the duty of the State.

### **Article XVIII**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health.
2. The State shall have the duty to assist the family which is custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

### **Article XIX**

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

### **Article XX**

1. All peoples shall have the right to existence. They shall have unquestionable and inalienable right to self determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

**Article XXI**

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies, so as to enable their peoples to fully benefit from the advantages derived from their national resources.

**Article XXII**

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

**Article XXIII**

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the African Union shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations. States parties to the present Charter shall ensure that:
  - a. Any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;

- b. Their territories shall not be used as base for subversive or terrorist activities against the people of any other State party to the present Charter.

#### **Article XXIV**

All peoples shall have the right to a general satisfactory environment favourable to their development.

#### **Article XXV**

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedom contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

#### **Article XXVI**

States parties to the present Charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

#### **Article XXVII**

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.
2. The rights and freedoms of each individual shall with due regard to the rights of others, collective security, morality and common interest.

#### **Article XXVIII**

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relation aimed at promoting. Safeguarding and reinforcing mutual respect and tolerance.

**Article XXIX**

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State which national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law.
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and in general, to contribute to the promotion of the moral wellbeing of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

**3.3 Measures of Safeguard****Article XXX**

An African Commission of Human and Peoples' Rights, hereinafter called (the Commission), shall be established within the African Union to promote human and peoples' rights and ensure their protection in Africa.

**Article XXXI**

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to person having legal experience.
2. The members of the Commission shall serve in their personal capacity.

**Article XXXII**

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Governments, from a list of persons nominated by the States parties to the present Charter.

**Article XXXIV**

Each state party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of States parties to the present

Charter when two candidates are nominated by a State, one of them may not be a national of that State.

**Article XXXV**

1. The Secretary-General of the African Union shall invite States parties to the present Charter at least four months before the elections to nominate candidates.
2. The Secretary-General of the African Union shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of States and Governments at least one month before the elections.

**Article XXXVI**

The members of the Commission shall be elected for six-year period and shall be eligible for re-election. However, the term of office of four of the members selected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

**Article XXXVII**

Immediately after the first election, the Commission of the Assembly of Heads of States and Government of the African Union shall draw lots to decide the names of those members referred to in Article 39.

**Article XXXVIII**

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

**Article XXXIX**

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary General of the African Union, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason than a temporary absence, the Chairman of the Commission shall inform the Secretary-General of the African Union" who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.

**Article XL**

Every member of the Commission shall be in office until the date his successor assumes office.

**Article XLI**

The Secretary-General of the African Union shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The African Union shall bear the cost of the staff and services.

**Article XLII**

1. The Commission shall elect its Chairman and Vice-Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equity of votes, the Chairman shall have a casting vote.
5. The Secretary-General may attend the meetings of the Commission.
6. He shall neither participate in deliberation nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.



**Article XLIII**

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the African Union.

**Article XLIV**

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the African Union.

**3.4 Mandate of the Commission****Article XL V**

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
  - a. To collect documents. Undertake studies and researches on African problems in the field of human and peoples' rights; organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights; and, should the case arise, give its view or make recommendations to Government.
  - b. To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
  - c. Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the AU or an African organization recognized by the AU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of States and Government.

**Article XLVI**

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary-General of African Union or any other person capable of enlightening it.

**Article XLVII**

If a state party to the present Charter has good reasons to believe that another state party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of the state to the matter. This communication shall also be addressed to the Secretary-General of the AU and to the Chairman of the Commission. Within three months of the receipt of the communication, the state to which the communication is addressed shall give the enquiring state written explanation or statement elucidating the matter. This sound includes as much as possible relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

**Article XLVIII**

If within three months from the date on which the original communication is received by the state to which it is addressed, the issue is not settled to the satisfaction of the two states involved through bilateral negotiation or by any other peaceful procedure, either state shall have the right to submit the matter to the Commission through the Chairman and shall notify the other states involved.

**Article XLIX**

Notwithstanding the provisions of Article 47, if a state party to the present Charter considers that another state party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication through the Chairman, to the Secretary-General of the African Union.

**Article L**

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

**Article LI**

1. The Commission may ask the states concerned to provide it with all relevant information.
2. When the Commission is considering the matter, states concerned may be represented before it and submit written or oral representations.

**Article LII**

After having obtained from the states concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of human and peoples' rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report stating the facts and its findings. This report shall be sent to the states concerned and communicated to the Assembly of Heads of States and Government.

**Article LIII**

While transmitting its report, the Commission may make to the Assembly of Heads of States and Government such recommendations as it deems useful.

**Article LIV**

The Commission shall submit to each Ordinary Session of the Assembly of Heads of States and Government a report on its activities.

**Article LV**

1. Before each session, Secretary of the Commission shall make a list of the communications other than those of states parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

**Article LVI**

Communications relating to human and peoples' rights referred to in Article 55 received by the Commission shall be considered if they:

- a. Indicate their authors even if the latter request anonymity;

- b. Are compatible with the Charter of the African Union or with the present Charter;
- c. Are not written in disparaging or insulting language directed against the state concerned and its institutions or to the African Union.
- d. Are not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. Are submitted within a period after the time local remedies are exhausted or from the date the Commission is seized of the matter; and
- g. Do not deal with cases which have been by these states involved in accordance with the principles of Charter of the United Nations, or the Charter of the African Union or the provisions of the present Charter.

#### **Article LVII**

Prior to any substantive consideration, all communications shall be brought to the knowledge of the state concerned by the Chairman of the Commission.

#### **Article LVIII**

1. When it appears after deliberation of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of States and Government to these special cases.
2. The Assembly of Heads of States and Government may then request the Commission to undertake an in-depth study of these cases and make factual report, accompanied by its findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of States and Government who may request an in-depth study.

#### **Article LIX**

1. All measures taken within the provisions of the present Charter shall remain confidential until such a time as the Assembly of Heads of States and Government shall otherwise decide.

2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of States and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of States and Government.

### **Article LX**

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the African Union, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the specialized agencies of the United Nations of which the parties to the present Charter are members.

### **Article LXI**

The Commission shall also take into consideration as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the African Union, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

### **Article LXII**

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

### **Article LXIII**

1. The present Charter shall be open to signature, ratification or adherence of the member states of the African Union.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the African Union.
3. The present Charter shall come into force three months after the reception by the secretary-general of instrument of ratification or

adherence of a simple majority of the member states of the African Union.

### **3.5 General Provisions**

#### **Article LXIV**

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary-General of the African Union shall convene the first meeting of the Commission at the headquarters of the organization within three months of constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

#### **Article LXV**

For each of the states that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by the state of its instrument of ratification or adherence.

#### **Article LXVI**

Special protocols or agreements may, if necessary supplement the provisions of the present Charter.

#### **Article LXVII**

The Secretary-General shall inform member states of the African Union of the deposit of each instrument of ratification or adherence.

#### **Article LXVIII**

The present Charter may be amended if a state party makes a written request to that effect to the Secretary-General of the African Union. The Assembly of Heads of States and Government may only consider the draft amendment after all the states parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring state. The amendment shall be approved by a simple majority of states parties. It shall come into force for each state which has accepted it in accordance with its constitutional procedure three months after the Secretary-General has received notice of the acceptance.

## **4.0 CONCLUSION**

At the end of this unit we now know that we have 77 Articles to make knowledge-able reference to. We shall also be able to relate them to the genuine effort the African Union is making or should make in promoting and protecting these rights especially in giving the people of Africa an African continent without shame, poverty, military interventions, dangerous leadership and endless conflicts; but one continent with good governance, food security and stable polity.

## **5.0 SUMMARY**

Africans should put their hands and heads together in eradicating all forms of developmental obstacles that would not allow a better life and visible human dignity for their peoples. Good reference knowledge of the articles in this charter will be very useful in this direction.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Good governance and stable development can make for a successful promotion and protection of human rights. Discuss, using African Union and the promotion and protection of human rights in Africa as a case study.

## **7.0 REFERENCE/FURTHER READING**

**Source:** The United Nations and Human Rights Office of Public Information (1978). New York: United Nations.

## **UNIT 4 HUMAN RIGHTS IN AFRICA**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 The Role of African Union
  - 3.2 African Union Charter of Human and Peoples Right
  - 3.3 Situation Report from two African Countries
  - 3.4 Nigeria and Zimbabwe
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

This unit looks at the place of human rights in Africa and the role African Union is playing in promoting and protecting these rights. It will also examines the human rights record of Nigeria and Zimbabwe as cases of human rights operations in some African countries.

### **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- explain the effort African Union is making to promote and protect human rights in the continent, and
- discuss the human rights situation report in Nigeria and Zimbabwe.

### **3.0 MAIN CONTENT**

#### **3.1 The Role of African Union**

The African Union (AU) is a major international institution in Africa comprising of 53 states founded in 2001. The purpose of the union is to help secure democracy, human rights and a sustainable economy especially in resolving Africa intra-African conflicts and creating an effective common market. Hence, the African Commission on Human and Peoples Rights (ACHPR) was set up as quasi judicial organ of the AU tasked with promoting and protecting human rights and collective (peoples) right throughout the African continent as well as interpreting the African charter on human and Peoples rights and considering



individuals complaints of violations of the charter. The commission has three broad areas of responsibility namely to:

- promote human and peoples' rights.
- protect human and peoples' rights.
- interpret the African charter on human and peoples' rights

To achieve these goals the commission is mandated to:

- collect documents
- undertake research and studies
- organize seminars, symposia and conferences
- disseminate of information on African problems in the field of human and people's rights.
- encourage national and local institutions concerned with human and peoples' rights and should any case arise give its views or make recommendations to government as seen in charter, Article 45.

The establishment of African court on human and peoples' rights under a protocol to the charter which was adopted in 1998 and entered into force in January 2004, gives the commission on human and peoples' rights the all important task of preparing cases for admission to the court jurisdiction. Beyond this task, let us carefully go through the African Union charter on human and peoples' rights to gain a clear understanding of the demands of the charter that should guide the commission in its preparation of cases for admission to the court of jurisdiction in case of any violations as stated below:

### **3.2 African Union Charter of Human and Peoples' Rights**

#### **Article 1**

The member states of the of the African Union parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the charter and shall undertake to adopt legislative or other measures to give effect to them.

#### **Article II**

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group/colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

**Article III**

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

**Article IV**

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of this person. No one may be arbitrarily deprived of this right.

**Article V**

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of particularly slavery, slave trade, torture, cruel, inhuman or punishment and treatment shall be prohibited.

**Article VI**

Every individual has the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or defamed.

**Article VII**

1. Every individual shall have the right to his case heard
  - (a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - (b) The right to be presumed innocent until proved guilty by a competent court or tribunal;
  - (c) The right to defence, including the right to be defended by counsel of his choice;
  - (d) The right to be tried within a reasonable time by an important court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

**Article VIII**

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

**Article IX**

1. Every individual shall have the right to receive information
2. Every individual shall have the right to express and disseminate his opinions within the law.

**Article X**

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

**Article XI**

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject to necessary restrictions provided for by every law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedom of others.

**Article XII**

1. Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subjected to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a state party to the present charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited; mass expulsion shall be that which is aimed at national, racial, ethical or religious groups.

**Article XIX**

All people shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

**Article XX**

1. All peoples shall have the right to existence. They shall have unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All people shall have the right to the assistance of the state parties to the present charter in their liberation struggle against foreign domination, be it political, economic or cultural.

**Article XXI**

1. All people shall freely dispose of their wealth and natural resources, this right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present charter shall individually and collectively exercise the rights to free disposal to their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

**Article XXII**

1. All people shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the charter of the United Nations and reaffirmed by that of the African Union shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:
  - (a) Any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other state party to the present Charter;
  - (b) Their territories shall not be used as bases for subversive or terrorist activities against the people of any State party to the present Charter.

**Article XXIV**

All peoples shall have the right to a general satisfactory environment favorable to their development.

**Article XXV**

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

**Article XXVI**

States parties to the present Charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedom guaranteed by the present Charter.

**Establishment and Organization of the African Commission on Human and Peoples' Rights****Article XXX**

An African Commission on Human and Peoples' Rights, hereinafter called (the Commission), shall be established within the African Union

to promote human and peoples' rights to ensure their protection in Africa.

### **Article XXXI**

The commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.

### **3.3 Situation Report from Nigeria and Zimbabwe**

Taking Nigeria first, research findings show that in its 2005 report on human rights practices around the world the US department of state found that:

Nigeria's human rights record was "poor".

This is true of a *TELL* Magazine publication of April, 20, 2009 entitled "Nigeria: Great Nation, Poor Human Rights". And according to the Magazine, Nigeria was invited at the 9th session of the United Nations Human Rights council held in Geneva Switzerland on Monday, February 9, 2008 to defend its poor human rights records and the country was ably represented by a delegation made up of Michael Aondoakaa then Minister of Justice and Attorney General of the Federation, Ojo Maduekwe then Foreign Affairs Minister and some other government officials.

The magazine also reveals that while Aondoakaa and Maduekwe laboured to defend Nigeria's poor human rights records, Ajoni Kehinde who is the Executive Secretary of the National Human Rights Commission (NHRC) a body that reports on issue of promotion of Human Rights in Nigeria presented a genuine minority report that showed the true state of human rights violations in Nigeria.

Ajoni's report that was found convincing, stated that in spite, of the constitutional guarantees on the right to life and right to freedom from torture, the NHRC continued to receive convincing complaints daily on the use of cruel, inhuman and degrading means to extract "confession" from suspects. The magazine quotes the NHRC boss to say .that 40 percent of complaints received by the NHRC are related to torture and extra-judicial killings by the Nigeria police and other individuals.

The NHRC report carried evidence that show that:

- On February 25, 2008, police killed approximately 50 persons, burned nearly 100 homes and destroyed more than 150 market stalls in Ogaminana just outside Okene, in Adavi Local

- Government of Kogi State. This attack was carried out without any investigation of who killed a police colleague.
- On January 3, 2008, police in the Oke-Agbe, area of Ondo State allegedly shot and killed three youths and wounded two others who were demonstrating against local police extortion of money from poor citizens.
  - Few days after precisely on January 15, 2008, the police again struck in Sabon Tasha area of Kaduna State, killing four persons protesting the failure of Power Holding Company of Nigeria to deal with incessant power outages in the area.
  - The report also frowned at the events of November. 27, 2008 where the Jos religious crises gave the police and the military the opportunity to use lethal force during attempts to quell the violence, thereby, killing well over 100 innocent civilians"
  - In corroborated findings by NHRC, Amnesty International and NOPRIN, which monitored 400 police stations in 13 states of Nigeria for a year and found that the use of violence and lethal force by the police is however, not only limited to riotous situations or the need to extract confessional statements but also used to force-rape women in prisons with impunity, while being also deployed at unauthorized check points and road blocks in order to extort money from innocent citizens. The incident of October 31, 2008 in which a police officer shot and killed 23-year old Gabriel Mordi at a check point in Agbor, Delta State because of an argument over Mordi's refusal to give the police any money.
  - Other places that got Nigeria an infamous human rights rating are:
    - A. The prison and detention conditions for example, the Lagos State prison built for 2,905 inmates, houses 4000; Makurdi built for 240 inmates, houses 464 and they are without adequate water, light and food.
    - B. The crises in Niger Delta that has taken a lot of human lives and has destroyed many homes and communities.

The all important role of the Human Rights Council in monitoring, protecting in UN member nations as highlighted earlier in this course material has established itself in this unit as an effective monitoring instrument as the reader has seen that Nigeria was invited to defend her human rights posture before it in Geneva Switzerland.

For Zimbabwe, there are widespread reports of systematic and escalating violations under the Mugabe regime as reported by Amnesty International and Human Rights Watch. The report shows a visible violation of:

- The right to shelter, food.
- Freedom of movement and residence, freedom of assembly and the protection of the law.

There are also reports of killing and torturing of members of the opposition, kidnapping and child labour.

The United States' department of State reported in a public announcement dated July 12, 2007 that the situation in Zimbabwe and Nigeria are indications of what is happening in most countries in Africa; i.e suppressive governments and corrupt government institutions. Despotic leaders and lack of freedom of speech and information abound on the continent and that have placed human rights under serious threat.

#### **4.0 CONCLUSION**

Research findings have shown that most Africa countries run governments that are not truthful to the promotion and protection of human rights. That they are called democratic does not make any difference.

#### **5.0 SUMMARY**

In Africa, democracy must be redefined to include result-oriented promotion and protection of human rights.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

Redefine African democracy to include result-oriented promotion and protection of human rights, using Nigeria and one other countries of your choice as examples.

#### **7.0 REFERENCES/FURTHER READING**

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violation of:

## MODULE 3

Unit 1	Beijing Declaration Fourth World Conference on Women
Unit 2	The Rights of the Child
Unit 3	AU Charter on the Rights and Welfare of the Child
Unit 4	Fundamental Human Rights

### UNIT 1 BEIJING DECLARATION FOURTH WORLD CONFERENCE ON WOMEN

#### CONTENTS

1.0	Introduction
2.0	Objective
3.0.	Main Content
3.1	The Declaration
3.2	Our Commitment
3.3	Our Conviction
3.4	Our Determination
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

#### 1.0 INTRODUCTION

The bitter experiences women go through during and after wars show that they have a crucial role to play in conflict resolution and peace building. Women have however, been refused participation and the empowerment to effectively necessary for them to play this role in a world dominated by men.

This unit on the Charter of the Beijing Declaration dwells extensively on recognizing and empowering women for the effective participation in peace building and the protection of their interests in a world dominated by men.

#### 2.0 OBJECTIVE

At the end of this unit, you should be able to:

- explain and educate the public on the "Beijing women Empowerment charter" that should create the determination in the women to fight for their cause in a world which is hostile to

### 3.0 MAIN CONTENT

#### 3.1 Declaration

1. We, the Governments participating in the Fourth World Conference on Women,
2. Gathered here in Beijing in September, 1995, the year of the fiftieth anniversary of the founding of the United Nations,
3. Determined to advance the goals of equity, development and peace for all women everywhere in the interest of all humanity,
4. Acknowledging the voices of all women everywhere and taking note of the diversity of women and their roles and circumstances, honoring the women who paved the way and inspired by the hope present in the world's youth,
5. Recognize that the status of women has advanced in some important respects in the past decades but that progress has been uneven, in equalities between women and men have persisted and major obstacles remain with serious consequences for the well-being of all people,
6. Also recognize that this situation is exacerbated by the increasing poverty that is affecting the lives of the majority of the world's people, in particular women and children, with origins in both the national and international domains,
7. Dedicate ourselves unreservedly to addressing these constraints and obstacles and thus enhancing further the advancement and empowerment of women all over the world, and agree that this required urgent action in the spirit of determination, hope, cooperation and solidarity, now and to carry us forward into the next century.
8. The equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration on the Elimination of Violence against Women and the Declaration on the Rights to Development;
9. Ensure the full implementation of the human rights of women and of the girl child as an inalienable, integral and invisible part of all human rights and fundamental freedoms;
10. Build on consensus and progress made at previous United Nations conferences and summits - on women in Nairobi in 1985, on children in New York in 1990, on environment and development in Rio de Janeiro in 1992, on human rights in Vienna in 1993, on population and development in Cairo in 1994

them.



