

HUMAN RIGHTS IN A MULTICULTURALIST WORLD: THE MYTH AND REALITY IN CONTINENTAL AFRICA AND AFRO-DIASPORA

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ABSTRACT:

The question of the universalism of human rights and its particular tendencies in a multicultural Age is now gaining currency in contemporary philosophical discourse. This paper is an attempt to contribute to the debate on the universalism and particularism of the values of human rights within the African Diaspora and continental Africa. In pursuit of a synthesis between these two perspectives, this paper raises anew the question of the distinction between the nature of man and the nature of a person, between alienable and inalienable rights, between cultural universals, relativism, and moral relativism. The paradoxes and insights from the conceptual and critical appraisal of these dialectical concepts inform this paper's thesis that multiculturalism is compatible with the universalism of human rights. While basing the discourse within the purview of the hermeneutic-reconstructionist model in African jurisprudence, this paper establishes through extant texts in *Ifa* corpus that there are some ideas and principles of jurisprudence in *Ifa* that show the paradox of the dichotomy between universalism and multiculturalism of human rights. Further, this paper argues that the supposed parallels between the two perspectives become insignificant because human rights in both senses are geared towards the same goals: respect for culture, human values and dignity, tolerance of ideas and beliefs, promotion of peace and human development. It argues further that while this symmetrical ideal is more of a myth than reality in the legal systems of continental Africa and the African Diaspora, it is only in the context of unhindered commitment to multiculturalists' human rights that human development can be sustained and the capacities of the citizenry most optimized. The paper concludes with an exploration of

the implications and imperatives of this resulting synthesis for the quest for development in continental and Diasporic Africa.

INTRODUCTION

The question of what constitutes the nature of human rights has unabatedly continued to generate controversies in contemporary jurisprudential discourse. Two orientations can be identified. On one hand is the Western liberal tradition, which constitutes the bulk of contemporary discourse (and activism) on human rights. This tradition holds that human rights are, by nature, of universal concern and, as a matter of fact, an expression of rights, which man enjoys and shares with his fellow men regardless of race, culture, colour, age, sex and creed. On the other hand are those who view the liberal tradition as representing a fragmentary discourse on human rights. In this orientation—call it the multiculturalist tradition—the universalist claim of the liberal tradition on the nature of human rights is challenged. The emergence of different Regional Charters on human rights has further provided the impetus for the raging debate in international human rights circles on the universal or relativistic nature of human rights.

In this paper, an attempt is made to investigate the controversy over the universality of human rights and its possibilities, contradictions and constraints in a multicultural world. The pertinent questions addressed in this paper are: Is it logically correct and consistent to accept the universal declaration of human rights as universally valid and binding over and above other cultural specific rights? Are there recognition, respect and observance of culturally specific rights in continental Africa¹ and Afro-Diaspora²? What is the

¹ The term continental Africa is a geographical space connoting the mapped territory of any person or community within Africa.

myth and reality of human rights in the lived experiences of Africans on the continent and in the Diaspora? “How can universal human rights be legitimized in radically different societies without succumbing to either homogenizing universalism or the paralysis... of relativism?” (Cook 1994: 6)

The answers given to the above fundamental questions foreshadow some implications for other pertinent issues on human rights in the contemporary political landscape. Understanding such issues as the scope of human rights, the wanton abuses of human rights, mechanisms for human rights enforcement, democracy and human rights protection, and human rights activism is possible only if what truly constitutes the nature of human rights is properly grasped.

This paper is an attempt to contribute to the above debate on human rights discourse by attempting a philosophical exposition of the jurisprudential relevance of *Ifa* to the resolution of the controversy regarding the dichotomy between the universalist and the relativist nature of human rights. A proper starting point of this discussion is to first attempt a conceptual clarification of human rights.

