

## THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A PHILOSOPHICAL AND ETHICAL APPRAISAL

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### ABSTRACT

*The purpose of this paper is to trace the history and development of the Universal Declaration of Human Rights as a global ethical standard. Human rights are predicated on human dignity. We live in a world that some people either because of wealth, education or power have treated their fellows with contempt. This has led to a rigorous search for dignity and personal worth. The Universal Declaration of Human Rights was adopted to check and redress wanton violations of personhood, which has continued to terrify the conscience of civilized humanity since the Second World War. With the horrors of Hitler's savagery and the heartless brutality and inhumanity which characterized the strategies and logistics of that war, human beings were reduced and transformed from persons into things. The specific aims of this study are to evaluate the raison d'etre of the Declaration, probe its history and travails, and proffer solutions to curb and ameliorate human rights violations in the 21<sup>st</sup> century.*

**KEYWORDS: United Nations, Universal Declaration, human right violations, Eleanor Roosevelt**

### INTRODUCTION

The predetermined objective of the Universal Declaration was to redefine man, his dignity and worth and also recreate hope in man's resilience and capacity to prevail in the face of appalling degradation and dehumanization. Robert McAfee Brown has rightly asserted that:

When we talk about a " person" we are not talking about an object but about a subject. We are describing someone who is not quantifiable or interchangeable with another. Each person has unique worth. There is no legitimate way to assert that one person is " worth more" than another person, since the worth of each is infinite (7).

Before we proceed into full analysis of the history, content and goals of the Declaration, it is necessary, to establish the starting point with the definitions of human rights. The United Nations has defined human rights as "those rights, which are inherent in our nature and without which we cannot live as human beings (Awake! 4). Here, human rights are viewed as derivatives of human personality. The rights are embedded in human nature. Harold Laski has described rights as ... "those conditions of social life without which no man seek, in general, to be himself at his best (91). Laski further contended that although we have rights to safeguard our uniqueness, and express our personality and potentiality in the vast pressure of social forces, our rights are not independent of society, but inherent in it.

Therefore man's rights are derived from man's membership of society (93). According to Laski, rights have three essential dimensions. The interest of the individual, the interest of the various groups within the society and thirdly, the interest of the community, which represent the sum total of the social forces. We cannot leave the groups within the community to define their rights by conflict, any more than we can permit individuals to determine their rights. We live by common rules. We must build an organ, which enforces and interprets those common rules. We must so build it that both groups and individuals are safeguarded in their freedom and their equality... (Laski 141).

Osita Eze is in the same wavelength with Harold Laski when he defined human rights as ... "demands or claims, which individuals or groups make on society, some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in the future" (5). Human rights are justifying claims, which individuals make on society. The primary duty of every human society is to institutionalize a workable and viable mechanism within the social structure for the protection of human rights. This is why Laski notes that:

For any social order, which fails consistently to recognize the claims of personality, is built upon a foundation of sand. Sooner or later it will provoke the dissent of those whose nature is frustrated by its policy. Its disasters will become their opportunity. For, to deny the claims of right is to sacrifice the claim to allegiance (97).

## **ELEANOR ROOSEVELT AND THE DRAFTING OF THE UNIVERSAL DECLARATION**

In 1946, the United Nations established the Human 'Rights Commission' with Eleanor Roosevelt, the widow of President Franklin Roosevelt as the chairperson, with the mandate to, prepare a 'Universal Declaration of Human Rights' as the first element in the internal 'Bill of Rights' (Stott 142). Apart from Eleanor, a notable personality in the Commission was Rene Cassin from France. The task of drafting a human rights document that will be accepted to the world community was not an easy one. It tested the patience, wit and organized skills of Mrs. Roosevelt.