- and on social development in Copenhagen in 1995 with the objective of achieving equality, development and peace;
11. Achieve the and. effective implementation of the Nairobi Forward-looking Strategies for the Advancement of Women;
  12. The empowerment and advancement of women, including the right to freedom of thought, conscience, religion and belief, thus contributing to the moral, ethical, spiritual and intellectual needs of women and men, individually or in community with others and thereby guaranteeing them the possibility of realizing their full potential in society and shaping their lives in accordance with their own aspirations.

**We are convinced that:**

13. Women's empowerment and their full participation on the. basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace;
14. Women's rights are human rights;
15. Equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their well-being and that of their families as well as to the consolidation of democracy;
16. Eradication of poverty based on sustained economic growth, social development, environmental protection and social justice requires the involvement of women in economic and social development, equal opportunities and the full and equal participation of women and men as agents and beneficiaries of people-centered sustainable development;
17. The explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment;
- 18.. Local, national, regional and global peace is attainable and is inextricably linked with the advancement of women, who are fundamental force for leadership, conflict resolution and the promotion of lasting peace at all levels;
19. It is essential to design, implement and monitor, with the full participation of women, effective, efficient and mutually reinforcing gender-sensitive policies and programmes, including development policies and programmes, at all levels that will foster the empowerment and advancement of women;
20. The participation and contribution of all actors of civil society, particularly women's groups and networks and other non-governmental organizations and community-based organizations, with full respect for their autonomy, in cooperation with

Governments, are important to the effective implementation and follow-up of the Platform for Action;

21. The implementation of the Platform for Action requires commitment from Governments and the international community. By making national and international commitments for action, including those made at the Conference, Governments and the international community recognizes the need to take priority action for the empowerment and advancement of women.

**We are determined to:**

22. Intensify efforts and actions to achieve the goals of the Nairobi Forward looking Strategies for the Advancement of Women by the end of this century;
23. Ensure the full enjoyment by women and the girl child of all human rights and fundamental freedoms and take effective action against violations of these rights and freedoms;
24. Take all necessary measures to eliminate all forms- of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women;
25. Encourage men to participate fully in all actions towards equality;
26. Promote women's economic independence, including employment, and eradicate the persistent and increasing burden of poverty on women by addressing the structural causes of poverty through changes uneconomic, ensuring equal access for all women, including those in rural areas, as vital development agents, to productive resources, opportunities and public services.
27. Promote people-centred sustainable development, including sustainable economic growth, through the provision of basic education, life-long education, literacy and training, and primary health care for girls and women;
28. Take positive steps to ensure peace for the advancement of women and, recognizing the leading role that women have played in the peace movement, work actively towards general and complete disarmament under strict and effective international control, and support negotiations on the conclusion, without delay, of a universal and multilaterally and effective verifiable comprehensive nuclear-test-ban treaty which contributes to nuclear disarmament and the prevention of the proliferation of nuclear weapons in all its aspects;
29. Prevent and eliminate all forms of violence against women and girls;
30. Ensure equal access to and equal treatment of women and men in education and health care and enhance women's sexual and reproductive health as well as education;

31. Promote and protect all human rights of women and girls;
32. Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people;
33. Ensure respect for international law, including humanitarian law, in order to protect women and girls in particular;
34. Develop the fullest potential of girls and women of all-ages, ensure their full and equal participation in building a better world for all and enhance their role in the development process.

**We are determined to:**

35. Ensure women's equal access to economic resources, including land, credit, science and technology, vocational training, information, communication and markets, as a means to further the advancement and empowerment of women and girls, including through the benefits of equal access to international cooperation;
36. Ensure the success of the Platform for Action, which will require a strong commitment on the part of governments, international organizations and institutions at all levels. We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor, particularly women living in poverty, to utilize environmental resources sustainably is a necessary foundation for sustainable development. We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice. The success of the platform for Action will also require adequate mobilization of resources at the national and international levels as new and additional resources to the developing countries from all available funding mechanisms, including multilateral bilateral and private sources for the advancement of women, financial resources to strengthen the capacity of national, sub regional, regional and international institutions; a commitment to equal rights, equal responsibilities and equal opportunities and to the equal participation of women and men in all national, regional and international bodies and policy-making process; and the establishment or strengthening of mechanisms at all levels for accountability to the world's women;

37. Ensure also the success of the Platform for Action in countries with economies in transition, which will require continued international cooperation and assistance;
38. We hereby adopt and commit ourselves as governments to implement the following Platform for Action, ensuring that a gender perspective reflected in all our policies and programmes. We urge the United Nations system, regional and international financial institutions, other relevant regional and international institutions and all women and men, as well as non-governmental organizations, with full respect for their autonomy, and all sectors of civil society, in cooperative with governments to fully commit themselves and contribute to the implementation of this Platform for Action.

#### **4.0 CONCLUSION**

At the end of this unit we see the imperative need to contribute in projecting the empowerment and advancement of women, which should include: Women's conscience, religion and belief, thus contributing to the moral, ethical, spiritual and intellectual needs of women and men, individually and in community with others; and thereby guaranteeing their full potential in shaping their lives in accordance with their aspirations.

#### **5.0 SUMMARY**

The Beijing Declaration demands that we all contribute to the projection of the voices of women everywhere and their roles in participating in conflict resolutions and peace building.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

The Beijing Declaration shows a result-oriented women's empowerment and their full participation on the basis of equality in all spheres of society. Discuss.

#### **7.0 REFERENCES/FURTHER READING**

The United Nations and Human Rights Office of Republic Information.  
New York: United Nations, 1978.



## **UNIT 2 THE RIGHTS OF THE CHILD**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objective
- 3.0 Main Content
  - 3.1 The UN Convention on the Rights of the Child
- 3.2 Conclusion
- 3.3 Tutor-Marked Assignment
- 3.4 References/Further Reading
- 3.5 Summary

### **1.0 INTRODUCTION**

In the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance against all kinds of child abuse.

This proclamation later known as the United Nations Convention on the right of the child was adopted in Geneva at the 40th session of the United Nations opened for signature ratification by member nations of the United Nations. By this ratification, member states have accepted the fact and responsibility that the child by reason of his physical and mental immaturity needs special safeguards, and care, including appropriate legal protection, before as well as after birth”.

The fact that Nigeria ratified the convention on the rights of the child on the 21st of March 1991 demands that we meticulously read through the charter in this unit with such understanding that should compel us to protect our innocent children from all forms of abuse.

### **2.0 OBJECTIVE**

At the end of this unit you should be able to:

- explain the functional usefulness of the charter in this unit to the protection of our children against all forms of child abuse.

### 3.0 MAIN CONTENT

#### 3.1 The States Parties to the Present Convention

**Considering** that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

**Bearing in mind** that the people of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

**Recognizing** that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants of Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, region, political or other opinion, national or social origin, property, birth or other status.

**Recalling** that, in the Universal Declaration of human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

**Convinced** that the family, as the fundamental group of society and the natural environment for the growth and well being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

**Recognizing** that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

**Considering** that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideas proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equity and solidarity,

**Bearing in mind** that the need for extending particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in article 23 and 24), in the International Covenant

of Economic, Social and Cultural Rights (in particular in its article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

**Bearing in mind** that, as indicated in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1959, “the Child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

**Recalling** the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85 of 3rd December (1986); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules") (General Assembly Resolution 40/33 of 29 November (1985); and the Declaration on the Protection of Women and Children in Emergencies and Armed Conflict (General Assembly Resolution 3318 (XXIX) of December (1974),

**Recognizing** that in all countries in the world there are children living in exceptionally difficult conditions, and that such children need special consideration, **Taking due account** of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

**Recognizing** the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries. Have agreed as follows:

## **Article I**

For the purpose of the present Convention a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

## **Article II**

1. The States Parties to the present Convention shall respect and ensure the rights set forth in this Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms discrimination or punishment on the basis of the status, activities, expressed, opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article III**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary constitute.
2. States Parties undertaken to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standard 4Established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision.

### **Article IV**

States Parties shall undertake all appropriate legislative, administrative, and other measures, for the implementation of the rights recognized in this Convention. In regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **Article V**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by the local custom, legal or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

**Article VI**

1. States Parties recognized that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article VII**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article VIII**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to specially re-establishing his or her identity.

**Article IX**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph I, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct

contract with both parties on a regular basis, except if it is contrary to the child's best interest.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child.
5. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of other; or
  - (b) For the protection of national security or of public order (order public), or of public health or morals.

#### **Article XIV**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

#### **Article XV**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article XVI**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, or to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

**Article XVII**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international source, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage International co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources; State Parties shall further ensure that the submission of such request shall of itself entail no adverse consequence for the person(s) concerned.

**Article X**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to either or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. State Parties ensure that the submission of such a request shall entail no adverse consequences for the applicants and the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular bases save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (order public), public

health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### **Article XI**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### **Article XII**

1. States Parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard and judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article XIII**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
  - (a) Encourage the production and dissemination of child's books;
  - (b) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to minority group or who is indigenous;
  - (c) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being bearing in mind the provisions of article 13 and 18.

#### **Article XVIII**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the



case may be, legal guardians, have the primary responsibility *for* the upbringing and development *of* the child. The best interests *of* the child will be their concern.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

### **Article XIX**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who is the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, appropriate, for judicial involvement.

### **Article XX**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care should include, *inter alia*, foster placement, care for Islamic law, adoption, or if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religion, cultural and linguistic background.

**Article XXI**

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- a. Ensure that the adoption of a child authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;
- b. Recognizing that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c. Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption.
- d. Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;
- e. Promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

**Article XXII**

1. States Parties shall take appropriate measure to a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations co-operative with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee

child in order to obtain information necessary for reunification with his or her family. In case where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

### **Article XXIII**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resource of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote in the spirit of international co-operation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken to the needs of developing countries.

### **Article XXIV**

1. States Parties recognizing the right of the child to the enjoyment of the highest attainable standard of health and to facilitate for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right

of access to such health care service. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality.
  - (b) To ensure the provision of necessary medical assistance and health care of all children with emphasis on the development of primary health care,
  - (c) To combat disease and malnutrition including with the framework of primary health care, through *inter alia* the application of readily available technology and through the provisions of adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution,
  - (d) To ensure appropriate pre and post-natal health care for mothers,
  - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of, basic knowledge of child health and nutrition, the advantages of breast feeding, hygiene and environmental sanitation and the prevention of accidents,
  - (f) To develop preventive health care, guidance for parents, and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
  4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article XXV**

States Parties recognize the right of a child who has been placed by the competent authorities for the purpose of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstance relevant to his or her placement.

#### **Article XXVI**

1. States Parties shall recognize for every child the right to be benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

### **Article XXVII**

1. States Parties recognize the right of every child to a standard of living the child's physical, mental, spiritual, moral and social development
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate arrangements.

### **Article XXVIII**

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education compulsory and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

- (d) Make educational and vocational information and guidance available and accessible to all children;
  - (e) Take measures to encourage regular attendance at school and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
  3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

### **Article XXIX**

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child's personality, talents, mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) The development of respect for the natural environment.
2. No part of this article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institution shall conform to such minimum standards as may be laid down by the State.

**Article XXX**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her culture, to profess and practice his or her own religion, or to use his or her own language.

**Article XXXI**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

**Article XXXII**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum age for admissions to employment;
  - (b) Provide for appropriate regulation of the hours and conditions of employment; and
  - (c) Provide for appropriate penalties or other sanctions ensure the effective enforcement of this article.

**Article XXXIII**

States Parties shall take all appropriate measures, including legislative, administrative, social and education measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

**Article XXXIV**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity.
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

**Article XXXV**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form

**Article XXXVI**

States Parties shall protect the child against prejudicial to nay aspects of child's welfare.

**Article XXXVII**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstance;



- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

### **Article XXXVIII**

1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflict, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### **Article XXXIX**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, - inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### **Article XL**

1. States Parties recognize the right of every child alleged as, accused of, or recognize as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of other and which takes into account the child's age and the desirability of promoting the child's re- integration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed;
  - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;
    - (ii) To be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
    - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
    - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witness and to obtain the participation and examination of witness on his or her behalf under conditions of equality;
    - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
    - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
    - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions especially applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:
  - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - (b) Whenever, appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

### **Article XLI**

Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

### **Article XLII**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

### **Article XLIII**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be selected by States Parties from among their nationals and shall serve in their present capacity, consideration being given to equitable geographical distribution as well as the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties

- which have nominated them and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by Secretary-General at United Nations Headquarters. At those meetings, for which two-thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
  6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting.
  7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
  8. The Committee shall establish its own rules of procedure.
  9. The Committee shall elect its officers for a period of two years.
  10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
  11. *bis.* The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
  12. (With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.) or  
(States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties).
  13. (States Parties shall be responsible for expenses incurred in connection with the holding of meetings of State Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as a cost of staff and facilities, incurring by the United Nations pursuant to paragraph 10 *bis* of this article.)

**Article XLIV**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
  - (a) Within two years of the entry into force of the convention for the State Party concerned.
  - (b) Thereafter every five years.
2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1 (b) repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

**Article XLV**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, UNICEF and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, UNICEF and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions, if any, on these requests or indications.
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.
- (d) The Committee may take suggestions and general recommendations based on information received pursuant to articles 44 and 45 of this Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

#### **Article XL VI**

The present Convention shall be open for signature by all states.

#### **Article XL VII**

The present Convention is subjected to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article XL VIII**

The present Convention shall remain open for accession by any state. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article XLIX**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each state ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such state of its instrument of ratification or accession.

**Article L**

1. Any State Party may propose an amendment and file it with the Secretary General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one-third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph (I) of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bounded by the provisions of this Convention and any earlier amendments which they have accepted.

**Article LI**

1. The Secretary-General of the United Nations shall receive and circulate to all states the text of reservations made by states at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

**Article LII**

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one after the date of receipt of the notification by the Secretary-General.

**Article LIII**

The Secretary-General of the United Nations is designated as the depository of the present Convention.

**Article LIV**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

**4.0 CONCLUSION**

Nigeria's ratifying the United Nations Convention on the Rights of the child is not all. What should make all is the unrelenting determination to lift a result oriented working of this charter into the Nigerian society against all forms of child abuse such as child soldier, prostitution, sexual humiliation, trafficking, mutilation of genital organs, street hawking and forced house-help that denies child education.

**5.0 SUMMARY**

We Nigerians have in recent years lost knowledge of social protection and moral upbringing of our children. This unit resolves this lost knowledge conflict. Hence we need this knowledge to help our children out of all *forms* of child abuse.

**6.0 TUTOR-MARKED ASSIGNMENT**

Meticulously read through the charter in this unit and advise the Nigerian public on how to make this charter result-oriented against the kinds of child abuse prevalent in our Nigerian society today.

**7.0 REFERENCES/FURTHER READING**

*Nigeria and the Rights of the Child*. (1995). Child Development Department, Federal Ministry of Women Affairs and Youth Development, Abuja, June.

Resolution 1386 (xiv) of 20 November 1959.

See PCR 715 (*Peace Building and Humanitarianism*) NOUN Masters Course Text, pages 149-159.

The United Nations and Human Rights Office of Public Information. United Nations, New York, 1978.



## **UNIT 3 AU CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objective
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### **1.0 INTRODUCTION**

In addition to the United Nations convention on the rights of the child as presented in the previous unit, you are also taken into the AU or African Union charter on the rights and welfare of the child for a comparative understanding of the place of the African child and his rights at both the UN and AU levels.

### **2.0 OBJECTIVE**

At the end of this unit, you will be able to:

- discuss the rights and welfare of the African child both in the charters of the UN and the AU.

### **3.0 MAIN CONTENT**

#### **3.1 AU Charter on the Rights and Welfare of the Child**

The member states of the African Union, parties to the present Charter entitled "African Charter on the Rights and Welfare of the Child," **Considering** that the Charter of the African Union recognizes the paramount of Human Rights and the African Charter on Human and Peoples' Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any opinion, national and social origin, fortune, birth or other status,

**Recalling** the Declaration on the Rights and Welfare of the African Child (AHG/ST.4.Rev.1) adopted by the Assembly of Heads of State and Government of the African Union, at its 16th Ordinary Session in Monrovia, Liberia, from 17 to 20 July, 1979 recognized the need to take all appropriate measure to promote and protect the rights and welfare of the African child,

**Noting** with concern that the situation of most African children remains critical due to three unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity. He or she needs special safeguards and care,

**Recognizing** that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his atmosphere of happiness, love and understanding,

**Recognizing** that the child, due to the needs of his physical and mental development requires particular care with regard to health, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

**Taking** into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

**Considering** that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone,

**Reaffirming** adherence to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the African Union and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the AU Heads of States and Governments' Declaration on the Rights and Welfare of the African Child,

**Have agreed as follows:****Part 1: Rights and duties****Chapter One Rights and Welfare of the Child****Article I: Obligation of States Parties**

1. The member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to take the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State party or in any other international convention or agreement in force in that state.
3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

**Article II: Definition of a child**

For the purposes of this Charter, a child means every human being below the age of 18 years.

**Article III: Non-discrimination**

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter irrespective of the child's or his/her parent's or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

**Article IV: Best interests of the child**

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity

shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into considerations by the relevant authority in accordance with the provisions of appropriate law.

#### **Article V: Survival and development**

1. Every child has an inherent right to life. This right shall be protected by law.
2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.
3. Death sentence shall not be pronounced for crimes committed by children.

#### **Article VI: Name and nationality**

1. Every child shall have right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their constitutional legislations recognize the principles according to which a child shall acquire the nationality of the state in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other state in accordance with its laws.

#### **Article VII: Freedom of expression**

Every child who is capable of communicating his or her own views shall be assured of the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

#### **Article VIII: Freedom of association**

Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

#### **Article IX: Freedom of thought, conscience and religion**

1. Every child shall have the right to freedom of thought, conscience and religion.
2. Parents and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights

having regard to the evolving capacities, and best interests of the child.

3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

### **Article X: Protection of privacy**

No child shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

### **Article XI: Education**

1. Every child shall have the right to education.
2. The education of the child shall be directed to:
  - (a) The promotion and development of the child's personality, talents and mental and physical abilities to their fullest potentials;
  - (b) Fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and convention;
  - (c) The preservation and strengthening of positive African morals, traditional values and cultures;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all people ethnic, tribal and religious groups.
  - (e) The preservation of national independence and territorial integrity;
  - (f) The promotion and achievements of African unity and solidarity;
  - (g) The development of respect for the environment and natural resources;
  - (h) The promotion of the child understands of primary health care.

**Article XII: Leisure, recreation and cultural activities**

1. State Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. State Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

**Article XIII: Handicapped children**

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions, which ensure his dignity, promote his self-reliance and active participation in the community.
2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to be trained, preparatory for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.
3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access.

**Article XIV: Health and health services**

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health
2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
  - (a) To reduce infant and child mortality rate
  - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

- (c) To ensure the provision of adequate nutrition and safe drinking water;
- (d) To combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
- (e) To ensure appropriate health care for expectant and nursing mothers;
- (f) To develop preventive health care and family life education and provision of service;
- (g) To integrate basic health service programmes in national development plans;
- (h) To ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
- (i) To ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of basic service programme for children;
- (j) To support through technical and financial means the mobilization of local community resources in the development of primary health care for children.