Human rights defined

Human rights may be defined as those rights which all men enjoy simply by virtue of their humanity, the deprivation of which would constitute a grave affront to man’s natural sense of justice. In this context, rights mean something that can be demanded and insisted upon without embarrassment or shame. These rights can be seen in two senses: legal rights and moral rights. Rights in the legal sense denotes a benefit validly conferred by law, while in the moral sense

² By Afro-Doaspora, we mean the geographical location of people of African origin living outside the continent of Africa, whether or not with self-identifying ties to the continent.

rights are assertions of notions of wrongness and rightness without any backing of the legal and judicial system.

Given the above clarification, Osita Eze (2001:15) defines human rights as “demands or claims which individual[s] 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. These are claims which, according to U.O. Umzurike (2001: 38), are invariably supported by ethics and should be supported by laws made on society, especially its official managers, and by individuals or groups on the basis of their humanity. It follows from these descriptive conceptions that human rights may be violated, may not be legalized, may not be enforced immediately, or be unenforceable.

The claims of human rights incorporate such ideals as liberty, power, expectations and advantages, which the individual seeks to enjoy from the society by virtue of being human. Human rights are historically derived from a society’s structural needs and, more essentially, from man’s intrinsic (as well as extrinsic) needs, his powers, his powerlessness and the requirements for his self-fulfillment (Oyugi, 1989: 50). It must be quickly added that these rights are conceived as inherent or intrinsic in individuals as rational free-willed creatures, not conferred by some positive laws nor abrogated by positive laws (Obaseki, 1992: 17). They are not claims based on parochial interests. Rather, they are inherent and *inderogable* with a universal application. They are universal because all races, tribes and sexes, enjoy them and apply to all persons without discrimination, regardless of individual status.

In other words, human rights are derived from the fact of universal humanity, which man enjoys and shares with his fellow men, and as such, they should be granted and guaranteed to everyone. They are fundamental in that they are basic and are attached to his being born or created without necessarily contributing

anything to the society into which he enters. These fundamental rights are innate to man's creation and are, as such, imprescriptible and inalienable (Eze, 1984: 3). Human rights, when recognized, respected and protected, enable man to fully develop and use all qualities such as intelligence, talent and conscience to satisfy both spiritual and mundane needs. In fact, human rights protect the dignity of every man.

Having established its meaning, we need mention here that human rights have risen *ex nihilo*. However, we shall not embark on a detailed discussion of the evolution of the concept of human rights, as we know it today.³

The important point we need bear in mind is that the promotion and protection of human rights are accorded high importance in international law, the UN Charter, the 1948 Universal Declaration on Human Rights, the various UN covenants on Human Rights and other Regional Charters on Human Rights. These regional

³ It suffices to say that the jurisprudential evolution of the concept can be traced from Sophocles, who lived during the pre-Socratic period in Athens, to the period when natural law theory started gaining prominence, down to the postulates of natural rights theorists such as Thomas Hobbes, John Locke, Baron De Montesquieu, J.J. Rousseau, and among others. The various ideological expressions of these natural rights theorists paved way to the British Bill of rights in 1688, the French Revolution of 1789, and the Declaration of the Rights of Man and the Citizen into the American Constitution and the subsequent dissemination as the Bill of Rights in 1791. The ratification and adoption of human rights by the United Nations in 1948 resulted in the Universal Declaration of Human Rights. A modern interpretation of the 1948 Declaration of Human Rights was made in the Vienna Declaration and Programme of Action and adopted in 1993. For a detailed discussion on the historical evolution of human rights, see F.C.Eneumuo, "Democracy, Human Rights and the Rule of Law", Remi A. Francis (ed.), *Elements of Politics*, (Ikeja: Malthouse Press, 1999).

charters and organizations governing human rights include the European Commission of Human Rights, the African Commission of Human and People's Rights, and the Inter-American Commission on Human Rights, among others.