At the outset there was a clash of interest and variegated ideological agitations. The Chinese delegation insisted on the inclusion of Confucianism into the Declaration. The Soviets pressed for the inclusion of the ideas of Karl Marx, the Catholics felt that the life's work of Thomas Aquinas should dominate the content of the Declaration. The United States mounted pressure for a comprehensive adoption of the American Bill of

Rights (Awake! 3-4). It is to her credit that despite glaring divisive tendencies, Mrs. Roosevelt was able to carry all the members of the Commission along, and even to reach a consensus on protracted issues. After several meetings, brainstorming, amendments and 1400 rounds of voting on every word and clause, the 18 member Commission, arrived at 30 articles with a lively preamble.

On December 10, 1948, the United Nations General Assembly met in Paris to receive and adopt the Universal Declaration of Human Rights. In a speech on the occasion, Mrs. Roosevelt declared; "We stand today at the threshold of a great event both in the life of the United Nations and in life of mankind, that is the approval by the General Assembly of the Universal Declaration of Human Rights" (qtd. in Awake! 3). The President of the United Nations General Assembly of December 1948 which proclaimed the Universal Declaration of Human Rights, Dr. H. E. Evatt of Australia, observed that this was 'the first occasion on which the organized world community had recognized the existence of human rights and fundamental freedoms transcending the laws of sovereign states (qtd in Osler and Starkey 2). The Declaration was passed as resolution 217 A (111) of the General Assembly with South Africa, Saudi-Arabia, USSR, Ukraine, Yugoslavia, Poland, Byelorussia and Czechoslovakia abstaining (Umozurike, Introduction... 146). As a mark of honor, Mrs. Roosevelt's outstanding leadership qualities was openly rewarded with a well deserved standing ovation from the international community.

### **ETHICAL MESSAGE OF THE DECLARATION**

The message of the Declaration was clear and simple. The dignity of man must be recognized. The equality and inalienable rights of all men was emphasized. It was the cherished view of the framers of the Declaration that the "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" (Reoch 265). Coming at a time which... "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind"... (Reoch 265).

The Declaration was... "proclaimed as the highest aspiration of the common people"... (Reoch 265). As a global ethic, the Declaration was to serve as a source of inspiration and a modus operandi to reawaken human consciousness and recreate hope and confidence for a better world that will soon emerge as a result of consensus building, dialogue and mutual respect (Umozurike, 'Why Human Rights? 11-13).

The Declaration internationalized the concept of man's rights and also set a minimum standard for the world to follow. As a code of universal moral rights, the Declaration was stated in universal terms without any consideration to cultural diversities and peculiarities of individual people and communities. On the imperative of universality, former UN Secretary- General, Boutros Boutros- Ghali wrote:

To be sure, human rights are a product of history. As such, they should be in accordance with history, should evolve simultaneously with history and should give the various peoples and nations a reflection of themselves that they recognize as their own. Yet, the fact that human rights keep pace with the course of history should not change what constitutes their very essence, namely their universality (June 14, 1983 Opening Address).

The argument against universality has been that the cultures of the world are not monolithic. Cultural differences cannot vitiate the proposition that individual citizens of all countries have rights that should be recognized and protected. Countries that are not ready to comply with international human rights standard are often looking for excuses to use as a strategy to conceal their ulterior motives. Boutrous- Ghali in his observation reminds us that:

We must remember that forces of repression often cloak their wrongdoing in claims of exceptionalism. But the people themselves time and again make it clear that they seek and need universality. Human dignity within one's culture requires fundamental standard of universality across the lines of culture, faith and state (Opening Address).

On the ideological roots of the Universal Declaration, R. P Dhokalia described the content and basic philosophy of the Declaration as "an amalgam of ethical doctrines with rationalistic and theological roots and individualistic political doctrines" (94). A noticeable and overriding ideology of the Declaration was the natural law doctrine, which was ably represented by Thomas Hobbes and John Locke. It was the opinion of the natural law school that the law of nature was not superior to the state, but that the creator instituted it. (Omoregbe 28-40).