#### **Article XV: Child labour**

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous to interfere with the child's physical, mental spiritual moral or social development.
2. States Parties to the present Charter shall take all appropriate legislative and administration measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:
  - (a) Provide through legislation, minimum age for admission to every employment;
  - (b) Provide for appropriate regulation of hours and conditions of employment;
  - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
  - (d) Promote the dissemination of information on the hazards of child labour to all sectors of the community.

**Article XVI: Protection against child abuse and torture**

1. States Parties to the present Charter shall take specific legislative, administration, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.
2. Protective measure under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

**Article XVII: Administration of juvenile justice**

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:
  - (a) Ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
  - (b) Ensure that children are separated from adults in their place of detention or imprisonment.
  - (c) Ensure that every child accused of infringing the penal law:
    - i. Shall be presumed innocent until duly recognized guilty.
    - ii. Shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
    - iii. Shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
    - iv. Shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
    - v. Shall not be compelled to give testimony or confess guilt.
  - (d) Prohibit the press and the public from trial.



The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, reintegration into his or her family and social rehabilitation.

There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

#### **Article XVIII: Protection of the family**

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.
2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of the child.
3. No child shall be deprived of maintenance by reference to the parents' marital status.

#### **Article XIV: Parental care and protection**

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law that such separation is in the best interest of the child.
2. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:
  - (a) Provide free and compulsory basic education;
  - (b) Encourage the development of secondary education in its different forms and progressively make it free and accessible to all;
  - (c) Make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
  - (d) Take measures to encourage regular attendance at schools and the reduction of drop-out rate;
  - (e) Take special measures in respect of female gifted and disadvantaged children, to ensure equal access to education for all section of the community.
3. State Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to

- choose for their children schools, other than those established by public authorities, which conform to such minimum standards may be approved by state, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.
4. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with present Charter.
  5. States Parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.
  6. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in Paragraph I of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the states.
  7. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.
  8. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or member of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.
  9. When a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

#### **Article XX: Parental responsibilities**

1. Parents or other person's responsibilities for the child shall have the primary responsibility for the upbringing and development of the child and shall have the duty:
  - (a) To ensure that the best interests of the child are their basic concern at all times
  - (b) To secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and
  - (c) To ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measure;
  - (a) To assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;
  - (b) To assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and.
  - (c) To ensure that the children of working parents are provided with care services and facilities.

### **Article XXL: Protection against harmful social and cultural Practices**

1. State Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular.
  - (a) Those customs and practices prejudicial to the health or life of the child; and
  - (b) Those customs and practices discriminatory to the child on the grounds of sex or other status.
2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

### **Article XXII: Armed conflicts**

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.
2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.
3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to

children in situation of internal armed conflicts, tension and strife.

### **Article XXIII: Refugee children**

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the

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- d. Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child.
- e. Promote, where appropriate, the objective of this Articles by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;
- f. Establish a machinery to monitor the well-being of the adopted child.

### **Article XXV: Separation from parents**

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;
2. States Parties to the present Charter:
  - (a) Shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children.
  - (b) Shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. Where considering alternative family care of the child and the best interests of the child, due regards shall be paid to the desirability of continuity in a child's up-bringing and to the child's ethnic, religious or linguistic background.

#### **Article XXVI: Protection against apartheid and discrimination**

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under *Apartheid* and in States subject to military destabilization by the *apartheid* regime.
2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practicing racial, ethnic, and religious or other forms of discrimination as well as in States subject to military destabilization.
3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and *Apartheid* on the African Continent

#### **Article XXVII: Sexual exploitation**

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:
  - (a) The inducement, coercion or encouragement a child to engage in any sexual activity;
  - (b) The use of children in prostitution or other sexual practices;
  - (c) The use of children in pornographic activities, performances and materials.

#### **Article XXVIII: Drug abuse**

State Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

**Article XXIX: Sales, trafficking and abduction**

States Parties to the present Charter shall take appropriate measures to prevent:

- (a). The abduction, the sales of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child;
- (b). The use of children in all forms of begging.

**Article XXX: Children of imprisoned mothers**

States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular;

- (a) Ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (b) Establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) Establish special alternative institutions for holding such mothers;
- (d) Ensure that a mother shall not be imprisoned with her child;
- (e) Ensure that a death sentence shall not be imposed on such mother;
- (f) The essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

**Article XXXI: Responsibilities of the child**

Every child shall have responsibilities towards his family and society; the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty to:

- (a) Work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- (b) Serve his national community by placing his physical and intellectual abilities at its service;
- (c) Preserve and strengthen social and national solidarity;
- (d) Preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance,

- dialogue and consultation and to contribute to the moral well being of society;
- (e) Preserve and strengthen the independence and the integrity of his country; and
  - (f) Contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

## **Part II**

### **Chapter Two**

#### **Establishment and Organization of the Committee on the Rights and Welfare of the Child**

##### **Article XXXII: The Committee**

An African Committee of Experts on the Rights and Welfare of the Child hereinafter called "the Committee" shall be established within the Organization African Unity (African Union) to promote and protect the rights and welfare of the child.

##### **Article XXXIII: Composition**

1. The Committee shall consist of 11 members of high moral standing integrity, impartiality and competence in matters of the rights and welfare of the child.
2. The members of the Committee shall serve in their personal capacity.
3. The Committee shall not include more than one national of the same State.

##### **Article XXXIV: Election**

As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of States and Governments from a list of persons nominated by the States Parties to the present Charter.

##### **Article XXXV: Candidates**

Each State party to the present Charter may nominate not more than two candidates. The candidates must have one of the nationalities of the State parties to the present Parties. When two candidates are nominated by a State, one of them shall not be a national of that State.

**Article XXXVI**

1. The Secretary-General of the African Union shall invite States parties to the present Charter to nominate candidates at least six months before the elections.
2. The Secretary-General of the African Union shall draw up in alphabetical order, a list of persons nominated and communicate it to the Heads of States and Governments at least two months before the elections.

**Article XXXVII: Term of office**

1. The members of the Committee shall be elected for a term of five years and may not be re-elected. However, the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.
2. Immediately after the first election, the Chairman of the Assembly of Heads of States and Governments of the African Union shall draw lots to determine the names of those members referred to in sub-paragraph I of this Article.
3. The secretary-General of the African Union shall convene the first meeting of the Committee at the Headquarters of the Union within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.

**Article XXXVIII: Bureau**

1. The Committee shall establish its own rules of procedure.
2. The Committee shall elect its officers for a period of two years.
3. Seven Committee members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The working languages of the Committee shall be the official languages of the AU.

**Article XXXIX: Vacancy**

If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to service for the remainder of the term subject to the approval of the Assembly.



**Article XL: Secretariat**

Secretary-General of the African Union shall appoint a Secretary for the Committee.

**Article XLI: Privileges and immunities**

In discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

**Chapter three****Mandate and Procedure of the Committee****Article XLII: Mandate**

The functions of the Committee shall be:

- (a) To promote and protect the rights enshrined in this charter and in particular to:
  - i. Collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to governments;
  - (ii) Formulate rights and welfare of children in Africa;
  - (iii) Cooperate with other African, international and regional institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.
- (b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.
- (c) To interpret the provisions of the present Charter at the request of a state party, an institution of the African Union; or any state party.
- (d) Perform such other tasks as may be entrusted to it by the Assembly of Heads of States and Governments, Secretary-General of the AU and any other organs of the AU, or the United Nations.

**Article XLIII: Reporting procedure**

1. Every state party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the African Union, reports on the measures they have adopted which gives

effect to the provisions of this Charter and on the progress made in the enjoyment of these rights.

- (a) Within two years of the entry into force of the Charter for the State party concerned; and
  - (b) Thereafter, every three years.
2. Every report made under this Article shall.
    - (a) Contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and
    - (b) Shall indicate factors and difficulties, if any, affecting the fulfillment of the obligations contained in the Charter.
  3. A State Party which had submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (a) of this Article, repeat the basic information previously provided.

#### **Article XLIV: Communications**

1. The Committee may receive communication, from any person, group or non-governmental organization recognized by the African Union, by a member state, or the United Nations relating to any matter covered by this Charter.
2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

#### **Article XLV: Investigations by the committee**

1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures a State Party has adopted to implement the Charter.
2. The Committee shall submit to each Ordinary Session of the Assembly of Heads of States and Governments every two years, a report on its activities and on any communication made in Article 46 of this Charter.
3. The Committee shall publish its report after it has been considered by the Assembly of Heads of States and Governments.
4. States Parties shall make the Committee's reports widely available to the public in their own countries.

## **Miscellaneous Provisions**

### **Article XL VI: Sources of inspiration**

The Committee shall draw inspiration from International Law on Human and Peoples' Rights, the Charter of the African Union, the Universal Declaration of Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

### **Article XLVII: Signature, ratification or adherence**

1. The present Charter shall be open to signature by all member states of the African Union.
2. The present Charter shall be subject to ratification or adherence by member states of the African Union. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the African Union.
3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the African Union of the instruments of ratification or adherence of 15 member states of the African Union.

### **Article VIII: Amendment and revision of the Charter**

1. The present Charter may be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the African Union, provided that the proposed amendment is not submitted to the Assembly of Heads of States and Governments for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment.
2. An amendment shall be approved by a simple majority of the States Parties.

## **4.0 CONCLUSION**

We should make sure that the increased volume of knowledge we have gained on the rights and welfare of the child from units 10 and 11 is effectively applied to create a dignified environment for our children.

## **5.0 SUMMARY**

Let us, with all these knowledge on the rights and welfare of our children defend them and fully stand in the gap for them.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Having gone through the AU charter on the rights and welfare of the child, how will you assess its effectiveness in the Nigerian society today?

## **7.0 REFERENCE/FURTHER READING**

Information Resource Center, Office of Public Information, United Nations, New York, 1978.

## **UNIT 4     FUNDAMENTAL HUMAN RIGHTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Right to Life
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  - 3.4 Right to Fair Hearing
  - 3.5 Right to Private and Family Life
  - 3.6 Right to Freedom of Thought and Conscious
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- 4.0 Conclusion
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### **1.0 INTRODUCTION**

This unit takes the reader into the actual demands of the Charter on fundamental human rights so that a good understanding of these demands from the Charter of fundamental human rights will enable the reader know authoritatively where fundamental human right have been guaranteed or denied any person or group of persons in the society.

### **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- explain the fundamental human rights
- discuss how they could be practised and protected in our society.

### **3.0 MAIN CONTENT**

#### **3.1 Right to Life**

- (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a

court in respect of a criminal offence of which he has been found guilty in Nigeria.

- (2) A person shall not be regarded, as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary.
  - (a) For the defence of any person from unlawful violence or for the defense of property; or
  - (b) In order to effect a lawful arrest or to prevent the escape of person lawfully detained; or
  - (c) For the purpose of suppressing a riot, insurrection or mutiny.

### **3.2 Right to Dignity of Human Person**

This is the most fundamental of all human rights as it was given to man directly by God. Man should, therefore, not be deprived of his life except as permitted by law.

1. Every individual is entitled to respect for the dignity of his person, and accordingly,
  - a. No person shall be subjected to torture or to inhuman or degrading treatment;
  - b. No person shall be held in slavery or servitude, and
  - c. No person shall be required to perform forced or compulsory labour.
2. For the purpose of subsection (1) (c) of this section, forced or compulsory labour does not include,
  - a. Any labour required in consequence of the sentence or order of a court;
  - b. Any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
  - c. In the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;
  - d. Any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
  - e. Any labour or service that forms part of,
    - i. Normal communal or other civic obligations for the well-being of the community;

- ii. Such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly;
- iii. Such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by the National Assembly.

### **3.3 Right to Personal Liberty**

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law:

- (a) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;
- (c) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (d) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
- (e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community or;
- (f) For the purpose of preventing the unlawful entry of any person into Nigeria or to effect the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto;

Provided that a person who is charged with an offence and who has been detailed in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

- i. Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.
- ii. Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

- iii. Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of:
  - (a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
  - (b) Three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.
- i. In subsection (4) of this section, the expression "a reasonable time" means:
  - (a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day, and
  - (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.

Nothing in this section shall be construed:

- (a) In relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and
- (b) As invalidating any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria Police Force, in respect of an offence punishable by such detention of which he has been found guilty.



### 3.4 Right to Fair Hearing

Like the right to life, the right to fair hearing is also crucial to the existence of the citizen as it guarantees him the opportunity to make his view known with the assistance of qualified legal experts. Oyewo (2009: 114) states that this right is, perhaps, the most important of all guaranteed rights. It is the foundation on which other rights rest because it is at the root of the administration of civil and criminal justice. 36 –

- (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.
- (2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law
  - (a) Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person;
  - (b) Contains no provision making the determination of the administering authority final and conclusive;
  - (c) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public;
  - (d) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal: Provided that:-
    - (i) A court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen (18) years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

- (ii) If any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.
- (e) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of providing particular facts

- (f) Every person who is charged with a criminal offence shall be entitled to:
  - (i) Be informed promptly in the language that he understands and in detail of the nature of the offence;
  - (ii) Be given adequate time and facilities for the preparation of his defence;
  - (iii) Defend himself in person or by legal practitioners of his own choice;
  - (iv) Examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and
  - (v) Have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case.

No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

No person who shows that he has been tried by court of competent jurisdiction or tribunal for a criminal offence and either convicted or

acquitted shall again be tried for that offence for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or law of a State, any subsidiary legislation or instrument under the provisions of a law.

### **3.5 Right to Private and Family Life**

- The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.
- Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief I worship, teaching, practice and observance.
- No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own or a religion not approved by his parent or guardian.
- No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
- Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

### **3.6 Right to Freedom of Expression**

1. Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
2. Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

3. Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:
  - (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or
  - (b) Imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the Nigeria Police Force or other government security services or agencies established by law.

### **3.7 Right to Peaceful Assembly and Association**

- Every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interests.
- Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

### **3.8 Right to Freedom of Movement**

- (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.
- (2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society
  - (a) Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

- (b) Providing for the removal of any person from Nigeria to any country to:
  - i. Be tried outside Nigeria for any criminal offence, or
  - ii. Undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty.

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

### **3.9 Right to Freedom from Discrimination**

- (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:
  - (a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups places of origin, sex, religious or political opinions are not made subject; or
  - (b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizen of Nigeria of other communities, ethnic groups, place of origin, sex, religious or political opinions.
- 2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
- 3. Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

### **3.10 Right to Acquire and Own Immovable Property Anywhere in Nigeria**

Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

**Compulsory acquisition of property**

1. No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:
  - a. Requires the prompt payment of compensation therefore; and
  - b. Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.
- (2) Nothing in subsection (1) of this section shall be construed as affecting any general law:
  - (a) For the imposition or enforcement of any tax, rate or duty;
  - (b) For the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
  - (c) Relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
  - (d) Relating to the vesting and administration of the property of person adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up;
  - (e) Relating to the execution of judgments or orders of courts.
  - (f) Providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
  - (g) Relating to enemy property;
  - (h) Relating to trusts and trustees;
  - (i) Relating to limitation of actions;
  - (j) Relating to property vested in bodies corporate directly established by any law in force in Nigeria;
  - (k) Relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
  - (l) Providing for the carrying out of work on land for the purpose of soil-conservation; or
  - (m) Subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or

distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

- (3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

### **Restriction on, and derogation from fundamental rights**

- (1) Nothing in sections 37, 38, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society.
- (a) In the interest of defense, public safety, public order, public morality or public health; or
- (b) For the purpose of protecting the rights and freedom of other persons.
- (2) An Act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution, but no such measures shall be taken in pursuance of any such Act during any periods of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.

Provided that nothing in this section shall authorize any derogation from the provisions of section 33 of this Constitution except in respect of death resulting from acts of war or authorize any derogation from the provisions of section 36 (8) of this Constitution.

- (3) In this section, a "period of emergency" means any period during which there is in force; a proclamation of a state of emergency declared by the President in exercise of the power conferred on him under section 305 of this Constitution.

### **Special jurisdiction of the high court and legal aid**

- (1) Any person who alleges that any of the provisions of this Charter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

- (2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this chapter.
- (3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.
- (4) **The National Assembly**
  - (a) May confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section, and
  - (b) Shall make provisions
    - i. For the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Charter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and
    - ii. For ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

#### **4.0 CONCLUSION**

The most result-oriented way to promote and protect people's fundamental rights is indeed to let the people know the actual demands of the wordings that make up their fundamental human rights. For instance is not enough to say John has a right to fair bearing. He should also be told that. Every person charged with a criminal offence shall be presumed to be innocent until he is proved guilty as shown in section 36-(5) of this country's constitution.

#### **5.0 SUMMARY**

The reader should make a good knowledge of the demands of our fundamental human rights as stated in this unit available to the people.



## **6.0 TUTOR-MARKED ASSIGNMENT**

Suggest a mechanism that can make for a result-oriented promotion and protection of fundamental human rights in Nigeria today.

## **7.0 REFERENCES/FURTHER READING**

Oyewo, A. T. (1999). *Constitutional Law and Procedure in Nigeria*.

Section 33-46 of the Constitution of the Federal Republic of Nigeria, 1999.

The United Nations and Human Rights Office of Public Information  
United Nations, New York, 1978.

## **MODULE 4**

Unit 1	The Enforcement of Human Rights Laws
Unit 2	Human Rights Violations
Unit 3	The Definition and Concept of Diplomacy
Unit 4	Diplomacy Duties and Actions

### **UNIT 1 THE ENFORCEMENT OF HUMAN RIGHTS LAWS**

1.0	Introduction
2.0	Objective
3.0	Main Content
	3.1 The UN and Enforcement of Human Right Laws
	3.2 Enforcement of Human Right Laws at Nation-State Level by Courts
	3.3 Practical Enforcement Procedure
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

#### **1.0 INTRODUCTION**

The enforcement of human right laws both at the international and local levels must be carried out in a justice-oriented practical procedure that ensures the protection of the equal and inalienable rights of AU members of the human family as found in the United Nations universal declaration of human rights charter and in the constitution of member nations of the UN.

#### **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- explain the result-oriented practical enforcement of human right laws.

#### **3.0 MAIN CONTENT**

##### **3.1 The UN and Enforcement of Human Right Laws**

Human rights laws can be enforced at both the international and local levels. And at the international level the United Nation (UN) according to research findings is the only multilateral governmental agency with

universally accepted international jurisdiction for universal enforcement of human right laws. This is carried out through the United Nations Security Council, which is the only UN organ, authorized to enforce human rights laws.

Research findings have further shown that the United Nations Security Council has the primary responsibility for enforcing international peace and security including human rights issues. Hence it has the power to take actions when human rights violations occur. These actions may be direct actions and may involve sanctions as well as the power to refer cases to the international criminal court for the enforcement of human right laws. This is true of the UN charter that gives the Security Council the power to:

1. Investigate any situation threatening international peace and security including human right issues.
2. Recommend procedures for peaceful resolution of a dispute.
3. Call upon other member nations to completely or partially interrupt economic air, postal and radio communications or to sever diplomatic relations and
4. Enforce its decisions militarily, if necessary.

These indeed are powers to enable the Security Council enforce human right laws at the international level.

### **3.2 Enforcement of Human Rights by Courts and Nation-State Level**

The reader should carefully go through human right laws enforcement procedures as shown below and make effort to educate others on it.