All these documents state, in one way or another, the basic ingredients of human rights. They are generally grouped as first generation rights, second generation rights, third generation rights and fourth generation rights.⁴

⁴ Caution needs be exercised here, as this grouping should not be taken as rigid for they are closely related. The first generation consists of civil and political rights and they are libertarian in character. They include: the right to self-determination, the right to life, freedom from torture and inhuman or civil treatment, freedom from slavery and forced labour, the right to liberty and security, freedom of movement and choice of residence, right to fair trial, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, right of assembly, freedom of association, the right to marry and found a family, the right to participate in one's government either directly or through freely elected representatives, and the right to nationality and equality before the law. All the rights in the first category are given prominence under the International Covenant on Civil and Political Rights (ICCPR). The second generation of rights is economic, social and cultural rights that require affirmative action of governments for their implementation. These rights incorporate the right to work, the right to just conditions of work, the right to fair remuneration, the right to an adequate standard of living, the right to organize, form and join trade unions, the right to collective bargaining, the right to equal pay for equal work, the right to social security, the right to own property, the right to education, the right to participate in cultural life, the right to enjoy the benefit of scientific progress and right to enjoy the benefits of one's own creative activity. All these latter category of rights are the subjects of International Covenant on Economic, Social and Cultural Rights (ICESCR). The third generation of rights encompasses "solidarity rights" and can be said to be more developed and sophisticated than its predecessors. This third generation of solidarity rights includes the "right to development, the right to peace, the right to a safe

The Myth and Reality of Human Rights in Continental Africa and Afro-Diaspora

Human rights, as earlier clarified, are claims that all beings are entitled to make and demand simply by virtue of their status as human beings. All the above stated basic tenets of human rights should be protected by the law as stipulated in the preamble to the Universal Declaration of Human Rights, 1948. However, some of these basic human rights only have an internally recognized legal basis without total recognition and observance in all states' municipal legal systems. Their international legal character lies in the fact that the International Conventions in which they are embodied are regarded under international law as legal instruments and precepts. But the juristic bases of a right within a municipal legal system are the recognition and protection accorded the right by that state's legal system.

The problem associated with the enforcement of certain human rights in continental Africa and the Afro-Diaspora is that not all human rights reflected in treaty provisions are incorporated and accorded due recognition in the constitutions and legal systems of states. Many states have failed in fulfilling their duty of re-enacting the human rights provisions of International Conventions, which they have signed. In many cases, those that are even recognized and domesticated in the national constitution face the problem of enforcement and loyalty to the said rights. Any focus on human rights in many African states as well as in the Afro-Diaspora is largely on

environment, the right to ownership of the common heritage of mankind, and the right to communication." The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) detailed the fourth generation rights, which are about women's rights. For details, see: Nsongurua J. Udombana, *Human Rights and Contemporary Issues in Africa* (Lagos: Malthouse press ltd., 2003).

the first generation of rights (that is, on political and civil rights). An emphasis on second generation rights (economic, social and cultural rights), third and fourth generation rights (solidarity rights and women's rights, respectively) is more of a rhetorical myth than lived reality in continental Africa and Afro-Diaspora.

History is replete with countless records of gross violations of citizens' fundamental human rights (across generations) by the state in these parts of the world. For instance, in spite of the democratic deluge in Africa today, human rights remain precarious as there is wanton violation of socio-economic, cultural, political, and women's rights in many African states.

Certain obstacles and perhaps circumstances make the realization, protection, and enforcement of fundamental human rights impossible in general and in Africa cum the Afro-Diaspora in particular: war, psychiatric abnormalities, anachronistic traditions of human sacrifices and human indignity, totalitarian military government, utopian socialism, structural ineptitudes of judicial institutions and ignorance, amongst others. In times of war, human rights are thrown into oblivion. Where there is a natural disaster such as a landslide, the respect for human rights and their enforcement becomes difficult. We can also not rule out the influence of nature and nurture in a consideration of the obstacles facing the promotion of human dignity through the protection of human rights. With regard to nature, some people by biological constitution appear to be servile and feel no remorse for being treated unequally. Under irrational conditions, a person may have his or her human rights eroded. At the level of nurture, education and society are important factors. One's level of education could be a constitutive force in the demand for or repression of rights. At the level of society, some conditions may affect one's level of freedom, such as childhood experiences, type of upbringing and one's level of consciousness. Anybody who takes another person's life unjustifiably or acquires wealth/property

through an improper means can have his/her human rights, such as the right to life or the right to property eroded away. Traditional practices of human sacrifice in appeasement of the gods and other anachronistic beliefs (such as in genital mutilations), religious fundamentalism and enlightenment ignorance, and their negative effects on human rights are still not uncommon occurrences in some parts of Africa.

