



**NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES
LAGOS, NIGERIA**



**ROUNDTABLE ON NIGERIA'S HUMAN RIGHTS CHALLENGES:
AN OMNIPRESENT BATTLE**

23rd June, 2010

COMMUNIQUE

Introduction

On December 10, 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."

The preamble to the Declaration recognized the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, but noted that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.

For peaceful co-existence of the human family, the peoples of the world under the auspices of the United Nations have in 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.

THE GENERAL ASSEMBLY thereby proclaimed "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."

In Nigeria this injunction has been kept; our Chapter IV as well as chapter II of the Constitution contain provisions that tally with those of the Declaration. How well these provisions are observed and enforced however remains and is a constant issue for debate and discourse. Some argue that the provisions are honoured more in breach while others maintain that Nigeria is a Human Rights Compliant nation.

The Roundtable on Nigeria's Human Right Challenges: An Omnipresent Battle convened by the Nigerian Institute of Advanced Legal Studies under the auspices of the Gani Fawehimi Centre for Human Rights is the Institute's contribution to the process; the Roundtable aimed to look closely at Human Rights Practice in real terms in Nigeria with a view to seeing where we stand in the common global standard.

The Roundtable held on 23rd June 2010 at Professor Ayo Ajomo Auditorium at the Institute's Premises, University of Lagos Campus, Lagos.

In attendance were stakeholders and interested persons from a cross section of society and diverse walks of life. Notably, there were representatives from: Ministries of Justice; Human Rights Commission; Legal Research Initiative and other NGOs; Nigerian Ports Authority; Independent and Corrupt Practices Commission; National Orientation Agency; International Human Rights and Development; Private Legal Practitioners, the Academic community.

Perspectives for the Roundtable included:

- Overview of the legal and Institutional Framework for Protecting The Nigerian Child
- Human Rights and Access to Justice
- Combating the scourge of Unlawful Arrest, Torture and Extra Judicial Killings in Nigeria
- Mechanisms for monitoring and Enforcing Fundamental Human Rights in Nigeria
- Overview of Nigeria's International and Regional Human Rights Obligation

Observations

The Roundtable observed as follows:

1. Today all human rights are regarded as interdependent and equal and so should be treated equally and accorded similar prominence.
2. One third of the problems of human rights in Nigeria are directly linked to poverty; the others are related to interaction with state actors e.g. police brutality.
3. Statistics on the state of living in Nigeria are really appalling: infant mortality, expected life span of the average Nigerian and standard of living all fall well below minimum global standards.
4. The underdevelopment of Nigeria is in direct opposition to the country's resources.
5. Access to justice should be secured as a human right in itself and not just a tool or a means to securing human right
6. The pursuit of justice is a very important aspiration of any civilised society.
7. The goal of human rights and the goal of justice are the same; to ensure the realisation of human rights protection, access to justice must be assured.
8. In Nigeria where per capita income of the greater populace is low, pursuit of justice is viewed as luxury.
9. Incompetence and inadequate capacity of the legal practitioner is a major challenge to access of justice in Nigeria
10. Nigeria's level of underdevelopment is linked to her human rights records / non observance.
11. The present state of poverty is equally linked to corruption and impunity.
12. Impunity is at the heart of all acts of corruption and non observance of human rights principles.
13. The electoral system in place makes voters' choice irrelevant and so credible leaders are not elected into positions of leadership.
14. Corrupt acts go unpunished in Nigeria and much regard is placed on affluence and material prosperity.
15. Human rights norms create a trilogy of obligations: obligation to (i) respect; (ii) protect; and (iii) fulfil.
16. The international human rights architecture parades an array of human rights norms encapsulated in a range of instruments.
17. Regional and International human rights norms create vertical and horizontal obligations. The former refer to the obligations of States to non-State actors, while the latter refers to inter-State obligations.
18. Vertical obligations often require States to put in place legislative, administrative and judicial mechanisms to ensure the realization of human