#### **Fundamental Rights (Enforcement Procedure) Rules under Chapter IV of the Constitution**

##### **ORDER 1**

1. These rules may be cited as the Fundamental Rights (Enforcement Procedure) Rules.
2. In these rules "application" includes an application for the leave of the court; "Fundamental Right" means any of the Fundamental Rights provided for in Chapter IV of the constitution; "Court" means the Federal High Court or the High Court of a State; "Judge" means a Judge of the court; "Legal representative" means a person admitted to practice in the Supreme Court of Nigeria who has been retained by or assigned to a party to represent him in the proceeding before the court; "Originating summons" mean

every summons other than a summons in a pending case or matter; "Prison superintendent" means the person in charge of the prison or any other place in which the complainant is restrained or confined; "registrar" means the registrar of the Court hearing the application or any court to which an order is directed; "Rules" means these Rules or any amendment thereto and includes the Forms appended to these Rules; "State" means one of the component parts of the Federal Republic of Nigeria.

### ***Application for leave***

- (1) Any person who alleges that any of the Fundamental Rights provided for in the Constitution and to which he is entitled, has been, is being, or is likely to be infringed may, apply to the Court in the State where the infringement occurs or is likely to occur, for redress.
- (2) No application for an order enforcing or securing the enforcement within that State of any such rights shall be made unless leave therefore has been granted in accordance with this rule.
- (3) An application for such leave must be made expert to the appropriate Court and must be supported by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by an affidavit verifying the facts relied on.
- (4) The applicant must file, in the appropriate Court, the application for leave not later than the day preceding the date of hearing and must at the same time lodge in the said Court enough copies of the statement and affidavit for service on any other party or parties as the Court may order.
- (5) The Court or Judge may, in granting leave, impose such terms as to giving security for costs as it or he thinks fit.
- (6) The granting of leave under this rule, if the Court or Judge do directs, shall operate as a stay of all actions or matters relating to, or connected with, the complaint until the determination of the application or until the Court or Judge otherwise orders.

### **Time for applying for leave**

- (1) Leave shall not be granted to applicant for an order under these Rules unless the application is made within twelve months from the date of the happening of the (event, matter or act complained of, or such other period as may be prescribed by any enactment or expect where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or Judge to whom the application for leave is made.

- (2) Where the event, matter, or act complained of arose out of a proceeding which is subject to appeal and a time is limited by law for bringing of the appeal, the Court or Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

## **ORDER 2**

- (1) When leave has been granted to apply for the order being asked for, the application for such order must be made by notice of motion or by originating summons to the appropriate Court, and unless the Court or Judge granting leave has otherwise directed, there must be at least eight clear days between the service of the motion or summons and the day named therein for the hearing. Form No.1 or 2 in the Appendix may be used as appropriate.
- (2) The motion or summons must be entered for hearing within fourteen days after such leave has been granted.
- (3) The motion or summons must be served on all persons directly affected, and where it relates to proceedings in or before a court, and the object is either to compel the Court or an office thereof to do any act in relation to the proceedings or to quash them or any order made therein, the motion or summons must be served on the registrar of the court, the other parties to the Judge is made, on the Judge.
- (4) An affidavit giving the names and addresses of, and the place and date of service on all persons who have been served with the motion or summons must be filed before the motion or summons is listed for hearing and, if any person who ought to have been served under paragraph (3) of this rule has not been served, the affidavit must state the fact and the reason why service has not been effected, and the said affidavit shall be before the court or Judge on the hearing of the motion or summons.
- (5) If on the hearing of the motion or summons the Court or Judge is of the opinion that any person who ought to have been served with the motion or summons has not been served, whether or not he is a person who ought to have been served under paragraph (3), the Court or Judge may adjourn the hearing on such term, if any, as it or he may direct in order that the motion or summons may be served on that person.

### ***Statements and Affidavits***

- (1) 2 Copies of the statement in support of the application for leave under Order 1 rule

2(2) must be served with the notice of motion or summons under rule I (3) of Order 2 and subject to paragraph (2) of this rule, no grounds shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the said statement.

- (2) The Court or Judge may, on the hearing of the motion or summons allow the said statement to be amended and may allow further affidavits to be used if they deal with new matters arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must give notice of his intention and of any proposed amendment of his statement to every other party, and must supply to every such party, copies of such further affidavits.
- (3) Every party to the application must apply to any other party copies of the affidavit, which he proposes to use at the hearing.

### ***Several applications relating to the same infringement***

3. Where several applications relating to the infringement of a particular Fundamental Right are pending against several persons in respect of the same matter, and on the same grounds the applications may be consolidated by order of the Court or Judge hearing the applications.

## **ORDER 3**

### **Application to quash any proceedings**

1 (1) In the case of an application for an order to remove any proceedings for the purpose of their being quashed, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has served a certified copy thereof together with a copy of the application on the Attorney-General of the Federation or of the State in which the application is being heard as that case may be, or accounts for his summons has not been served, whether or not he is a person who ought to have been served under paragraph (3), the Court or Judge may adjourn the hearing on such terms, if any, as it or he may direct in order that the motion or summons may be served on that person.

### ***Settlements and Affidavits***

2(1) Copies of the statement in support of the application for leave under Order 1 rule 2(3) must be served with the notice of motion or summons

under rule 1 (3) of Order 2 and subject to paragraph (2) of this rule, no groups shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the said statement.

- (2) The Court or Judge may, on the hearing of the motion or summons allow the said statement to be amended and may allow further affidavits to be used if they deal with new matters arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits he must give notice of his intention and of any proposed amendment of his statement to every other party, and must supply to every such party, copies of such further affidavits.
- (3) Every party to the application must apply to any other party copies of the affidavit, which he proposes to use at the hearing.

***Several applications relating to the same infringement***

3. Where several applications relating to the infringement of a particular Fundamental Right are pending against several persons in respect of the same matter, and on the same grounds the applications may be consolidated by order of the Court or Judge hearing the applications.
4. (1) Subject to paragraphs (2) and (3) of this rule, an order for the production of the person restrained must be served personally on the person to whom it is directed.
  - (2) If it is not possible to serve such an order personally, or if it is directed to a police officer, or a prison superintendent or other public official, it must be served by leaving it with any other person or official working in the office of the police officer, or the prison or office of the superintendent or the office of the public official to whom the order is directed.
  - (3) If the order is made against more than one person, the order must be served in the manner provided by the rule on the person first named in the order and copies must be served on each of the other persons in the same manner.
  - (4) There must be served with the order (in the form 4 in the appendix) for the production of the person restrained a notice (in the form 5 in the appendix) stating the court or judge before whom, and the date on which the person restrained is to be brought.

**ORDER 3****Application to quash any proceedings**

- (1) (I) In the case of an application for an order to remove any proceedings for the purpose of their being quashed, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has served a certified copy thereof together with a copy of the application on the Attorney-General of the Federation or of the State in which the application is being heard as that case may be, or accounts for his failure to do so to the satisfaction of the Court or Judge hearing the motion or summons.
- (2) Where an order to remove any proceedings for the purpose of their being quashed is made, in any such case, the order shall direct that the proceedings shall be quashed forthwith on their removal into court, which heard the application.

**ORDER 4****Application for production and release of person restrained**

- (1) In an application where the applicant complains of wrongful or unlawful detention, the Court or Judge to whom the application is made *ex parte* may make an order forthwith for his release from such detention, or may
  - (a) Direct that an originating summons as in the Form 2 in the appendix be issued or that an application therefore be made by notice or motion, as in Form 3; or
  - (b) Adjourn the *ex parte* application so that notice thereof may be given to the person against whom the order for the release of the applicant is sought.
- (2) The summons or notice of motion must be served on the person against whom the order for the release of the applicant is sought and on such other persons as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there must be at least five clear days between the service of the summons or motion and the date named therein for the hearing of the application.
- (3) Every party to an application under paragraph (1) of this rule must supply to every other party copies of the affidavits, which he proposes to use at the hearing of the application.



- (2) Without prejudice to rule 1 (1), the court or judge hearing an application where the applicant complains of wrongful or lawful detention may, in its or his discretion, order that the person restrained, be produced in court, and such order shall be a sufficient warrant to any superintendent of a prison, police officer in charge of a police station, police officer or constable in charge of the complainant, or any other person responsible for his detention, for the production in court of the person under restraint
  - (3) Where an order is made for the production of a person restrained, the court or judge by whom the order is made shall give directions as to the court or judge before whom, and the date on which, the order is returnable.
- 4
- (1) Subject to paragraphs (2) and (3) of this rule, an order for the production of the person restrained must be served personally on the person to whom it is directed.
  - (2) If it is not possible to serve such an order personally, or if it is directed to a police officer, or a prison superintendent or other public official, it must be served by leaving it with any other person or official working in the office of the police officer, or the prison or office of the superintendent or the office of the public official to whom the order is directed.
  - (3) If the order is made against more than one person, the order must be served in a manner provided by the rule on the person first named in the order and copies must be served on each of the other persons in the same manner.
  - (4) There must be served with the order (in the Form 4 in the Appendix) for the production of the person restrained a notice (in the Form 5 in the appendix) stating the court or judge before whom, and the date on which the person restrained is to be brought.

#### **Return to the order for release**

- (5) (1) The return to an order for the release of a person restrained must be endorsed on or annexed to the order and must state all the causes or justifications of the detained or the person restrained.
- (3) The return may be amended, or another return substituted thereof, by leave of the court or judge before whom the order is returnable.

**Proceeding as hearing of motion or summons after order has been returned**

- (6) When a return to the order has been made, the return shall first be read in open court and an oral application then made for discharging or remanding the person restrained or amending or quashing the return, and, where that person is brought up in court in accordance with the order, his legal representative shall be heard first, then the legal representative for the state or for any other official or person restraining him. The legal representative for the person restrained will then be heard in reply.
- (7) An order for the release of a person restrained shall be made in clear and simple terms having regard to all the circumstances.

**ORDER 5****Right of any other person or body to be heard**

Any person or body who desires to be heard in respect of any application, motion, or summons, under these rules, and appears to the court or judge to be a proper person or body to be heard, shall be heard notwithstanding that he or it has not been served with the copy of the application, motion, or summons.

**ORDER 6****Orders, which the court can make, and effect of disobedience**

1. (1) At the hearing of any application, motion, or summons under these Rules, the court or judge concerned may make such orders, issue such writs, and give such directions as it or he may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the fundamental rights provided for in the constitution to which the complainant may be entitled.
- (2) In default of obedience of any order made by the court or judge under these rules, proceeding for the committal of the party disobeying such an order will be taken order of committal is in the Form 6 of the Appendix.

**Appendix**

**Form No.1**

**NOTICE OF MOTION FOR AN ORDER ENFORCING A FUNDAMENTAL RIGHT (ORDER 2 RULE 1 (1))**

In the federal high court/High court .....state.  
In the matter of an application by..... for an order for the enforcement of a fundamental right

And

In the matter of ..... applicant

Take notice that pursuant to the leave of the federal high court at ..... /High court of. ... state (or the honorable justice.....) give on the..... 19... the.....

High court will be moved on the ... day of... 19 .....or so soon thereafter as counsel can be heard on behalf of .....(for an order that.....).In terms of the relief sought in the statement accompanying the affidavit in support of the application for leave to apply for the order on the grounds set out in the copy statement served herewith, used on the application for leave to apply for such order.

And take notice that on the hearing of this motion the said ... Will use affidavit of..... and the exhibits therein referred to.

And also take notice that the .....high court (or the honourable justice.....) by order date.....Directed that all proceedings in (or on) the said .....be stayed until after the hearing of this motion or further order).

Date the ... Day of ... 19.....  
(signed)

Applicant or his legal representative

To

Respondent or his legal representative.

Notice - Delete the High Court that is not application.

**Form No.2**

**ORIGINATING SUMMONS ORDER 2 RULE 1(1), AND'  
ORDER 4 RULE 1(1)**

In the federal high court at..... High court of... ..  
... ..state..... division

Suit no... ..(in the matter of. .... Between  
B..... complaint and C.D ... ..

defendant To C.D. of.. ...in the... ..of Let the defendant,  
within 14 days (or if the summons is be served out of the jurisdiction  
insert here the time for appearance fixed by the order giving leave to  
issue the summons and serve it out of the jurisdiction) after service of  
this on him, inclusive of the day of service, cause an appearance to be  
entered to this summons, which is issued on the application of the  
plaintiff:

.....of... ..  
By the summons the plaintiff claims against the defendant. (Or seeks the  
determination of the court of the following question,  
namely,.....or as ninny  
be).

If the defendant dose not enters an appearance, such judgment may be  
give or order made against or in relation to him as the court may think  
just and expedient.

DATED the... .. day of ... .. 19... ..  
...

Note; this summon may not be served later than twelve calendar months  
beginning from the above date unless renewed by order of the court.

This summons was take out by..... of.....the  
Solicitor  
for the plaintiff whose address .....  
.....(or where the plaintiff sues in person)  
this summons was taken out by the said plaintiff who resides  
at.....

**DIRECTIONS FOR ENTERING APPEARANCE**

The defendants may enter an appearance in person or by a solicitor by  
handing in the appropriate forms, duly completed, at the federal high  
court at.....Or the high. court  
of.....

State sitting at.... ..  
(Delete court which is not applicable)

For service JUDGE

On.....

Defendant or solicitor acting for him.

#### **4.0 CONCLUSION**

We have known that the Security Council is internationally responsible for the enforcement of human rights laws. And courts through their decisions and agencies like the police are responsible for the enforcement of human rights laws at sovereign nations' level.

#### **5.0 SUMMARY**

Enforcement of human rights laws has international backing from the United Nations and local or national backing from the courts in respect of the demands of a nation's constitution.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

Defend the position that the enforcement of human rights laws has been effectively carried out both at the international and local levels judging from what you have read in this unit.

#### **7.0 REFERENCES/FURTHER READING**

The United Nations and Human Rights Office of Public Information,  
United Nations New York.

## **UNIT 2 HUMAN RIGHTS VIOLATIONS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Human Rights Violations at the International Level
  - 3.2 Human Rights Violations at the State Level
  - 3.3 Conclusion
  - 3.4 Summary
  - 3.5 Tutor-Marked Assignment
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

This unit discusses human rights violations at both international and state levels and presents human rights violations as indeed a very serious problem to human rights operations. This will be clearer as you go through the unit.

### **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- identify human rights violations as a very serious problem to
- discuss efforts made to create awareness for effective resistance.

### **3.0 MAIN CONTENT**

#### **3.1 Human Rights Violations at the International Level**

Let us briefly look at the violations of human rights at the international level especially how it occurs, and the preventive measures put in place to check further occurrences. Readings into human rights literature reveal that human rights violations occur at the international level when any state or non-state actor breaches any part of the Universal Declaration of Human Rights (UDHR) treaty or other international human rights or humanitarian laws.

Given this, you should remember that I have explained the term non-state actors in a previous unit in this course material and again it

represents very powerful countries and multinational companies that can manipulate persons or groups' rights on the globe.

Beyond this, Christian Davenport at the University of Maryland, United States, gives us some examples of these factors of human rights violations at the international level. And according to him, they include:

- a. War of aggression
- b. War crimes
- c. Trade violations, and
- d. Crimes against humanity, including genocides.

These he says are breaches of international humanitarian law and he concludes that they represent the most serious of human rights violations.

We should note that such breaches as mentioned by Davenport are monitored by the United Nations Committees, national institutions, and governments and by many independent non-governmental organizations such as:

- World Organization against Torture
- Freedom House
- International Freedom of Expression Exchange
- Amnesty International
- Human Rights Watch, and
- Anti-Slavery International Wars of Aggression War crimes

Research has shown that these organizations collect evidence of human right violations anywhere in the world and apply pressure to enforce human rights laws. In addition they seek the attention of Article 39 of the United Nations Charter that designates the UN Security Council as the only tribunal that determines UN human rights violations.

International human rights violation could also occur when a government closes a geographical region to journalists. This indeed raises suspicions of human right violations.

Recently Chechnia in Russia, Jaffna in Sri Lanka, Myanmar in Burima, Papua in Indonesia, Peshawar in Pakistan and Tilet in China were known to have closed their borders to foreign journalists.

### **3.2 Human Right Violations at the State Level**

At the state level looking at Nigeria as an indicator in the African context, human rights violations could rightly be described as primitive and worrisome.

Described as primitive because many people in Nigeria ignorantly and primitively too, violate their rights and that of their family members at will. For instance if a father of three kids layout himself into one drinking joint after the other every day as seen in many of our Nigerian villages; If he prefers to send his three kids out on the street hawking pure water and oranges instead of sending them to school such father would have denied himself the right to work for a decent living and also denied his kids their rights to be educated in life.

We have also seen the primitive violations of human rights in Nigeria from our cultural demands. This is true of the girl-child genital mutilation and the "outcast" system practised from cultural or traditional demands. It is the culture of some communities in Nigeria that a girl must go through genital mutilation before marriage. Hence that is culturally believed to limit the girl's sexual interest only to her husband. It is also in the culture of some communities in Nigeria especially in the eastern part of Nigeria that some of its members are called "outcast" or "Osu", thereby denying them of their rights to freedom of association, of assembly, of community leadership and of intra marriage-with the other so called son-of-the-soil members of the community.

By genital mutilation, the girl child is subjected to unconsented:

- Crude cutting of the most sensitive part of her genital organ.
- Pains and bleeding
- Psychological trauma.

In addition to all these, poverty is one major threat that has become unavoidable factor in human rights violations in our Nigerian society today. Poverty is for now still far from governmental remedy for many people today in Nigeria and some have resorted to:

- Human kidnapping
- Human trafficking
- Prostitution in foreign countries
- Early girl-child marriages, etc.

These are indeed violations of people's rights as they dehumanize the human person. Away from all these, human rights violations could also be described as worrisome in a country like Nigeria where we have:

- Policemen that forcefully collect bribes (usually N20) from motorists at checkpoints which have often result in shooting to kill if the money is not given.
- Politically motivated killings and setting of people's property on fire are common occurrences.



- Justice that cannot be obtained by the poor.
- The helpless poor are accused and sent to jail for crimes committed by the rich, especially politicians. Elections are rigged and persons that were not voted for by the people emerge as leaders.

To explain more on this, how else will any reasonable being explain human violations in Nigeria where police officers do not only wield their guns at helpless motorists at checkpoints to extort money but also use their deadly weapons to threaten, intimidate, harass and even kill innocent law abiding citizens at the slightest provocation. An instance is the Apo- six killings in Apo village, Abuja.

Where are our voting rights, where elections are rigged and the people we did not vote for are solidly installed as leaders to rule us?

Recently, Amnesty International and effective watchdog over human rights violations went into the Nigerian prisons and found out that:

- Many innocent Nigerians are perishing in the Nigerian prisons for offences they did not commit.
- Many of the ladies have been raped and even impregnated by male inmates.
- The living conditions of our prisons are dehumanizing. To confirm this see *The Source* magazine of December 1st, 2008.

This is also confirmed in the cover story of *TELL* Magazine of April, 20, 2009 by the same Amnesty International which says a recent visit to the prisons revealed that disease was pervasive in the cramped, poorly ventilated facilities, and chronic shortages of medical supplies were observed. Amnesty International further revealed that HIV/AIDS and tuberculosis were of particular concern.