In addition to the above-identified constraints to the realization of human rights ideals in continental Africa and the Afro-Diaspora, the bulk of human rights abuses are caused by political leaders and machineries of government. It is an irony that government, which ought to be the prime protector of human rights, is the prime abuser of human rights. In this sense, government and its machineries are major constraints on the realization of the ideals of human rights by intentionally stumbling on people's human rights in order to satisfy and further their egoistic, oppressive and recalcitrant attitude. This private transgression is more noticeable in autocratic regimes where gross violations of fundamental human rights are committed with impunity. History is witness to the severe human rights abuses experienced in Uganda under Idi-Amin (1971-1979), Central Africa under Bokassa (1966-1979), Equatorial Guinea under Nguema (1968-1979), and Nigeria under Abacha (1993-1998) (Ogungbemi, 2007: 52). Worst off are the cases of human rights abuses in Liberia, Kenya, Sudan, Rwanda, Burundi and Somalia. The quantum number of refugees that human rights abuses in these states have created is incalculable.

The justice system operating in a given political state can be a militating factor in the realization of human rights ideals. Where the justice system is itself punitive, like the Nigerian example, nothing better can be expected than a crass violation of people's rights and freedom. Defending and guaranteeing human rights presupposes the creation of basic political, economic and social conditions. One of the

key conditions for a sustainable democracy with human rights in Africa is the establishment of efficient democratic institutions and the delivery of democratic dividends in various key sectors of the state. But the contrary is the case in continental Africa and the Afro-Diaspora.

In addition, the consumerist quest for materialism in the contemporary world has led to exploitation between individuals and individuals, institutions and individuals, as well as the imperialistic dimension of exploitation through the body of NGO's and other international donor agencies.

One important constraint in the realization of human rights ideals in continental Africa and which also affects the Afro-Diaspora world is the largely contradictory nature of the constitutions of many states. Because of such contradictions in articles and sections of the constitutions as well as vague interpretations of relevant sections that border on human rights, violations of human rights are usually taken for granted with the end excused of constitutional lapses and ambiguities.

Some further constraints that affect the chances of human rights to have success in continental Africa and Afro-Diaspora are worth considering. Arguably, most African states and peoples remain aloof regarding the human rights principles in the African charter. This reserve can be explained by certain ideological presuppositions, social structure, historical factors and specific views of man as a communal being. The idea that a human being can only attain his or her value within the ethnic group, which exists in many traditional societies, is contrary to the philosophical foundations of human rights within the Western tradition, in which the foundations of law are laid in the human being as such, presupposing a universal idea of the human being (Scholze, 1992: 60). In particular, the human rights conceived during the period of 'African Socialism' ignored the

fundamental value of individuality in the idea of human rights, in the name of elite power-politics. This ambition, to produce a special 'socialist conception of human right', has contributed to neglecting the rights of individuals and the idea of human autonomy. In this socialist conception of rights, the state is to protect, develop and limit human rights.

Also important is the factor of political changes taking place in Africa. Previously customary political means, such as high-handedness or restrictions on democratic procedures in the name of socialism, have been discredited now (Scholze, 1992: 59). But because of the excessive gratification of the people in terms of their new experiences in the civil regimes, when compared with the extreme violations of human rights in the immediately past autocratic regimes, the majority of the people feel contented with the new situation. As much as the delivery of democratic dividends in the new civil dispensations still leaves much to be desired, human rights have better a chance of success in continental Africa and the Afro-Diaspora if there are more copious democratic dividends that directly improve the welfare of the citizenry.

There are other tensions that serve as obstacles to the realization of human rights in continental Africa and the Afro-Diaspora. As reported in the year 2000 *Human Development Report* (30), such tensions are those "between national sovereignty and the international community's monitoring of human rights within countries; between the indivisibility of human rights and the need to establish priorities because of resource constraints; between the supremacy of international laws and that of national laws; between international norms and the norms set by regional human rights systems; between ratifying international treaties and enforcing them nationally"; and between universalism and particularism of human rights in a multicultural world.