- rights,
19. while horizontal obligations are generally two-fold: (i) each State fulfils its own obligations; and (ii) each State is obligated to ensure that other States fulfil their own obligations.
 20. Regional and International human rights obligations are, broadly speaking, created by treaties which are consent dependent and customary international law, which are not consent dependent.
 21. Nigeria is a party to most international human rights instruments. Unfortunately, Nigeria's international posture is sometimes "at variance with its domestic constitutional scheme of human rights; a paradoxical and hypocritical stance that renders Nigeria vulnerable to charges of engagement in a bogus public relations stunt.
 22. At the continental level, Nigeria is a party to all the instruments on which the African human rights system is predicated. These include the African Charter on Human and Peoples' Rights (and its protocols) and the African Charter on the Rights and Welfare of the Child.
 23. A norm of human rights which acquires the status of a peremptory norm (or jus cogens) binds all States.
 24. Because of the importance of the values it protects, the prohibition of torture has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules.
 25. Nigeria signed the UN CAT on July 28, 1988 (during General Babangida's tenure), but it was not ratified until June 28, 2001 (by the Obasanjo administration) thirteen years later!
 26. Nigeria has obligations deriving from its membership of the international community and its ratification of international instruments.
 27. With specific reference to UNCAT this obligation includes amongst others:
 - to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction;
 - to ensure that attempts to commit torture, complicity or participation in torture and all acts of torture are offences under its criminal law and made punishable by appropriate penalties which take into account their grave nature
 - to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment
 - to ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his/her dependants shall be entitled to compensation.
 28. Nigeria has complied with its UN CAT Obligations in the following areas-
 - In terms of legislative measures, apart from relevant provisions of the Penal Code and the Criminal Code, as far back as September 30, 1960, Nigeria enacted the Geneva Conventions Act, which domesticated the 1949 Geneva Conventions which, in turn, prohibit, among others, "torture or inhuman treatment, including biological experiments
 - Section 34(1)(a) of the 1999 Constitution provides that every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subjected to torture or to inhuman or degrading treatment", while article 5 of the African Charter on Human and Peoples' Rights, 1981 (which Nigeria has domesticated) forbids "all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruelty, inhuman or degrading punishment and treatment.
 29. Nigeria has not complied with its UN CAT obligations in the follows areas-
 - Nigeria has not made a Declaration pursuant to Article 21 of the UNCAT that it recognises the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the convention
 - Nigeria has not made a declaration, pursuant to article 22 of the convention, recognising the competence of the committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the convention. Thus, in respect of both inter-State and non-State communications, the committee has no competence over Nigeria.
 - Nigeria has, so far, not domesticated the Convention in accordance with section 12 of the 1999 Constitution to give the Convention a force of law in Nigeria.
 30. While certain acts that can be classified as torture (for instance assault) are punishable under the laws of Nigerian, there is no law specifically criminalising torture in the context of UN CAT and so there is lack of a deterring factor in the form of punishment
 31. While there are signs of improvement under the current civilian regime in the use of torture, a lot remains to be done- especially in the realm of law enforcement and in the specific context of the treatment of prisoners, to secure a respectable degree of compliance with the provisions of the Convention.
 32. Victims of Human Rights abuse including torture are either ignorant of their rights or are not willing to challenge acts of impunity because of the limiting force of their poverty
 33. Human rights are products of struggle and not dependent on the number of laws enacted or instruments ratified, and this struggle is predominantly initiated and sustained by the general public and the civil society
 34. There are numerous cases in Nigeria testifying to the success of sustained efforts from the public and the civil society in addressing instances of gross human rights abuses by government agents against individuals.

Recommendations

1. There is need to instill in the society the desire to bring change which should be gradual and evolutionary rather than revolutionary
2. Effort should be made to address the root causes of poverty and the degradation of societal values rather than only the symptoms
3. The culture of change should be instilled holistically covering the basic foundation of development of the Nigerian person from early childhood and up bringing.
4. Accountability would dispense with the rule of impunity and usher in development.
5. Reforms situated in the context of governance are needed to make votes count. It is only then that human rights abuses would abate.
6. Electoral reform must be at the root of these reforms, for every time INEC publishes a fictitious result or register, political larceny is committed on the nation. Electoral reform is needed to secure votes and make the process more credible.
7. Civil society organizations should be active in preventing electoral malpractice by monitoring conduct of elections and speaking out against acts of impunity and corruption by government officials.
8. Credible persons should seek positions of leadership.

9. Public opinion is a potent tool for change and is indispensable in ushering in a stable and progressive nation based on ideals of human right, there should therefore be public enlightenment on human right issues.
10. Nigeria should, consistent with the requisite constitutional prescriptions, domesticate the UN CAT and ensure its optimal application in its entire territory; there should be a clear offence of torture in Nigeria.
11. Nigeria should make articles 21 and 22 of the human rights declarations to underscore its commitment to combat the scourge of torture.
12. Nigeria should sign and ratify the optional protocol to the UN CAT, which establishes a system of regular visits to be undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.
13. Nigeria should ensure prompt compliance with its reporting and other obligations;
14. Civil society organizations should sustain their efforts in popularizing the provisions of the UN CAT and underscore the need for Nigeria to rise up to its UN CAT obligations.
15. Poverty and ignorance is again identified as being at the root of non challenge of torture and acts of impunity, therefore socio-economic development and empowerment of the people will usher in strong resistance to acts of torture.
16. Access to justice cannot be over emphasized in the fight against human rights violation. Our justice system should be made accessible especially to the poor and vulnerable groups.
17. There is need for adequate advocacy capacity in the bar and the bench to create and secure access to justice, where not only access will be given but justice is actually guaranteed.
18. There is need for an innovative interpretation of the Constitution specifically Chapter II to ensure that rights guaranteed under Chapter IV are protected. This has been done and is being done effectively in India and South Africa.
19. The possibility of actually seeking remedies or enforcement of socio-economic rights under the African Charter should be explored more assertively.

Signed:

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Director General