### **THE LEGALITY OF THE DECLARATION**

Even though the Declaration was not intended to have legal effect, its content was to be merely persuasive; there is a rapid progress in the area of legality, which has reduced the burden of non-justiciability. The Declaration has been adopted in the constitution of many new states, and also in European and American conventions of human rights. The influence of the Declaration is also noticeable in the Banjul (African) Charter on Human and People Rights. Apart from its continuous reaffirmation in many conventions, declarations and resolutions of the United Nations, it has positively metamorphosed into an inescapable moral force in international customary law through adoptions, state practice and judicial decisions. It is incontrovertible that the Declaration is the most powerful and popular human rights document in international law (Iwe 126-127). It has fulfilled the wishes of Mrs. Eleanor Roosevelt when she described the Declaration as:

... a guiding light to all those who endeavored to raise men's material standard of living and spiritual condition... a moral obligation on the different countries to find ways and means of giving effect to the rights proclaimed therein... a common standard of achievement for all countries (qtd. in US Bill 751 ).

### **THE UNIVERSAL DECLARATION AND THE UNITED NATIONS CHARTER**

The United Nations was established in 1945 as an attempt to provide an institutional framework for the attainment of world peace. The preamble to its charter reads:

We the people of the United Nations determined to save succeeding generations from the scourges of war, which twice in our life time has brought untold sorrow to mankind and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standard of life in larger freedom. (Rodee et al 539).

Article 1 (3) of the UN charter speaks of "... promoting and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". Article 13 (b), goes further with a promise of "... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Similar provisions have been re-enacted in article 55 (c). It was the wisdom of the framers of the Declaration to incorporate Articles 1,13,55,68 and 76 of the UN charter, which made reference to human rights into the Universal Declaration.

## **BASIC PHILOSOPHY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS**

### **(a) EQUALITY OF ALL MEN**

The basic philosophy of the declaration is stated in Article 1: "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 3 says: "Every one has the right to life, liberty and security of person". Indisputably, the wordings and salient philosophical motivations of Article 1 and 2 of the Declaration reflected Thomas Jefferson's Declaration of independence:

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness (661-664).

Here we can detect the influence of the natural law movement especially the legacies of John Locke and Thomas Hobbes. The implication is that every human being is born free, and endowed with natural faculties of intelligence and freedom. The fundamental equality of all men was also endorsed at the Second Vatican Council:

All men have rational soul and they are created in God's image, they share the same nature and origin... the same destiny, so it should be more and more recognized that they are essentially equal (Iwe 352).

Equality does not permit discrimination. All forms of discrimination should be treated as a flagrant and unjustifiable violation of human rights. The UN in 1958, defined discrimination as:

... Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinions, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment (Jenks 91).

Osler and Starkey have identified the four pillars of the Universal Declaration to be:

- a) personal rights (life, freedom, security, justice) in articles 2 to 11;
- b) rights regulating relationship between people (freedom of movement, rights to found a family, asylum, nationality, property) in articles 12 to 17;
- c) public freedoms and political rights (thought, religion, conscience, opinion, assembly, participation, democracy) in articles 18 to 21 ;
- d) economic, social and cultural rights (social security, work, equal wages, trade unions, rest and leisure, adequate standard of living, education, cultural life) in articles 22 to 27. To cap the edifice (article 28 -30) there is the pediment of an international order essential for the realization of rights and the understanding that rights imply duties to the community and freedoms do not extend to those actions which jeopardize the rights of others (4-5).

## **(B) RULE OF LAW**

The rule of law was given adequate attention in the Declaration. Article 5 stipulates that: " No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". (Universal Declaration Article 5). Article 6: Says, "Every one has the rights to recognition every where as a person before the law". Article 5-11, covers such topics as fair-hearing, false imprisonment, malicious prosecution and duress. The basic philosophy of the Declaration is that civil and criminal prosecution; the rights of the accused person should be recognized. The rights to fair hearing is stated in Article 10:

Every one 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 10)

Fair hearing means that the accused person must be informed of his offense within a reasonable time and should be given time to defend himself. Fair hearing also connotes absence of bias. The principle of presumption of innocence is stated in Article 11 (1):

Every one 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 had all the guarantee necessary for his defense. (Article 11 (1)).