It was discovered that in this helpless situation only those with money or whose relatives bought food regularly had sufficient food; prison officials routinely stole the money provided for food for prisoners. It was also observed by the Amnesty International, these prison harsh conditions and denial of proper medical treatment contributes to many prisoners death. For example in September 2007, inadequate medical attention allegedly contributed to the death of Olawale Daniel, and inmate of the Agodi Federal Prison in Ibadan, Oyo State. As stated in the magazine, Olawale's death sparked riot between inmates and guards on September 11 which resulted in the death of yet another 11 prisoners, including four staff members of the prisons.

In addition to what we have now known about Nigeria concerning human rights violations, let us increase the knowledge by also looking at human rights violations in Zimbabwe which we discussed briefly in Unit 8 of this course material.

### **Human rights violations in Zimbabwe**

An article on Human Rights Violations in Africa in the Internet shows that in Zimbabwe under President Mugabe, like Nigeria and any other country in Africa there are widespread report of continuous violation of human rights. According to human rights organizations such as Human Rights Watch and Amnesty International, there have been systematic and escalating violations of the rights to

- shelter, food.
- freedom of movement and residence
- freedom of assembly and
- the protection of law, which have all been at the subject of brutal attacks by the police force. For example, there was such as police crackdown on a March 11th, 2008 Movement for Democratic Change (MDC) rally during which the party leader Morgan Tsvangirai and 49 other opposition activists were arrested and severely beaten by the police.

Even when Morgan Tsvangirai went on BBC after his release to convince the world that he suffered head injuries and blows to the arms, knees and back, and that he lost a significant amount of blood and the police action was strongly condemned by the UN secretary-General, Ban Ki-Moon, the European Union and the United States, the Zimbabwean government controlled daily newspaper *The Herald* ostensibly claimed that the police had intervened after demonstrators "ran amok" looting shops, destroying property, mugging civilians and assaulting police officers and innocent members of the public". This shows that violations are perpetrated by government supporters as well as law enforcement agencies that induce assaults, torture, death threats, kidnappings and unlawful arrests and detentions.

The write up on human rights abuses in Zimbabwe culled from the internet further reveals that the law enforcement agencies are a major source of human rights violations in Zimbabwe as revealed by the Human Rights Watch which convincingly reported a growing number of cases in which police have assaulted and tortured opposition supporters and civil society activists.

For instance, a notable case was the arrest and subsequent beatings of a group of trade union activists, including the President and Secretary-

General of Zimbabwe Congress of Trade Unions at Matapi police station, following peaceful protests on September 13, 2006. The unionists the article continued were initially denied medical assistance.

In Zimbabwe, the freedom of assembly is severely restricted by law. The legal framework is further stretched in practice, with law enforcement closely monitoring opposition demonstration and public gatherings. There are many reports of arrest and subsequent beatings of demonstrators. According to the Human Right Watch report, "You Will Be Thoroughly Beaten". The Brutal Suppression of Dissent Zimbabwean laws such as the Public Order and Security Act (POSA) and the miscellaneous offences Act (MOA) are used to violently disrupt peaceful demonstration and justify the arrest of civil society activists. In some cases, the activists are held for more than the legally allowed limit, often without charge. More to this is the arrest of student activist's leader Promise Mkwanzazi. On May 29, 2006 Mkwanzazi was detained at a police station in Bindura for five days without charge. During the time he was repeatedly stripped, shackled and beaten with batons by police men, who accused him of trying to overthrow the government.

It is very instructive to note that from 1,200 cases of human rights violations by the law enforcement agencies, including 363 cases of torture, 516 cases of assault, 58 cases of death threats, 399 cases of unlawful arrest and 451 cases of unlawful detention. Many of these incidents include multiple victims. Indeed it was discovered that the enforcement agencies are encouraged to perpetuate abuses by statements made by high ranking members of the ruling party ZANU-PF.

#### **4.0 CONCLUSION**

At the beginning of this unit we were told that we will be able to identify human rights violations especially at the state level as a serious problem to human rights operations. And this is indisputably true of Nigeria and Zimbabwe discussed in this unit. Indeed to confirm further the *Spectator* daily national newspaper on December 26, 2008- January 1, 2009 said about Nigeria:

*Like the previous years, not much has changed in the Nigerian human rights record as some Nigerians have died defending their rights or shot by trigger-hungry police officer for refusing to part with little as N20 at the ubiquitous illegal tolls mounted by the police across the nation's roads.*

When will this primitive and worrisome violations of human rights stop in Nigeria. Let this worry us to a resisting point, as we could also in correcting the Nigerian case also correct that of other countries in Africa.

## **5.0 SUMMARY**

This unit demands that we fully resist human rights violations in Nigeria and beyond.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Read this unit carefully and make a result-oriented case for resisting human rights violations in Nigeria and beyond.

## **7.0 REFERENCES/FURTHER READING**

The United Nations and Human Rights. Office of Public Information  
United Nations, New York, 1978.

*The Spectator*, December 26, 2008 p 3.

*The Source* magazine, December 1, 2008

“Nigeria: Great Nation Poor Human Rights” in *TELL* magazine 16,  
April, 20, 2009.

## **UNIT 3 THE DEFINITION AND CONCEPTS OF DIPLOMACY CONTENTS**

- 1.0 Introduction
- 2.0 Objective
- 3.0 Main Content
  - 3.1 The Meaning of Diplomacy
  - 3.2 Types of Diplomacy
  - 3.3 The Diplomat
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

This unit seeks to define the term diplomacy and diplomat in a way the reader will be able to clearly explain both without contradicting diplomatic issues related to peace in international relations.

### **2.0 OBJECTIVE**

At the end of this unit, you should be able to:

- explain the term diplomacy and who is a diplomat in accordance with their relevance to peaceful relationships between nations.

### **3.0 MAIN CONTENT**

#### **3.1 The Meaning of Diplomacy**

As Henry Kissinger puts it, diplomacy is a plea for good relationships between nations through negotiations against wars. The living *Webster* encyclopaedic dictionary says diplomacy is the science or art of conducting negotiations between nations.

In the traditional American view, Robert E. Osogood in his book entitled *Limited War: The Challenge to America's Strategy* says diplomacy should be a process of ironing out differences through discussion with eventual agreement based on rational accommodation of reasonable interests. Given this, diplomacy is simply defined as the science or art of resolving international conflict peacefully through agreements, compromises and settlements found in negotiations.

### 3.2 Types of Diplomacy

We have six types of diplomacy, namely:

- i. Personal Diplomacy
- ii. Parliamentary Conference Diplomacy
- iii. Permanent Traditional Diplomacy
- iv. Permanent Conference Diplomacy
- v. Ad hoc Conference Diplomacy
- vi. Revolutionary Diplomacy.

These six types of diplomacy briefly explained below are:

**Personal diplomacy:** involves key decision makers in the art of resolving international conflicts such as heads of state, foreign ministers, secretaries-general of international organizations like the UN or AU and very special representatives of the heads of state. Note here that the voices of these key decision makers could undermine the powers of a nation's constitution and make the impossible possible.

**Parliamentary conference diplomacy:** This kind of diplomacy involves a delaying process of conference discussions within international organizations or institutions that states and restates positions rather than seek to discuss, negotiate and generate quick diplomatic actions.

**Permanent traditional diplomacy:** is the oldest type of diplomacy that involves the opening of foreign embassies in friendly nations and the sending of ambassadors to permanently represent both their Heads of state for peace and good political, economic and social relationship.

**The permanent conference diplomacy:** is a procedure whereby permanent delegations are accredited to international and regional organizations and institutions. This could be a delegation of heads of states, permanent representatives and senior staff at the UN conference on peace decision making. This allows committees which are effectively covered by permanent delegates from all member states of the UN.

**Ad hoc conference diplomacy:** This has become very important type of diplomacy as it is a gathering of delegates who meets occasionally to discuss the qualification and rights of diplomats to negotiate for peace. This makes room for effective and up-dated competence in decision making for peace.

**Revolutionary diplomacy:** requires foreign nationals abroad to organize progressive and revolutionary movements, parties and front organizations abroad to press for the resolution of conflict in their respective home states. Beyond this, what is very important to note is that the six types of diplomacy briefly explained above are used in order to make diplomatic representations. Hence this representations state or restate clarified positions, call attention to specific situations of interactions or to some negatives situations that are likely to affect general levels of interactions. The purpose here is to make sure that relations among nations are peacefully devoid of potential conflict, as the structures of the six types of diplomacy mentioned in this unit will help to develop rational procedures to meet unexpected contingences and to search for options in which one minimizes the adversary's threats and maximize one's own self-interests other than resorting to war.

### 3.3 The Diplomat

For a better understanding of the concepts of diplomacy let us look at the relationship between diplomacy and diplomat. The relationship between diplomacy and diplomat is this:

While diplomacy is the science or art of negotiating for peace between nations, the person that carries out the task of negotiation for peace is called the diplomat. Indeed Coral Bell calls the diplomat a crisis manager.

According to him, the diplomat or crisis manager must possess:

- i. A good knowledge of international relations.
- ii. A good understanding of how international relations functions between nations.
- iii. The confidence and the convincing ability to capture successful negotiations.
- iv. The ability to establish intimacy and empathy with the adversaries and their aspirations in the negotiations.
- iv. Great moral and intellectual sensitivity, perception, imagination and courage.
- v. The ability to make parties feel convincing and grateful for successful negotiation.

Beyond this, a diplomat is expected to possess a good knowledge and understanding of his own country; its geography, history and culture, its economic, political, social and its human and economic, political, social and demographic structure, its human and economic resources-agriculture, industry, finance in short the determinants of its foreign policy priorities. A knowledge of other states, regions, and of the

mechanism and procedures of international intercourse which involves a deep knowledge of the world network of diplomatic missions and consular posts, their functions, their practice and structure, the worldwide network of private and state trading and financial establishment and how they operate. And indeed the existing intergovernmental institutions, global and regional, for international political, social and economic cooperation with regard to the kind of priority being given to his neighbours, his region and super powers.

The diplomat should also possess specialist qualities such as: -

- Political awareness
- Personal acceptability
- Intellectual curiosity and the drive to go on learning
- Intellectual versatility

The diplomat's needed functional skills are in:

Negotiating

- observing, analyzing and reporting
- representation
- managing crisis
- communications and public diplomacy
- cross-cultural relations

What I have done here is to let the would-be diplomat become aware of the skills he needs to be a highly effective diplomat.

### **Diplomatic Mission**

The skills mentioned above becomes relevant ingredients as soon as the would-be diplomat is nominated by the head of state, and approved by the National Assembly for appointment especially in the case of Nigeria. If appointed the diplomat's mission is conducted through the ministry of foreign affairs which sends him out on diplomatic mission and hereafter representing the sending state in the receiving state. From here, he is now described as the head of a mission armed with credentials to prove his authenticity to the head of the state to which he is accredited. These letters of credence such as letters of credence can read.

*Thus - For Ambassadors*

*To -----(full name and title of Head of state)*

*Your Excellency: I have appointed Prof. Agwunobi, a distinguished citizen of Nigeriato represent me before your government as Ambassador of Nigeria. He is well aware of the mutual interests of our*



*two countries and shares my sincere desire to preserve and enhance the long friendship between us.*

*My faith in high character and ability gives me entire confidence that he will carry out his duties in a manner fully acceptable to you. Accordingly, I entrust him to your confidence. I ask that you receive him favourably, and give full confidence to what he shall say on the part of Nigeria as well as to the assurances which he bears of my best wishes for the prosperity of the United States of America.*

*Very truly yours,*

*(Signature of Head of state)*

*By the head of state*

*(Signature of Minister for foreign Affairs of Nigeria) (Date)*

The seat of a diplomatic mission is always established in the capital city of the host or receiving state. And from an example of the content of letters of credence stated above, one would observe that the diplomat is a representative of his Head of State and accordingly must be honoured as such by his host state. Indeed this honour carry with it diplomatic privileges and immunities that visibly and excessively keep the diplomat and his native diplomatic staffs away from un-permitted entry into diplomatic premises or private residence of a diplomat; from pressures, whether physical, legal or moral that may come from the host state.

Also included under diplomatic privileges and immunities are diplomatic bags containing only official documents and articles for official use. Diplomatic records, documents, correspondence and archives which are unavoidable at any time.

The diplomat's immunities start as soon as he enters the host country with his family to start his diplomatic missions and end as soon as he leaves the host country at the end of his diplomatic tenure.

#### **4.0 CONCLUSION**

The knowledge of what is diplomacy and who is a diplomat have been well treated in this unit and you should therefore apply this knowledge to a result-oriented benefit of the society.

#### **5.0 SUMMARY**

Students of international relations need a sound knowledge of what diplomacy is and who is a diplomat and the skills of a diplomat as they may become diplomats one day. Hence the task of diplomacy is better placed in the hands of experts.

## 6.0 TUTOR-MARKED ASSIGNMENT

Operationally define diplomacy and relate it to who a diplomat is, while identifying the needed skills of a diplomat.

## 7.0 REFERENCES/FURTHER READING

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## **UNIT 4     DIPLOMATIC DUTIES AND ACTIONS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objective
- 3.0 Main Content
  - 3.1 Diplomatic Relations
  - 3.2 The Establishment of Diplomatic Posts and Diplomatic Duties
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

This unit attempts to identify four major duties of the diplomat and that of other actors in the field of negotiations which is the major task of the diplomat.

### **2.0 OBJECTIVE**

At the end of this unit, you should be able to:

- explain the duties of the diplomat and how actors play the game of diplomacy.

### **3.0 MAIN CONTENT**

#### **3.1 Diplomatic Relations**

As Feltham puts it, diplomatic relations between states may be established by friendly contacts of any form between their governments; but permanent diplomatic relations are considered to exist only with the establishment of a diplomatic mission, or preferably with the exchange of diplomatic missions. These are established by mutual consent and on the basis of mutual understanding of the functions that will be undertaken by the mission. These functions have become generally accepted over past centuries, and have been defined in the 1961 Vienna Convention on

Diplomatic Relations as consisting basically of:

- (a) Representing the sending state in the receiving state.

- (b) Protecting in the receiving state the interests of the sending state and its nationals, within the limits permitted by international law;
- (c) Negotiating with the government of the receiving state.
- (d) Ascertaining, by all lawful means, conditions and development in the receiving state, and reporting thereon to the government of the sending state.
- (e) Promoting friendly relations between sending state and the receiving state, and developing their economic cultural and scientific relations.

Apart from their diplomatic relations, members of the diplomatic staff carry out the following stated below.

### **3.2 The Establishment of Diplomatic Post and Diplomatic Duties**

The establishment of diplomatic relations between states implies agreement in principle to the identification of diplomatic posts and the duties attached to such posts.

Diplomatic duties are specified in general terms in the 1961 Vienna Convention on diplomatic relations as follows:

- a. Protecting in the receiving state the interests of the sending state and of its nationals, both individuals and bodies corporate, within the limits permitted by international law,
- b. Furthering the development of commercial, economic, cultural and scientific relations between the sending state' and the receiving state and otherwise promoting friendly relations between them in accordance with the provisions of the convention,
- c. Ascertaining, by all lawful means, conditions and developments in the commercial, economic, cultural and scientific life of the receiving state, reporting thereon to the government of the sending state and giving information to persons interested.
- d. Issuing passports and travel documents to nationals of the sending state; and visas or appropriate documents to persons wishing to travel to the sending state;
- e. Helping and assisting nationals, both individuals and bodies corporate, of the sending state.
- f. Acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations 'as of the receiving state.
- g. Safeguarding the interests of nationals, both individuals and bodies corporate, of the sending state in case of succession *mortis*

- causa in* the territory of the receiving state, in accordance with the laws and regulations of the receiving state.
- h. Safeguarding within the limits imposed by the laws and regulations of the receiving state, the interest of minors and other persons lacking full capacity who are not nationals of the sending state, particularly where any guardianship or trusteeship is required with respect to such persons.
  - i. Subject to the practices and procedures obtaining in the receiving state, representing or arranging appropriate representation for nationals of the sending state before the tribunals and other authorities of the receiving state, for the purpose of obtaining, in accordance with the laws and regulations of the receiving state, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence of any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests.
  - j. Transmitting judicial and extra-judicial documents or executing letters of authority or commissions to take evidence for the courts or the sending state in accordance with international agreements in force or, in the absence of such agreements, in any other manner compatible with the law and regulations of the receiving state.
  - k. Exercising rights of supervision and inspection provided for in the laws and regulations of the sending state, in respect of vessels having the nationality of the sending state, and of aircraft registered in that state, and in respect of their crews.
  - l. Extending assistance to vessels and aircraft mentioned in (k) above and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's paper, and without prejudice to the powers of the authorities of the receiving state, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, of officers and the seaman in so far as this may be authorized by the laws and regulations of the sending state;
  - m. Performing any other functions entrusted to a consular post by the sending state which are not prohibited by the laws and regulations of the receiving state or to which no objection is taken by the receiving state or which are referred to in the international agreements in force between the sending state and receiving state.

It will be noted that the facilities granted by the host state to diplomatic post are those necessary to ensure the effective fulfillment of its functions: the premises used exclusively for consular purpose are (with minor exceptions such as emergency requiring prompt action on the premises) inviolable and may not be entered except with the permission of the head of the consular post or the head of the diplomatic mission of

the country concerned; the host state is obliged where necessary, to help in the finding of suitable premises for the diplomatic post (and accommodation for staff) and to damage or insult; the diplomatic archives and official correspondence are inviolable; there is freedom of movement for members of the post (save in generally restricted zones) and freedom and inviolability of communication by bag and other recognized means, although wireless transmitters may be used only with the permission of the host government; furthermore the host government may ask for bag to be opened if it has serious reason to believe that its contents are unauthorized (if, however, the sending state refuses to do this, the bag shall be returned to its place of origin); and the head of post has the right to fly his national flag and display his national coat of arms on his premises and residence, and fly his flag on his car, boat or aircraft when on official business.

The diplomatic premises, including the residence of the head of the post but not those of other members of the staff, are not directly liable to taxation (though this exemption does not apply to the vendor or lessor of the premises if he is liable under the law), but charges for services, e.g. refuse collection, must be met.

In addition, diplomatic fees and charges may be levied for services rendered, e.g. the granting of visas, certification of documents; these are exempted from all dues and taxes in the host state.

In a more detailed explanation, diplomats perform the following duties and such detailed duties are to report, represent, protect and negotiate. Indeed the one most important in these four types of diplomatic duties is the function of **NEGOTIATION** as we shall see later in our discussion.

Given this, Gordel Hull briefly explains these four types of diplomatic duties as follows:

1. **Reporting** benefits the home office of diplomats. As diplomats are the eyes and ears of their country abroad, their reports which cover politics, economics, news analysis, social conditions in their hosts countries, changes in policies or decision-makers, intelligence gathered from formal and informal contacts and carefully thought-out pieces of advice on policy reforms, are eagerly awaited raw materials in the foreign office. They are confidential dispatches which are sent through privileged courier services. Much diplomatic effort is devoted to the duty of reporting. It involves an embassy in monitoring all aspects of the life and work of the country in which it is based. The task enjoins an ambassador to entertain leaders, officials, mass-media people and military leaders to cultivate their personal acquaintances;

read, analyse and evaluate the host's press, radio and television programmes; and develop his own independent knowledge and interpretative skill of the host country. These help the ambassador and his staff in reporting accurately and realistically to their foreign office without their host state or their colleagues from other actors knowing the contents of the reports. This is why we maintain that important tough reporting structure. It is not central to the role of diplomats in international affairs. Reporting aids the actors. In this way, institutional or organizational pressure is brought to bear on the parties to submit themselves to negotiations. If force and hostilities have commenced, the progress of war and its successes and failures for the combatants, the attitude of their allies in favour of continuation or negotiation, the nature of their stores and equipment and their capacity to replenish these, and the morale and will of their peoples to continue fighting and endure the hardship and dangers of war, combine to determine or not to send out peace feelers for the commencement of negotiations making of foreign policy rather than international relations which is the interrelatedness of two or more foreign policies.