Under this principle, the accused is presumed innocent until the contrary is proved and the onus probandi is on the prosecution. In *Woolmington vs. DPP*, a unanimous House of Lords agreed in many words that it is better for ten guilty men to escape justice than to punish the innocent. It was held that... "it is the duty of the prosecution to prove the

prisoner's guilt" (Woolmington 462). The accused person does not have any duty under the law to testify against himself.

### **(c) PREVENTION OF WAR**

Carl von Clausewitz has defined war as "an act of violence intended to compel our opponent to fulfill our will" (Encyclopedia Britannica 543). In another write-up the same author described war as "a continuation of policy by other means. It is not merely a political act, but a real political instrument" (Whiskey 15). Nobody can deny the fact that war is a rational instrument in international politics. Powerful nations intimidate weak ones through use of force. But more than that, we also have civil wars fought internally within a particular country. War times are the worst moments for human rights violation. Evils of war ranges from outright murder of innocent citizens to rape, cannibalism and slave raid. While politicians are using war as instrument of foreign policy without considering the human toll, men of conscience have a duty to work against situations that causes war.

That is exactly what the framers of the Declaration did. The United Nations was established with the mandate to maintain peace and security in the world. The preamble to its Charter has an ambitious commitment- "To save succeeding generations from the scourge of war..." (Preamble of UN Charter). Article 2(4), says:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations (Article 2(4)).

From 1945 till date, war has continued to plague human society. Humanity now lives in the throes of war. Even at this, United Nations is not a total failure in stopping war. The United Nations has put in place mechanism for conflict resolution and prevention of war. Article 33 of the UN Charter encourages conflict resolution through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement and resort to regional agencies or arrangements. Although Article 51 allows for self-defense when a sovereign state faces armed attack, the preference of the UN is for peaceful resolution of conflict and avoidance of war. In pursuance to this, the UN is now preoccupied not only with peace making, but also peace keeping and peace building.

When the Universal Declaration was adopted, there was hope all over the world that through continuous human rights education, creation of functional awareness within the international system, that the scourge of war will be reduced to the barest minimum, if not completely eliminated. The Declaration was to achieve this through a superlative moral and ethical influence which the Declaration was supposed to impose on all people's and government. The Declaration was supposed to be a moral code for world citizenship and it was intended 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... (Reoch 265)

## **HUMAN RIGHTS VIOLATION AFTER THE ADOPTION OF THE UNIVERSAL DECLARATION**

One would have expected that with the euphoria that greeted the adoption of the Declaration in 1948, that governments and people of the world would have a rethink by working conscientiously to discourage human rights violations. What happened after the adoption of the Declaration was a far cry. In international law, governments are obliged to act as the protectors of universal rights. "In practice, they have acted as the violators and have failed as the guarantors" (Reoch 14). Dictators and tyrants have continued shamelessly to violate human rights to the repugnancy of the international community. Boutros Boutros-Ghali writes:

Not a day goes by without scenes of warfare or famine, arbitrary arrest, torture, rape, murder, expulsion, transfers of population, and 'ethnic cleansing'. Not a day goes by without reports of attack on the most fundamental freedoms. Not a day goes by without reminders of racism and the crimes it spawns, intolerance and the excesses it breeds underdevelopment and the ravages it causes. ( Opening Address).