2. **Representing** is the next duty. It inclines more towards the ceremonial aspects of foreign relations than towards the substantive tasks of pursuing the goals of foreign policy. But, the contacts made during official ceremonies are of great help. Host countries invite foreign countries to attend their state functions, the opening of their parliaments, the commissioning of development projects, and ports, university convocations, and many other such activities. Foreign diplomats in the host countries concerned represent their states at these functions, parties and ceremonies. Through representation, they seek to maintain and raise the general level of cordial relations between those they represent and the host.
3. Diplomats **protect** the lives, property and interests of their citizens in foreign lands. This is their function of protection. They realize that carelessness over the welfare of a citizen could cause strains in foreign relations between their country and their host. These citizens abroad may be businessmen, tourists, students, workers or government officials. Their needs, welfare and interest differ. Protecting, promoting and attending to these needs, interests and welfare, improve relations and reduce international tensions.
4. **Negotiation:** This function brings them in close contact with their host states as an actor, and with other diplomatic missions in the

same post also as actors. We shall, however, discuss negotiations generally in this section, without confining ourselves to negotiations between a specific diplomatic mission and its host country. Hull has also shown us the place of actors in the field of negotiation when he said we have mentioned earlier that as a result of the exchange of diplomatic correspondence between actors, negotiations to resolve an issue and reach an agreement may be reached. If the relations between actors are severely strained, the indication of a willingness to negotiate may be given through a third party, or feelers may be sent out through actors that maintain very friendly relations with the actors in dispute. Another way of initiating negotiations is through resolutions of international or regional organizations that embrace the disputants. Such organizations may call on these powers to commence negotiations, or may decide to mediate, or offer their good offices *or* arbitration efforts to the actors.

Beyond this, effective diplomatic result could come through economic, political or force pressure if negotiations fail. Murtala Muhammed understood this pressure- diplomacy game and played it this way. By this singular act of courage and daring, he won independence for Angola and shamed the United States, showing Uncle Sam another shade of diplomacy.

Olusegun Obasanjo who succeeded Muhammed as the head of state after the latter's untimely death followed the vigorous step of his predecessor. Obasanjo surprised Britain in his result-oriented application of pressure diplomacy on Britain when Britain was trying to play the arrogant game with regards to Zimbabwe's independence. Obasanjo began to eat away at Britain's economic interests in Nigeria. It was a master stroke, for it is in the pockets that these "super powers" feel the pinch. In no time, Britain changed tactics and made the independence of Zimbabwe a speedy reality.

Those were the economic days of Nigerian diplomacy. Hence the role economic power of a nation plays in effective diplomatic achievements.

#### **4.0 CONCLUSION**

Diplomacy is a game of reporting, representing, protecting and above all negotiating which calls for a useful understanding of the processes of establishing good relationships between nations.



## 5.0 SUMMARY

The student of conflict resolution needs a thorough understanding of what have been discussed in this unit in order to relate diplomacy issue to relationships between nations.

## 6.0 TUTOR-MARKED ASSIGNMENT

Discuss how diplomacy accounts for good relationship between nations.

## 7.0 REFERENCES/FURTHER READING

Agwunobi, J.C. 'AU and Conflict Resolution.' A Paper presented to esc Jaji-Kaduna.

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## MODULE 5

Unit 1	Citizenship and Rights of Citizens
Unit 2	Rule of Law and Human Rights
Unit 3	Civic Duties and Citizenship Responsibilities
Unit 4	From Human Rights to Animal Rights

### UNIT 1 CITIZENSHIP AND RIGHTS OF CITIZENS

#### CONTENTS

1.0	Introduction
2.0	Objective
3.0	Main Content
3.1	The Meaning of Citizenship
3.2	Types of Citizenship
3.3	Difference between Citizens and Non-Citizens
3.4	The Rights of Citizens
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

#### 1.0 INTRODUCTION

Before going through this unit, you should bear it in mind that there is no human rights without citizenship. This fact will be clear as we go through on.

#### 2.0 OBJECTIVE

At the end of this unit, you should be able to:

- discuss the inevitable link between, citizenship and human rights.

#### 3.0 MAIN CONTENT

##### 3.1 The Meaning of Citizenship

A nation or state is a community of sovereign people politically put together to enjoy the inalienable rights and privileges of their community. And these people who must enjoy the full economic social and political rights are called citizens. The *Webster Encyclopaedia Dictionary of the English Language* defines a citizen as a native or

naturalized, as opposed to alien, member of a state or nation, owing allegiance to its government and entitled to its protection.

Indeed, the special status according to citizens by the state is called citizenship. There are also people who reside in a given state but are not legally recognized as members of that state. These categories of people are called aliens. Aliens are foreigners who do not have rights of citizenship in the state they reside.

This confirms the fact that we must have a nation we call our own so as to enjoy human rights. Simply put, no nation, no human rights.

### 3.2 Types of Citizenship

There are three types of citizenship. They are:

- i. Citizenship by birth
- ii. Citizenship by registration
- iii. Citizenship by naturalization.

**Citizenship by Birth** is defined in our Nigerian constitution as every person born in Nigeria before the date (October 1st 1960) of independence, either of whose parents or any of whose given parents belongs or belonged to a community indigenous to Nigeria. This evidence is shown in the family, kindred, community and the Local Government Area we come from. Hence in recent time Nigerians are always asked in case of any identification need to show their local government identification certificate.

**Citizenship by Registration:** subject to provisions of section 28 of our Nigerian constitution, women from other countries married to Nigerians as well as matured men from other countries who will want to become Nigerian citizens could apply and be registered as Nigerian citizens, if the President of Nigeria is satisfied that:

- i. The person is of good character.
- ii. The person has shown a clear intention of his desire to be domiciled in Nigeria, and
- iii. The person has taken an oath of Allegiance prescribed in the seventh schedule to the constitution.
- iv. The person has to renounce his or her original citizenship.

**Citizenship by Naturalization:** Naturalization is the process through which a citizen of another country is granted citizenship outside his original country by being issued with a certificate of naturalization which qualifies him to enjoy all the rights and privileges of citizenship.

And a citizen so accepted is called a naturalized citizen that must satisfy the following conditions as stated below:

- i. The person must be of good character.
- ii. The person must show a genuine intention to be domiciled in that state and reside in that state continuously for a prescribed number of years.
- iii. The person must show a genuine interest or love for that state and must be prepared to make contributions to her progress.
- iv. The person must take the oath of Allegiance prescribed by that state.
- v. The person must renounce the citizenship of any other state.

### **Distinction between citizens and non-citizens**

A given state is made up of people. And apart from a state being occupied by women and men, its people can further be divided into citizens and non-citizens. Indeed the differences between citizens and non-citizens or aliens are established below:

- a. Citizens have political rights while aliens do not have. Citizens have the right to vote at elections. They also have the right to contest any political office within the state, as well as the right to form parties. Aliens have none of these rights.
- b. Citizens owe allegiance to the State, while aliens do not. Citizens have the obligation to be loyal to the State, sing the national anthem and honour the national flag. Aliens have no such obligation.
- c. Citizens have the obligation to join the army when called upon to do so especially during an emergency. A citizen has the obligation to help and defend the State at times of war. But aliens have no such obligations.
- d. Citizens have the freedom to enter into their own country at any time they wish and without a visa. But an alien's entry into a State is always regulated. Moreover, he can enter only with valid documents. A sovereign State has the power to refuse the entry of an alien.

### **Rights of Citizens**

Citizens of a given state have certain inalienable rights enshrined in the constitution which they enjoy. As could be seen in the Nigerian constitution presented below:

**Right to life:** 33. - (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of

a court in respect of a criminal offence of which he has been found guilty in Nigeria. (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary (a) For the defence of any person unlawful violence or for the defence of property; (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) For the purpose of suppressing a riot, insurrection or mutiny.

**Right to dignity of human person:** 34 - (1) Every individual is entitled to respect for the dignity of his person, and accordingly: (a) No person shall be subjected to torture or to inhuman or degrading treatment; (b) No person shall be held in slavery or servitude; and (c) No person shall be required to perform forced or compulsory labour.

(2) For the purpose of subsection (1) (c) of this section, "forced or compulsory labour" does not include:

- (a) Any labour required in consequence of the sentence or order of a court;
- (b) Any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
- (c) In the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service; or
- (d) Any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
- (e) Any labour or service that forms part of: (i) normal communal or other civic obligations for well-being of the community, (ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or (iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly:

**Right to personal liberty:** 35 - (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law: (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; (b) by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law; (c) for the purpose of bringing him before a court in execution of the order of a

court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence; (d) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare; ( e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence. (2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice. (3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention. (4) Any person who is arrested or detained in accordance with subsection (1)( c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of: (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions that are reasonably necessary to ensure that he appears for trial at a date. (5) In subsection (4) of this section, the expression "a reasonable time" means: (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable. (6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law. (7) Nothing in this section shall be construed: (a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and (b) as invalidating any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of the Nigeria Police Force in execution of a

sentence imposed by an officer of the armed forces of the Federation or of the Nigeria Police Force, in respect of an offence punishable by such detention of which he has been found guilty.

**Right to fair hearing:** 36 - (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

- (2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law:
  - (a) Provides for an opportunity for person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and
  - (b) Contains no provision making the determination of the administering authority final and conclusive.
- (3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.
- (4) Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that:

- (a) A court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;
- (b) If in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly

disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

- (5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.

Provided that nothing in this section shall invalidate any law by reason only that the law impose upon any such person the burden of proving particular facts.

- (6) Every person who is charged with a criminal offence shall be entitled to:
- (a) Be informed promptly in the language that he understands and in detail of the nature of the offence;
  - (b) Be given adequate time and facilities for the preparation of his defence;
  - (c) Defend himself in person or by legal practitioners of his own choice.
  - (d) Examine, in person or by his legal practitioners, the witness called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and
  - (e) Have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.
- (7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case.
- (8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.
- (9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.
- (10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.



- (11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law: and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

**Right to private and family life:** 37 - (1) The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

**Right to freedom of thought, conscience and religion: 38**

- (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.
- (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination. Any place of education maintained wholly by that community or denomination.
- (4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

**Right to freedom of expression and the press:** 39 - (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

- (2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly,

shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

- (3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:
  - (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or
  - (b) Imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

**Right to peaceful assembly and association: 40.**

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

**Right to freedom of movement: 41**

- (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from.
- (2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society.
  - (a) Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or
  - (b) Providing for the removal of any person from Nigeria to any other country to:
    - (i) Be tried outside Nigeria for any criminal offence, or
    - (ii) Undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of

which he has been found guilty; provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

**Right to freedom from discrimination: 42**

- (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:
  - (a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or
  - (b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions.
- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
- (3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

**Right to acquire and own immovable property anywhere in Nigeria: 43.**

Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

**Compulsory acquisition of property: 44**

- (1) No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:
  - (a) Requires the prompt payment of compensation therefore and

- (b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.
- (2) Nothing in subsection (1) of this section shall be construed as affecting any general law:
  - (a) For the imposition or enforcement of any tax, rate or duty;
  - (b) For the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
  - (c) Relating to lease, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
  - (d) Relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up;
  - (e) Relating to the execution of judgments or orders of court;
  - (f) Providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
  - (g) Relating to enemy property;
  - (i) Relating to trusts and trustees;
  - (j) Relating to limitation of actions;
  - (k) Relating to property vested in bodies corporate directly established by any law in force in Nigeria;
  - (k) Relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
  - (l) Providing for the carrying out of work on land for the purpose of soil conservation; or
  - (m) Subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, surveyor dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.
- (3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the

Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

**Restriction on and derogation from fundamental rights: 45**

- (1) Nothing in sections 37, 38, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:
  - (a) In the interest of defence, public safety, public order, public morality or public health; or
  - (b) For the purpose of protecting the rights and freedom of other persons.
- (2) An Act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods or emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency; provided that nothing in this section shall authorize any derogation from the provisions of section 33 of this Constitution, except, in respect of death resulting from acts of war or authorize any derogation from the provisions of section 36(8) of this Constitution.
- (3) In this section, a "period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred to him under section 305 of this Constitution.

**Special jurisdiction of High Court and legal aid: 46**

- (1) Any person who alleges that any of the provisions of this Chapter has been, is being, or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.
- (2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within the State of any right to which the person who makes the application may be entitled under this Chapter.

- (3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purpose of this section.
- (4) The National Assembly:
  - (a) May confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or described for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and
  - (b) Shall make provisions:
    - (i) For the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view of enabling him to engage the services of a legal practitioner to prosecute his claim, and
    - (ii) For ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

#### **4.0 CONCLUSION**

There are no human rights for any person who does not have any nation, state or community he calls his own. Apartheid South Africa deprived black South Africans of their nation and citizenship. And with that they were not free and had no human rights until the year 1993 when the yoke of apartheid was broken.

The Nigerian constitution shows Nigerians as citizens with fundamental human rights only as from 1st October, 1960 the date Nigeria got her freedom from the British colonial masters.

#### **5.0 SUMMARY**

Human freedom from any form of enslavement is the only pillar on which human rights operate successfully.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

Discuss human freedom and successful operation of human rights using Nigeria as a case study.

#### **7.0 REFERENCE/FURTHER READING**

*Constitution of the Federal Republic of Nigeria (1999).*

Oyewo A.T. (2009). *Constitutional Law and Procedure in Nigeria.* Ibadan: John Archers (Publishers) Limited.

## **UNIT 2      RULE OF LAW AND HUMAN RIGHTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 The meaning of the Rule of Law
  - 3.2 Elements of the Rule of Law
  - 3.3 The Link between the Rule of Law and Human Rights
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

This unit defines the rule of law, discusses its elements and attempts to introduce the reader to the link between the rule of law and human rights.

### **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- explain the supremacy of the rule of law
- discuss the impact of such supremacy on the successful operation of human rights.

### **3.0 MAIN CONTENT**

#### **3.1 The Meaning of the Rule of Law**

The rule of law which is synonymous with absolute supremacy of law, means that nobody, no matter how highly placed in the society, is above the law of the land. Indeed the rule of law sees everybody in the society, be you a president or a mechanic, equal before the law of the land. Hence it speaks of legal equality, impartiality and individual liberty.

#### **3.2 Elements of the Rule of Law**

In his book, entitled the "Law of the Constitution", an English scholar, A.V. Dicey proffered three elements of the rule of law to further explain its meaning. And according to him these elements are:

1. Absolute Supremacy of the law which says a person or his property cannot be prejudiced except by existing law of the land. This element absolutely holds to the fact that any punishment that must be placed on any citizen against any offence must be traced from the existing law of the land as interpreted by the court of law. Hence the law must be supreme where the rule of law reigns.
2. Indeed under the Nigerian constitution a person cannot be prevented from doing anything except it is forbidden by law. The second element is Absolute Equality before the law which says"
  - a. All men in a given society are subject to the same law and no one is too great or too small to be above the law.
  - b. An accused person is deemed innocent until proved otherwise by a court of law.
  - c. Every one from the president of the state to the poor trader must obey the law of the land.

This is observed strictly under the interpretation and protection of court rulings. But where extra judicial bodies are created in the form of administrative tribunals to look into existing cases outside the court rulings the rule of law prevails provided these extra judicial bodies act justly and operate according to known procedures and reasoned judgment based on the rule of law.

The third element of the rule of law is Personal Liberty which we will discuss in 3.3 below.

Beyond this, is very instructive for the reader to know that the rule of law works effectively under the following:

1. **Judicial Independence:** This is the capacity of the courts to ensure without any bias that the law of the land reigns supreme and that all citizens are accorded equal treatment. And in carrying out this all important task, judges should be given absolute free hand as they consider and decide cases brought to them.
2. **Poor man's lawyer's scheme:** to help defend the poor people in the society with court cases they cannot afford to get a lawyer for their defence.
3. **Fair hearing:** This is a very important demand of the rule of law enshrined in Article 36(1) of the 1999 Constitution of the Federal Republic of Nigeria and it says:



In the determination of the civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

What is being emphasized here is simply the right of any accused person to be given a fair hearing and freedom from bias.

4. **Complaint Bureau** like the public complaint commission should be established in all the states of the Federation to enable people ventilate their grievances whenever their rights are trampled upon.
5. **Political Neutrality of judges:** Judges should be politically neutral to enable them carry out their duties without any political influence. They must not suffer peremptory dismissal unless on the account of proven misbehaviour.

Bearing all these in mind, the reader should watch out for a detailed explanation of fair hearing, so explained in this unit as to further establish the link between the rule of law and human rights in the Nigerian context, as stated below.

### 3.3 The Link between the Rule of Law and Human Rights

Indeed the third element of the rule of law which is Personal Liberty links the rule of law to human rights in that it speaks of the personal freedom of the citizens otherwise known as "Civil Liberty". The rule of law in this third element places in every citizen of a state certain conditions of happiness which are the minimum basis of a satisfactory social life. These conditions are the natural or fundamental rights of life and property of happiness, of speech, right to elect and be elected, right to education, right to reputation. These rights are so fundamental to citizenship. Hence the rule of law must exist to protect them from the interference of government.

In Nigeria with written Constitution a Declaration and Convention of human rights exist in the constitution to guarantee these rights. Hence citizens could always seek redress from the law courts for any breach of their fundamental human rights.

Given this, let us now use fair hearing as a detailed practical example stated below to understand the true position of the link between the Rule of Law and Human Rights in Nigeria.

One important issue in any constitutional democracy which derives its origin from the constitutions of nations as embedded in the Fundamental Rights provisions is the right to fair hearing.

To further appreciate the importance of the right to fair hearing, one should understand the fundamental rights which gave birth to it are those rights conferred on individuals which must be protected by the state. In other words, they are those individual rights not to be interfered with by the state.

The interference with such rights can only arise if it is for the protection of the rights of other citizens and in such instances, it must be done in accordance with laid down legal rights and must also be enforceable in law. Generally, apart from the afore-mentioned exception, fundamental rights inclusive of the rights to fair hearing are said to be inviolable and sacrosanct.

The right to fair hearing in modern day jurisprudence is broadly divided into two and often times described by the two Latin maxims, the first of which is the "Audi Alteram Partem" rule which literally means '**Hear the other side**' or '**hear both sides**'. This give rise to the popular aphorism that "No man should be condemned unheard". The second aspect of this rule is the maxim 'nemo iudex in causa sua' which means that 'One should not be a judge in his own case'. These two maxims are a brief summary of what the right to fair hearing entails, but when broken down one could see that there are so many different aspects of it.

Fair hearing itself was defined in Black's Law Dictionary (8th Edition) 2004, as "A judicial or administrative hearing conducted in accordance with due process." It should be noted however, that this rule applies to any hearing of disputes by any court, tribunal, person or group of persons who are in a position to decide anything. Thus, it follows that non-compliance with the rules of fair hearing in any proceeding or adjudication may render such void.

As previously stated the confines of two aspects of the right to fair hearing are quite expensive and run across the line of the constitutional provisions of the Nigerian Constitution of 1999.

Officers in pursuance of the cause of natural justice should not have any interest in the matter. In practical terms for instance, an officer adjudicating between two parties should not have any relationship with any of the parties which will lead any of the parties to believe that justice will be miscarried. Whether justice will be miscarried or not is the issue, but mere suspicion of the miscarriage of justice is enough for such an adjudicating officer to disqualify himself from such case if such

an issue is brought up. One other aspect of this requirement is that an adjudicating officer who has interest in a case should not sit over it. One cannot for instance be an accuser and a judge at the same time. Those conversant with judicial proceedings are aware that in some cases, judges on their own disqualify themselves from cases to avoid imputation of bias if circumstances that point to that direction arise. In some instances, parties on their own apply for adjudicating officers to disqualify themselves from a case if they believe there would be likelihood of bias. That is the right step to take in such circumstances. Generally, the issue of right to fair hearing can be better appreciated through decided cases, but it should be noted that a person seeking the right to fair hearing must also by his conduct in judicial proceedings show that he deserves it.

Briefly put, the obligation to 'Hear the other side' means that in criminal, quasi-criminal or civil matters, parties must be communicated in clear language the allegations or issues in respect of such proceedings and they must also be communicated in advance and all the particulars that will enable them defend the issues will be made available to them. In criminal proceedings for instance, the accused person must be informed in the language he understands the offence against him as well as the person or persons against whom such act is allegedly committed.

**Section 36 of the 1999 constitution** of the Federal Republic of Nigeria made numerous provisions aimed at ensuring fair hearing in respect of civil and criminal matters. These include the fact that such persons shall be entitled to fair hearing in public within a reasonable time by a court or tribunal. As regards the issue of public hearing however, there are exceptions where for instance a party has not attained eighteen years of age.

Thus, in the interest of public order and morality, if the adjudicating institution believes by reason of special circumstances that publicity will be contrary to the interest of justice, the public may be excluded from such proceedings and it may be held in private outside public glare. In the other instance, if it is considered that it will not be in public interest for any matter to be disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter. Specifically in respect of criminal trials, it is also provided amongst others that such an accused person should be given adequate time and facility for the preparation of his defence. He shall also be entitled to defend himself in person or by legal practitioners of his choice. Procedurally too, such an accused person "shall examine in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal on the same

condition as those applying to the witness called by the prosecution. An accused person is also entitled, without payment to the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

On the issue of one not being a judge in his own case as embedded in the Latin maxim 'nemo iudex in causa sua', this requirement is meant to avoid bias.

The courts are of the opinion that though the right to fair hearing is a constitutional provision, it has some relationship with the principle of equity.

In the case of *INAKOJU V ADELEKE, RASHIDI LADOJA & ORS (2007) 29 NSCOR*, the case where the Oyo State House of Assembly did not follow the laid down procedure towards the impeachment of Governor Rashidi Ladoja, the Supreme Court per NIKI TOBI J.S.C frowned at the delay tactics of counsel to the members of the House of Assembly and restated that a party who seeks fair hearing in the case must also be fair in the litigation to the adverse party and the proceedings. The learned justice of the Supreme Court stated as follows: "A party who seeks fair hearing from the Supreme Court must also be fair in the litigation to adverse party and the proceedings: A party who intentionally files motion to delay the proceedings is not fair to the adverse party and the proceedings where he decides to plant mines.

In the judicial process to obtain victory in the event of a possible slip on the part of the court or the adverse party, such a party will not be in a position to ask for fair hearing of a case because he has not shown fairness in the process itself. The principles of equity and fairness will certainly deny him of the fair hearing principles that he refused to surrender in the judicial process..."

One other implication of the right to fair hearing as it concerns criminal and quasi-criminal cases is the fact that an accused is presumed innocent until found guilty. This is a constitutional provision and as such should be seen as paramount. In reality, the way and manner suspects and accused persons are treated in Nigeria derogates so much from this cardinal constitutional requirement. Situations where suspects are hounded into custody without making sure they are tried within reasonable time as provided for in the constitution is a misnomer. Apart from capital offences, accused persons are entitled to bail, but the way and manner the issue of grant of bail is politicized especially in EFCC matters are antithetical to the constitutional right to fair hearing as entrenched in the constitution.

One other area where there have been so much reported cases of non-adherence to the right to fair hearing is matters involving disciplinary measures being meted out by public institutions on staff and in cases of educational institutions, students and staff. Most of them do not adhere to due process in carrying out this duty. This has in most cases made the courts to quash such proceedings. In the case of *PSYCHIATRIC HOSPITALS V. MRS. DORIS EDOSA (2001) 5 NSCQR 533*, the respondents appointment was terminated by Psychiatric Management Board on allegation of theft.

The Supreme Court nullified this termination on the grounds that she was not given fair hearing. More so, the court was of the opinion that the allegation against her was criminal in nature and needed to be proved beyond reasonable doubt.

The lesson here is that the right to fair hearing is a fundamental right and authorities involved in the dispensation of justice from the security personnel to the judicial officers, and other exercising adjudicatory powers are enjoined to abide by it or else any decision taken by them can be voided for non-conformity with the principle. The reader should make a submission on judicial independence.

#### **4.0 CONCLUSION**

Human rights will no doubt operate successfully in a community where the rule of law prevails.

#### **5.0 SUMMARY**

This unit presents the rule of law as the bedrock of human rights which should be promoted as such in our society.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

Define the rule of law and explain its relationship to human rights, using Nigeria as a case study.

#### **7.0 REFERENCES/FURTHER READING**

Edward, F. C. (1977). *A Detailed Analysis of the Constitution*. Littlefield: Adams and Co. Totowa New Jersey.

Jones, (1986) *Administrative Law*.

See the 1999 Constitution of the Federal Republic of Nigeria. Lagos: Federal Government Press.

## UNIT 3      **CIVIC DUTIES AND CITIZENS RESPONSIBILITIES**

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Civic Duties of Citizens
  - 3.2 Citizenship Responsibilities
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### 1.0 INTRODUCTION

Citizenship, in modern states, is the term by which we expose the status of individuals who possess full political rights. By the same token such individuals are obliged to perform certain duties and civic responsibilities to the state since privileges necessarily entail responsibilities. As Oyebola, et al put it, in the Roman Empire; citizenship was a privileged position because such position was not enjoyed by everyone in the Empire. Ordinarily the foreigners residing in the Empire have this position extended to them. The Roman Authority, however, conferred the status on certain foreigners like St. Paul and also on some freed slaves as a mark of distinction which it rarely gave.

As we go through this unit, let us have in mind that citizenship in modern times, is secured in much the same way as in the Roman Empire (1) by birth and (2) by naturalization. And that the net sum of rights in modern time as recognized by the law of a state and protected by it is known as

**Civil Liberty** means that rights of citizenship are the creation of the state and they remain rights only as long as the state has power to protect them. Hence, those fundamental human rights of citizenship in modern state such as the Right to Life, Right to work have been discussed earlier in this book.

### 2.0 OBJECTIVES

At the end of this unit, you should be able to:

- identify the duties and obligation of citizens
- explain the duties and obligation of citizens in our communities

### 3.0 MAIN CONTENT

#### 3.1 Civic Duties

As citizens, we must be aware that the fundamental human rights we enjoy carry with them duties we must perform in the state. And such duties we owe to our state as citizens are as stated below:

1. **Allegiance:** The most important duty of a citizen to his State is allegiance. Allegiance means loyalty and respect to the state. Citizens of the state should respect the national flag and anthem. They should stand when their national anthem is being sung and take part in singing it.
2. **Obedience to Laws of the state:** Citizens of the state have a responsibility to support legitimate policies and activities of the government. They should also obey all the laws, regulations and directives of the government of the

#### 3.2 Citizenship Responsibilities

Here we must understand that being a citizen of a country is not just limited to having a passport from the state in which one is born or being a resident of a particular city, region or nation. Citizenship implies certain rights and political rights. And it also implies responsibilities which include placing the well being of the people before personal interest.

Beyond this, we can separate citizenship responsibilities into two areas for a better understanding namely:

1. **Personal citizenship responsibility:** that takes care of oneself accepting responsibility for the consequences of one's actions, taking advantage of opportunities to become educated, and fulfilling responsibilities to one's family, neighbors and friends.
2. **Civic citizenship responsibility:** These we have already explained earlier in this unit including;
  - a. Paying taxes, obeying laws, respecting the rights and opinions of others.
  - b. Serving in the military when called to do so.
  - c. Voting and be voted for.
  - d. Serve the law court faithfully and promptly whether as a member of panel or jury or as a witness.

- e. Enlistment in the states armed forces for specified period of time where conscription is employed by state for civil defence purpose.
- f. Above all, be informed and attentive to needs of one's community and nations. Active participation in society at local, state and national levels, being socially and politically active in the area of joining groups at local, state and federal levels devoted in solving societal problems such as providing or maintaining schools, hospitals, elders homes roads, water and market places in a given community.

Given this, a citizen's civic responsibility also includes the obligation to be tolerant, fair, open minded, honest trustworthy, compassionate, respectful, reliable and open to negotiation, compromise, stability and peace. And what is this civic obligation of the citizen?

For civic obligation, Oyebola et al 1967 in their book entitled *A Textbook of Government for West Africa* explains that obligation entails moral consideration (i) in the exercise of rights of citizenship, and (ii) the performance of the duty of obedience to the state. It implies, with regards to voting rights of a citizen, the question may be asked: now that I have the right to vote, is it necessary for me to vote? In essence, this question hinges on the factor of omission in the exercise of rights. When a man has right to vote and refuses to do so, the result is an unpopular government. It therefore, becomes an obligation for a citizen to exercise his right. As with "right," rational basis is also necessary for performance of civic duties e.g. a citizen might ask: is it always right to obey the government? What happens if the government ceases to protect and foster the citizen's happiness; should the citizen continue to obey it? Provided the government is good, the citizen owes it a political obligation to obey government. By the same token, he could resist an unpopular government.

In conclusion, they said that obligation of citizenship may be said to include all civic actions on the part of a citizen which contribute to an effective government and omission of those acts which might infringe on the rights of other citizens. Hence we must as responsible citizens ensure a safe and comfortable nation for ourselves.

#### **4.0 CONCLUSION**

At the end of this unit, you now know the relationship between the rights of a citizen, his/her duties and civil responsibilities.



## **5.0 SUMMARY**

You also now know that citizenship rights must carry with them duties and civil responsibilities to the state.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Explain duties and civil responsibilities of a citizen to his state and relate them to the rights citizens enjoy in a state.

## **7.0 REFERENCES/FURTHER READING**

Oyebola; *et al* (1967). *A textbook of Government for West Africa*. Ibadan: Board Publication Ltd., Oyo State.

Quigley, C.N & Bahmueller, C.F. (Eds). (1991). *Civitas: A Framework for Civic Education*. Calabasas, CA: Center for Civic Education.

## **UNIT 4 FROM HUMAN RIGHTS TO ANIMAL RIGHTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Explaining the Difference between Human Rights and Animal Rights
  - 3.2 Do Animals have Rights?
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 Reference/Further Reading

### **1.0 INTRODUCTION**

One of the important sub-headings in the guideline for the building of this course material led me to find out whether animals have rights as human beings? And I feel I should discuss this so that you can share with me in finding out.

### **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- list the rights that animals are likely to have
- suggest how animals' rights should be accorded them.

### **3.0 MAIN CONTENT**

#### **3.1 Explaining the Differences between Human and Animal Rights**

With the advances of the search for new knowledge and modern thinking that follows it, the status quo of human rights thinking is constantly challenged. New unforeseen possibilities and events occur which can affect existing rights and we may require new ones. Animals are not exceptional in this case. But, the difference which would be observed as this discussion progresses is that animals can not fit into human rights especially personal rights such as right to life, right to own property, right to take legal actions and in such cases of rights violations which include the rights to vote and be voted for, the right to be educated. And above all, God in His creation of man, created man in His own image very far above all other creatures including animals. Hence

in the Ten commandments, He says to us "Thou shall not kill" as we all know refers to man and not animals.

Thou shall not kill tells us that the greatest sin any person can commit in the sight of the Almighty is to take life or murder his fellow human being. But this is not true of animals which God did not include in the list. Rather animals can be killed for food or sacrifice. Hence the killing and eating of animals have never been thought of as sin or crime in Nigeria. After all, we have read or heard from the Christian bible that God Himself gave Abraham a ram to kill and use it for sacrifice onto the Lord instead of sacrificing Isaac his son. How then can we position our thinking in order to conceptualize and create animal rights in Nigeria?

Do animals have rights? In an article in the *Compass* newspaper of Wednesday March 3, 2010, Tunde Osowe examines the issue of animal rights. The reader should take a meticulous and critical look through the entire discussions, as to enable him make his own contributions.

Animals welfare, also referred to as animal liberation, suggest that the most basic interest of animals should be accorded same consideration as those of humans. The Annual International Animal Rights Day (IARD) commemorated every December 10, is aimed at remembering the animals as victims of human tyranny and calls for the recognition of the Universal Declaration of Animal Rights (UDAR). The goal of this historic campaign is to build on the recognition of human rights and persuade humanity that kindness and respect must be due to all creatures.

A Non-Governmental Organization (NGO), Animal Welfare Initiative, has embarked on an aggressive public sensitization of the need to address the issue of animal welfare.

Addressing journalists in Abuja, a member of the Board of Trustees of the initiative, Dr. Aishatu Abubakar, who expressed displeasure over the way animals are being treated by the public, said "respect for animal rights as enshrined in the constitution must be adequately adhered to". Animal Welfare Initiative was established by a group of veterinary doctors and other professionals from the media and legal profession to propagate the rights of animals. The question many people have asked is that if such a development could be an abiding practice in advanced countries of the world, would it be allowed to operate in Nigeria where human rights and other privileges are being trampled upon even by constituted authorities? Scores of Nigerians in Lagos expressed deep reservation over the issue. They noted that even human rights activists in the country are gradually giving up on the battle of fighting for the rights of Nigerians. Others said that animals should be viewed as legal persons and members of the moral community and not properties, and that they

should not be used as food, clothing, research objects, or as a tool for entertainment.

According to a report, on June 25, 2008, a committee of Spain's national legislature became the first to vote for a resolution to extend limited rights to non human primates. The parliamentary environment committee was said to have recommended giving chimpanzees, baboons, gorillas, and orangutans the right not to be used in medical experiments or in circuses, but recommended making it illegal to kill apes, except in self-defence, based upon Peter Singer Great Ape Project (GAP). It was regarded as "a historic day in the struggle for animal rights... which will doubtless go down in the history of humanity". In a review of *Animals, Men and Morals* for The New York Review of Books on April 5, 1973, the Australian philosopher, Peter Singer, first in 1979 came to believe that by eating animals, he was engaging in the oppression of other species and eventually put forward his arguments in favour of animal liberation, which became pivotal within the movement for the protection of animal rights.

He was said to have based his arguments on the principle of utilitarianism that an act is right insofar as it leads to the "greatest happiness of the greatest number". Singer drew an explicit comparison between the liberation of women and the liberation of animals. Another feat in the animal world was also recorded in January 2010, when a team of scientists announced research results, suggesting that dolphins are second in intelligence only to human beings, and that they should be regarded as "non human persons". Reacting to the issue, an agriculturist, Mr. Clement Olatunji, said that the 21st Century debates about how humans should treat animals could be traced to the ancient world. He said: "The idea that the use of animals by humans for food, clothing, entertainment, and as research subjects is morally acceptable, springs mainly from two sources. First, there is the idea of a divine hierarchy based on the theological concept of dominion. In Genesis, 1:20-28, where Adam is given dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth." Olatunji reasoned that although the concept of dominion need not entail property rights, it has, over the centuries, been interpreted to imply some form of ownership.

He added that, "there is also the idea that animals are inferior, because they lack rationality and language skill which can be understood, and as such are worthy of less consideration than humans. Springing from this is the idea that individual animals have no separate moral identity. A pig is simply an example of the class of pigs, and it is to the class, not to the individual, that human responsibility or stewardship applies. This leads to the argument that the use of individual animal is acceptable so long as

the species is not threatened with extinction". To this end, it is said that animal law is taught in 113 out of 180 law schools in the United States, in eight law schools in Canada, and is routinely covered in universities in philosophy or applied ethics courses.

This, notwithstanding, critics argue that animals are unable to enter into a social contract or make moral choices, and therefore cannot be regarded as possessors of rights, a position summed up by the philosopher, Roger Scruton, who writes that only humans have duties, and that, "the corollary is inescapable: we alone have rights". A parallel argument is that there is nothing inherently wrong with using animals as resources if there is no unnecessary suffering, a view known as animal welfare position. From his submission, an activist, Mr. Fola Akande, said that it would have been better if Nigeria system would encourage it. According to him, in a country where the list of human rights abuses is endless, it is doubtful if such a move will thrive.

He said that the most significant human rights problems were: "Extra judicial killings, use of excessive force by security forces, impunity, arbitrary arrests and unnecessary detention, judicial corruption and executive influence on the judiciary, rape, torture, cruel and inhuman or degrading treatment of prisoners and suspects. Others, he said, included, "harsh and life-threatening prisons and detention conditions, human trafficking, forced labour, societal violence and vigilante killings, child labour and child abuse and sexual exploitation, female genital mutilation (FGM), domestic violence, ethnicity and religious unrest, infringement of privacy rights and the abridgment of the rights of citizens to change the government. Look at the adoption of sharia in some northern states and its eventual pronouncements which include punishment for alcohol consumption, infidelity and theft, including amputation, lashing, stoning and long prison terms. "Some pastors have severally been accused of involvement in the torturing and killing of children accused of witchcraft. Over the past decade, over 1,000 children have been murdered as witches. Since 2001, the lives of at least 3,000 Nigerians have been blighted in major episodes of inter communal and religious violence in Plateau, Bauchi, Borno, Kaduna among other states. The rave of the *Boko Haram*, *kala kato* and other extremist groups remains fresh in our memory. Yet, those who have committed these terrible acts have not been held accountable".

According to Akande, if the country's leadership can afford to tackle the culture of impunity that allows the serious human rights abuses to persist, proponents of the animal rights and welfare can then beat their chest to have a safe haven for their campaign. He also said that, "Nigerians have suffered from violence, corruption, and state-sponsored abuses for too long. Our President, Goodluck Jonathan has promised to

create a new era of rights and justice for Nigerians, and there is no time to waste. "He should take immediate and concrete steps to address large-scale violence, endemic corruption, lack of accountability for rights abuses, and other pressing human rights problems in the Niger Delta region". While also wishing the group success, he charged it to go on a wider sensitization campaign.

#### **4.0 CONCLUSION**

Our discussion in this unit have shown that any discussion on animal rights have either been elusive or controversial. Currently, human rights apply only to human beings and not animals. Any point at which animal rights are measured to that of human beings cannot be accepted. Those who are pro-human beings believe that animals are created by God for human consumption but pro-animal sympathy group believe that animals should be given rights that will grant them some careful treatment.

#### **5.0 SUMMARY**

The question is: Have Animals Rights? And the real solution is what we can contribute to convince the society for a possible animal right.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

Argue a case that will convincingly make for any possible animal rights.

#### **7.0 REFERENCE/FURTHER READING**

From the New York Review of Books on April, 5, 1973.