Even though the right to life has been recognized in various human rights documents, willful, culpable and malicious killing of human being is being carried out with impunity. Genocide or 'ethnic cleansing' is taking place in troubled spots across the world. According to a UN source... an estimated 120 million people were killed in the 20th century both in peacetime and armed conflict... 14 million children die every year under five years of age, as a result of easily preventable causes. Young people are forcefully conscripted into rebel army. School children face sexual harassment, which leads to teenage pregnancy and exposure to sexually transmitted disease. Girls are compelled to marry below the age of consent. Some 130 million children lack access to primary education. About 16 million children suffer acute malnutrition. Many children are abandoned in orphanages, while about 250 million children are engaged in various forms of child labor (Reoch 265). In "The Children's Rights-and Squandered Opportunities" it has been observed that:

More than 1.5 million children have been killed in wars during the past decade. More than 4 million are in refugee camps waiting for wars to end, and another 12 million have lost their homes... Before 1945, most victims of war were soldiers, but in more than 150 wars since then, 80 percent of the 20 million dead and 60 million wounded have been civilians, and most of them have been children and women (15).

## **VIOLATION OF WOMANHOOD**

Another area that deserves attention is the right of women, which have been violated for many years. Women have been abused, dehumanized and oppressed by a male dominated society. According to Senator Hillary Clinton, the world continues to "treat women as less than complete citizen. (Awake! 8). Mrs. Clinton went further to say that, of the world's poor, 70 percent are women, and that two thirds of the world's 130 million children who are unable to attend school are girls. Millions of women are being



denied a life with dignity through specific forms of violence and deprivations ranging from the non-provision of basic necessities of life to domestic and sexual violence. Women are victims of rape, wife battering, genital mutilation, kidnaping of girls, forced prostitution, selling of women by poor families, using girls as collaterals, female infanticide, sex tourism, dowry burning, sexual slavery, compulsory heterosexuality, forced pregnancy and discrimination in legal status, education and health care of the nearly one billion adults who are illiterates, nearly 600 million are women (Statement on Women and Human Rights 14).

### **NEW DIMENSION OF SLAVERY**

Slavery, prima facie is a crime in international law. There is a new dimension of slavery. Like its antecedent, economic motivation is the prime cause. Human trafficking has become a lucrative business all over the world. In Africa, young people, especially young girls are disappearing because of slave raid. Thousands of women and children are held perpetually in bondage because of their inability to repay either their loans, or that of their parents. In Africa and Asia, there is a phenomenon called ritual slavery, "slaves of the gods". Here religion plays a retrogressive role. Some people are not allowed to partake in the progress which humanity has achieved because of religious restrictions. Over 200 million people are held in conditions analogous to slavery.

### **ESCALATION OF REFUGEE PROBLEM**

Persistent socio-political instability around the world has also aggravated refugee problem in recent times. A refugee is a person who flees his country because of fear, violence, poverty, discrimination or repressive regimes. Refugees are frustrated and hopeless people. Sadako Ogata has said:

Safeguarding human rights is the best way to prevent conditions that force people to become refugees. Respect for human rights is a key element in the protection of refugees in their country of asylum. Improve observance of human rights standards is often critical for the solution of refugee problems enabling refugees to return home safely (qtd. in Reoch 265).

Since 1992, an average of 5,000 people are being displaced because of religious and political persecution and environmental damage caused by war. Over 100 million people have been forcibly displaced for development programs such as dams, mining, oil drilling, forestry, and urban renewal in some cases without any form of compensation.

### **CONCLUSION**

Even with the lawlessness and outlawry that has characterized a greater part of the twentieth century and the colossal perversion of human values that ushered in the 21st century, it is the opinion of the present writer that the Declaration is not a total failure. After 57 years of implementation and enforcement, it is glaring that the Declaration is indeed "... a common standard of achievement for all people and all nations..." The Declaration was the first international document to use the term 'human rights'. From 1948, till date, the Declaration has been translated into over 200 languages. Because of the complexities of human rights situation there are advocacy for the revision and

rewording of the Declaration. On this Kofi Anan, former UN Secretary- General writes: "Just as there is no need to rewrite the Bible or the Koran, there is no need to adjust the Declaration. What needs to be adjusted is, not the text of the Universal Declaration, but the behavior of its disciples" (*Awake!* , November 22, (1984): 3-4). Government all over the world should rise up to the challenge of protecting human rights. They should do so by showing the example. It is dangerous and retrogressive to violate human rights for political or economic reasons.

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