**MODULE 6**

Unit 1	Human Rights Education
Unit 2	Human Rights and Good Governance

**UNIT 1 HUMAN RIGHTS EDUCATION****CONTENTS**

1.0	Introduction
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**1.0 INTRODUCTION**

Research interview carried out in some selected villages and cities in Nigeria for the purpose of writing this unit has shown that many people in our society have not heard about human rights, not to talk of what it means and the role it plays in the dignity and worth of man, hence this unit is to intimate you with this dangerous lack of knowledge.

**2.0 OBJECTIVE**

At the end of this unit, you should be able to:

- explain the need for human rights education.

**3.0 MAIN CONTENT****3.1 The Need for Human Rights Education**

Human rights education simply put is an opportunity for anyone who does not know what human rights is and the role it plays in the dignity and worth of human beings to know them and at the same time put such knowledge into practical use.

Given this, the true position of human rights awareness especially in Nigeria is that many people are ignorant of what human rights is all

about. Indeed, it is very common to hear Nigerians say I know my right or you think I do not know my right as citizen?, yet when you ask most Nigerians which section in our constitution deals with fundamental human rights. And what are the human rights under these fundamental human rights, you will be disappointed that even the educated ones do not know what is fundamental human rights not to talk of the redress that follows each in case of abuse or violations.

This indeed calls for an establishment of a mechanism that will create enabling ground for transformative education that will intimate all with practical knowledge of human rights. My observation is that human right culture can only be attained through human rights education

### **3.2 Human Rights Education for Enlightenment of the Masses**

The question that should be raised here is how do take away this ignorance from the majority of Nigerians. Indeed this no doubt calls for human rights education for Nigerians, which in its broader term human rights education should be a field of theory and practice of education related to the idea of promoting knowledge, attitudes and skills in human rights practice. And we should have commitment to the building of human rights interest and practice in a democratic society.

This is targeted towards the empowerment of ignorant masses that must be enlightened to know, understand and practice their *rights*. And given this, there are a variety of forms and contexts in which human rights education can be practiced. Most often, it is found as part of non-formal net works in form of:

1. **Media enlightenment campaign programme** whereby a period of time should be allotted to Federal and state television and radio programmes during which the masses will be educated on human rights programmes.
2. **Community programmes** under which communities should carry out human rights enlightenment programme for the people of the community that should include flyers, subjects of *eze's*, *obas*, *igwes* and chiefs addressing community members at town squares on human rights matters.
3. **Non-Governmental organizations or NGO** in their initiative and grass-root activities will reach out to community members with what I will call here house-to-house information or town square speeches and orientation on practical knowledge of human rights.



Beyond this, there is also room for **formal education programmes** that calls for classroom teaching knowledge of human rights at different levels and forms of education, from **elementary school to the University level**. At the primary school level human rights education should be carried out as human right studies incorporated into social studies under civic studies. Nothing I know makes it difficult or impossible for a primary school pupil to understand his rights to life, freedom and association. And with this a pupil will grow with the practical wisdom of human rights. This practical knowledge of human rights can progressively be carried out from primary school to secondary school where it can be incorporated into government studies that should be made compulsory for all students from JSS1 to JSSIII. No one will dispute the fact here that human rights education carried out from the primary level up to the secondary school level will not payoff. Hence from the secondary level we can now go to the university level. This dimension concern university human rights education which covers the teaching of human rights law in legal education available in law faculties of many Nigerian universities today.

Apart from law faculties where professional lawyers are turned out to advise the public and legal remedies in respect of promoting human rights knowledge as an aspect. I suggest that courses that should adequately carry the knowledge of human rights should be taught at the General Studies level for all undergraduate students entering any university. And such directive should come from National University Commission (NUC) just as it did with Peace Studies and Conflict Resolution Programme recently. In order for mass human rights education to be made possible both the federal and state government must implement the suggestions I have made here in support of mass human rights education.

### **3.3 Sources of Information for Education**

Given the institutional foundation of human rights education let us look at relevant information for human right education.

- i. That as human beings, we have inalienable rights that guarantee us freedom of movement, expression and assembly, freedom of worship, freedom to vote and be voted for. As seen in the 1999 Federal constitution of Nigeria
- ii. That great scholars and philosophers have argued on these inalienable rights and concluded on their inevitable attachment to human dignity and worth.
- iii. That world and regional organizations like the United Nations Organization and the African Union have not only universally and regionally declared human rights; they have also brought out

charters clearly stating the demands of the people's rights, women's rights and the rights of the child. And above this established a mechanism that compels member states of both the UNO and the AU to enforce, promote and protect every demand of human rights statement found in this charter in their respective state.

- iv. That the constitution of sovereign democratic nations guarantees the enforcement, promotion and protection of human rights under "Fundamental Rights". In case of Nigeria see the constitution of the Federal Republic of Nigeria 1999 chapter IV section 33-34.
- v. That mechanism have been put in place at both the state and international level for the enforcement of human rights as well as such mechanism that should check violations of human rights. For instance, member nations of the United Nations Organization meet every four years to give a convincing report on the human rights situation of their respective nations.
- vi. That as we understandably go through all the charters presented in this course material, we will be able to identify victims or injustice in our every day relationship with people and be able to apply our sense of social responsibility which demands that we stand up in educating and defending such ignorant victims.

This is the teaching of human rights actions that should be carried far and wide into our societies for it to have impact. And as such, impactful knowledge flows from our universities legal faculties, libraries and internet programmes, there is no doubt that we will begin to see more and more people in the society becoming enlightened in the things concerning human rights.

#### **4.0 CONCLUSION**

From your reading of the unit so far, there is no disputing the fact that human rights culture cannot be achieved without human rights education.

#### **5.0 SUMMARY**

Countries like Nigeria should give its people human rights education for mass practical understanding of human rights.

#### **6.0 TUTOR- MARKED ASSIGNMENT**

Educational institutions, NGOs and communities can serve as a mechanism for mass human rights education. Discuss.

## **7.0 REFERENCES/FURTHER READING**

Agwunobi, J.C. 'Human Rights and Diplomacy.' NOUN Course Material.

See Heyne, C. (Ed). *Human Rights Law in Africa* for the Founding acts of national human rights institutions.

## **UNIT 2 HUMAN RIGHTS AND GOOD GOVERNANCE**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 The Creation of Government
  - 3.2 What is Good Governance?
  - 3.3 The Link between Constitutional democracy and good governance
  - 3.4 The place of Human Rights in Good Governance
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- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

The promotion and protection of human rights should be first on the agenda of any government. Hence government was created by the people to make sure that their sacred rights to life, liberty and property were secured and defended. This assertion will be clearer as we progress.

### **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- explain the place of the people's consent in the creation, sustenance and removal of any democratic government in power
- discuss the relationship between human rights and good governance and its link to constitutional democracy.

### **3.0 MAIN CONTENT**

#### **3.1 The Creation of Government**

John Locke in *Second Treatise of Civil Government* (1688-81) convinced us that government is created from the consent of free, equal and independent people who have agreed to be ruled in return for certain and secure enjoyment of their individual rights which the courts and police powers of a government enforced. He concludes that government was legitimate as long as people continued to consent to it.

Given this, Locke strongly emphasized that people consented to create indirect government for the major reason that indirect government was needed to protect the people's political interest because of the growth of the world into political complexities. Hence what was known as direct democracy in Ancient Greek City States is today known as indirect democracy under which the majority must, under free and fair elections, elect credible people who should represent their interests at the local state and federal levels of government.

Having known what direct and indirect democracy stand for, it is instructive to also know that the best democracy we can operate today is constitutional democracy which must be operated according to the people's constitution. While democracy presents the government as an institution that take care of the welfare of the people, constitutional democracy speaks of what rules and regulations the government must follow in making the welfare of the people democratically possible to the people in their individual sacred rights to life, liberty and property. Above all, Locke insists that the people through the same consent must change any government which fails to protect their basic rights. What this means is that the ultimate power that creates and removes any government in power resides in the people.

This indeed confirms the immortal words of President Abraham Lincoln who at Gettysburg in 1863 told us convincingly that democracy is a government of the people, by the people and for the people entrenched into good governance, and should not be allowed to perish. This shallow definition built on indebt knowledge of the operational definition of the word democracy further explains good governance. Hence good governance must survive on the demands of democratic principles. Given this let us now look into the detailed explanation of democratic good governance as stated below:

Democracy originated from Greek City States in the 5th Century as a system where Greek citizens were directly involved in government process. Every male citizen belonged to an assembly that met throughout the year to discuss current problems. By this all the citizens attended the assembly and took part in decision making in order to govern the state. This is often called participatory democracy.

Operationally speaking constitutional democracy means that a democratic government is properly elected under constitutional democracy in which the elected government is adequately responsive to the needs of the people for the protection of their fundamental rights, the maintenance of their safety and peace and order lines among them.

Therefore, the concept of constitutional democracy is wider than that of democracy. It involves additionally, the notion of limited government, that is, a government limited in the extent of its power and the method of exercising them by entrenched constitutional provisions. By definition, writes Professor Carl Friedrich (1950) "a constitution is one that does not grant all powers to the majority", "it is ruled by representative majority to substantive limitation on the exercise of its power and to rules of procedure for exercising them".

The main limitations on government as it appear to constitutional democracy, first a constitutional guarantee of fundamental rights; second, separation of powers and function of different arms of government viz; the legislature, executive and judiciary, and third, a constitutionally prescribed procedure for the exercise of powers.

The need for effective governance requires admittedly, that government must be endowed with the capacity to perform its various tasks; nonetheless, a constitutional democracy should balance the guarantee of the fundamental rights of the citizens against the maintenance of public security and public order and the promotion of social programmes and well being of the people.

Robert Dahl has offered the most generally accepted listing of what he terms "procedural minimal" conditions that must be present for modern political democracy (or as he puts it, "polyarchy") to exist:

- 1) Control over government decisions about policy is constitutionally vested in elected officials.
- 2) Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon.
- 3) Practically all adults have the right to vote in the election of officials.
- 4) Practically all adults have the rights to run for elective offices in the government.
- 5) Citizens have a right to express themselves without the danger of severe punishment on political matters broadly defined...
- 6) Citizens also have the rights to form relatively independent associations or organizations, including independent political parties and interest groups

These conditions seem to capture the essence of procedural democracy of many theorists, but we propose to add two others. The first might be thought of as a further refinement of item (1), while the second might be called an implicit prior condition to all the above.

Popularly elected officials must be able to exercise their constitutional powers without being subjected to overriding (albeit informal) opposition from unelected officials.

These procedures alone do not define democracy, but their presence is indispensable to its persistence. And that persistence manifests itself in good governance. Hence the search for good governance is by operational definition a search for constitutional democracy because while democracy *is* foundation for good governance constitutional democratic practice provide for good governance in a sustained manner.

### **3.2 What is Good Governance?**

Good governance is the function of a constitutional government. And a constitutional government is the government that strictly and justly governs its people according to the demands of the country's constitution.

Indeed, good governance under constitutional government must respect:

- The sovereignty of the constitution
- The sovereignty of the people
- The guarantee of fundamental human rights
- A transparent and regular electoral process
- Good political leadership
- The rule of law, accountability and transparency in day-to-day operations of the government in power.
- For the limitations of government power through separation or diffusion of power and the establishment of checks and balances.

Good governance, according to Agwunobi in *The Nigerian Military in a Democratic Society*, is the government run in line with the (constitution) law of the land for maximum benefit of the entire people of the state.

### **3.3 The Link between Constitutional Democracy and Good Governance**

Given this let us now look at the inevitable link between constitutional democracy and good government bearing in mind that we cannot reach good governance without explaining constitutional democracy as a liable mechanism for sustaining good governance as the reader shall see stated below:

- 1) **Guarantee Fundamental Rights:** The .Constitution must guarantee basic rights. In doing so it is not enough to simply list these basic rights. The constitution must also specify the present circumstances under which these rights can be limited or derogated from, and the extent of any derogation, say under a state of emergency.

This raises the thorny question of the nationwide application of these core rights in the face of contrary provisions in the state should the state be able to depart from these rights. To put it more succinctly, can Nigerians in one state have less core rights than in another state? The concrete manifestation of this dilemma is now being confronted through the adoption of Sharia law by some states. Some countries expertly allow customary law or tradition to trump greater equality, e.g Zimbabwe; others insist on the supremacy of the constitution and the Bill of Rights (South Africa). In the latter case the position is a broader notion of citizenship supersedes state tradition and laws. Two rights are particularly allowed in a democracy - the right of association and the freedom of expression. The right of association is essential for the vitality of civil society. The press is indispensable for the dissemination of ideas and policies of individuals and groups and the accountability of state organizations.

A problem factor for governance at the personal and community level is the manner in which indigenes' rights has been entrenched in the constitution. It would seem that the provision emphasizes parochialism at the expense of citizenship. There is a need to redesign our citizenship status to give emphasis to residency as a way of building a strong and united country. A previous notion of citizenship, which emphasizes blood and birth is restrictive and must promote the vision of good neighbourliness in the country.

- 2) **Legitimacy of the Constitution:** However, there are two ways of looking at the issue of legitimacy of the constitution: legitimacy in its legal sense and legitimacy in political sense. In the legal sense, it is necessary to consider whether the enacting body has the legal right to do so. The issue here, therefore, is whether a military regime has a legal authority to assume the sovereignty of the people in the way it seems to have done by 'decreeing' the constitution into existence. The military and its civilian allies, in an effort to protect the power of the status quo, tinkered with the constitution and missed an opportunity to use the process to address some of the burning questions that are now posing several challenges to the democratic process. For a constitution to gain acceptability there must be obvious involvement of all stakeholders in the fashioning out of the content. There must be



adequate and effective consultation of all sectors and interests. The people's wish can be geared only through such broad consultations with the people.

- 3) **The Sovereignty of the People:** Democracy is a consensual system; its legitimacy comes from an acceptance of the fairness and transparency of its procedures for elections to state offices and for policy making. The sustainability of democracy depends on the maintenance of public confidence as well as the confidence of political groups in the fairness of these procedures. If a group considers that rules and procedures have been designed or manipulated to its disadvantages, it would withdraw its loyalty to the constitutional and political system and regard itself justified in ignoring or breaking the law in promoting its interests. Elections are the most striking manifestations of the sovereignty of the people, who would feel cheated if "the value of their votes were distorted by an unfair electoral system. The constitution sets out a series of arrangements and provisions intended to prevent the factionalism of politics along ethnic lines. Parties are required by law to be nationally representative. However, the great strength of democracy over the other political system is that it encourages free expression. But the requirement for the registration of political parties surely seems to violate the right to freedom of association?

The procedure prescribed in the constitution for changing the system of the government was identified, as having a bearing upon its democratic bases. If the choice of the system of government is the prerogative of the people, this is an identification of their sovereignty.

- 4) **The Rule of Law:** It is therefore, considered very important that constitutional mechanisms such as the rule of law, entrenchment of fundamental human rights and the due process of law must be reinforced by an independent judiciary as well as vigilance by the civil society. An active and vigilant civil society is necessary for the promotion and protection of special interests, for the protection of vulnerable members of society and for the accountability of government and other institutions.

An essential constituent of democracy is its practice and respect for the rule of law, including, the protection of the equality and dignity of all the persons. These rights cannot be taken away by decisions of a majority. The enjoyment and exercise of human rights are a pre-condition for the practice of democracy.

The rule of law was eroded under the deteriorating conditions during the 1990s and it will take consistent efforts over the next decade to uproot practices that have taken hold during the military rule. The rule of law was damaged by the failure of the government to comply with court orders; government interference through the use of special military tribunals to adjudicate over a wide range of communal matters; the military and police impunity, whereby armed forces routinely assisted the police in policing and neither force respect to civil rights or the demand of due process; and the deliberate under-funding and under staffing of the judiciary in addition to the use of ouster clauses to erode the powers and jurisdiction of the courts.

The content of the constitution and especially the entrenchment of human rights may not sustain democracy unless there is commitment to and insistence on the rule of law and due process. The acceptance and practice of the equality before the law and application of the due process of law is also important.

- 5) Separation of Powers:** Of related relevance to the crises of the rule of law is the principle of separation of powers. One way to achieve the diffusion of power is through the establishment of separate institutions as organs of governance but with definitive and unequivocal provisions as to the limits of their powers.

The principles of separation ensures that neither arm of the government, i.e. the legislative, executive and the judiciary performs the functions of the other but that each has means of checking the excesses of the other. The spate of face-off between the President and the National Assembly over issues such as the approval of ministerial and ambassadorial nominees, the dissolution of certain executive bodies, the transfer of some organizations from the Federal Capital Territory Abuja to Lagos, the removal from office of some members of the armed forces and chief executives and managers of some corporate bodies as well as the stalemate over the passing of some bills sent to the Assembly by the President, is partly due to non-specific provisions and clearly spelt out division of labour, but there is a high degree of ignorance of the constitutional provisions. Added to this is the kleptomaniac inclination of the members of the Assembly who seem to look for as many opportunities for blackmail in order to obtain unjustifiable and unreasonable welfare packages for themselves.

Concentration in the hands of one man or the same persons of the functions of legislation, executive and adjudication is the essence of dictatorship and absolute power is by its very nature arbitrary, capricious and despotic. Constitutional government demands therefore that the organization of government should be based on some concept of

structure where the functions of law making, execution and adjudication are vested in separate agencies.

The appropriate distribution of powers between federal and state levels of government is an issue that has been at the center of debate over the constitutional framework. There is also the problem of separation of powers between the three tiers of government.

- 6) Besides, the gender bias to citizenship must also be addressed. The constitution gives non Nigerian women married to Nigerian men the right to vote while non-Nigerian men married to Nigerian women cannot. Apart from this being discriminatory against women, it makes a mockery of section 17(2) (d) and section 42(1) which prohibits discrimination on the basis of community, ethnic group, place of origin, etc. The constitution character of Nigeria has been seen in part as legal response to fears that the political class is liable to pander to ethnic chauvinism.

Finally, the rights discourse in the constitution must also balance diversity against equality. The right to be equal does not mean the duty to be the same. Diversity should be protected, and can be without affecting equality principle.

- 7) **Over centralization of powers:** It would seem that the type of federalism is intentioned by the founding fathers has not been worked out. The long years of military rule re-inforced centralizing tendencies at the expense of regional/ethnic autonomy. There are identified several indices of over-centralization of power in the constitution, which negates the principle of federalism. These indices include:
- a. The legislative list, which gives the central government not only exclusive powers over 68 items, but also concurrent powers over the remaining 12 items. Also the central government has an over-riding power to legislate for any part of the federation for peace, order and good government.
  - b. The revenue allocation is skewed in favour of the centre.
  - c. The police force is centrally controlled in such a way that the Governors of the state and chief security officers of their state in name only.
  - d. The judiciary and its funding are now to be centrally controlled through the National Judicial Council.

Where the centre has too much concentration of power, there is the likelihood of abuse and misuse.

#### **4.0 CONCLUSION**

This unit has established the fact that good governance promotes, protects and enforces the people's fundamental human rights, as operationally guided by constitutional democracy.

#### **5.0 SUMMARY**

An absolute truth is that good governance and human rights are linked to constitutional democracy.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

Discuss the relationship between the consent of the people, good governance and human rights promotion and protection.

#### **7.0 REFERENCES/FURTHER READING**

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