The last of these tensions that stifles the smooth realization of the ideals of human rights is worthy of further remarks.

Universalism, relativism and multiculturalism

Universalism is the view that a thing, idea, concept, institution or practice validly transcends all cultural boundaries and holds true in all human societies. Universalism includes some presuppositions. Henk Procee underscores these in his comment that:

Universalism has unity at its centre: there is one reality, one method to acquire knowledge of this reality, and one sound system of moral judgment. In all the apparent variety it tries to find a basis which can function as a guideline for human existence and judgment (Procee, 1992: 48).

In opposition to universalism, relativism puts variety in the centre. In Procee's (1992: 47) account:

Relativism implies that every historical epoch and every culture has the equal right to present its perspective on the world. In principle, they all have the same value. There are no standards independent of culture that proves that some perspectives are better than others.

From the above, relativism refers to the doctrine that time, place, individual and cultural diversities should be distinctively recognized as parameters for the institutional organization of human societies, validity of ideas, values and knowledge (Fayemi, 2009: 240). It implies the idea that each culture or ethnic group is to be evaluated on the basis of its own values and norms of behavior and not on the basis of those of another culture or ethnic group (Rosaldo, 1994: 4).

Cultural relativism does not imply that there is no system of moral values to guide human conduct. Nor does it advocate individual or ethical relativism. Rather, it suggests that every society has its own moral code to guide members of that society, but that these values are of worth to those who live by them, though they may differ from our own (Herskovits, 1973:31). There is usually a conceptual failure in realizing that the principle of cultural relativism only has relevance across cultures and not within one culture. It is a cross-cultural principle and not an intra-cultural one. Failure to recognize that cultural relativism is a cross-cultural principle, leads ethicists to envisage an intra-cultural relativism, where the validity of any one society having any moral standards is denied, resulting in moral chaos and ethical anarchy (Herskovits, 1973:64).

Cultural relativism, however, raises a problem for itself; it tends to view reality exclusively from its own narrow perspective. Bidney (1959) is right in his position that “as against the uncritical assumption of cultural relativism that culture is the primary determinant of human experience and that all reality as known is cultural reality,” it is important to realize “that culture is but one of the conditions of human experience” (Bidney, 1959: 55).

Because of the above shortcoming of relativism we may consider the basics of multiculturalism. Multiculturalism refers to the doctrine that cultural diversity should be recognized as a permanent and valuable part of the institutional organization of human societies

(Tempe man, 1999: 17). Cultural relativism is implied in multiculturalism. Within multicultural relativism, there are many realities which have diverse value orientations and moral systems. In view of this, we can be tolerant of all perspectives. Relativism dissolves into multiculturalism at the point of appreciating and promoting the realities, values and knowledge systems of different cultures within a society

Notwithstanding the polarity between universalism and relativism, some inferences can still be drawn about the common areas of both. They share the same metaphysics. That is, they have the same preoccupation with stable fundamentals for interpreting the world. They have at their centers the quest for stable entities, which can function as the last resort for knowledge and morality (Procee, 1992:50). Where entities are understood as world-wide in universalism, they are taken to be culturally specific in relativism. At the level of multiculturalism, the specific differences between cultures and people are not seen as a goal, but as a starting point for dialogic interactions and about which new insights and ideas can be gainfully shared.

The dichotomy between universalism and relativism on the human rights question

When used in the discourse on human rights, universalism means the universal status of the claims of human rights as affirmed in the 1948 Universal Declaration of Human Rights. The preamble of the Declaration indicates that there is a common understanding of these rights and a common standard of achievement for all peoples and all nations.

The idea of the universality of human rights is rooted in the European tradition. It is seen as a Western idea, which is being imposed upon other countries. The West has employed universalism

in its efforts to justify its colonization and domination of the world. Ideally, universalism ought to have been an objective concept, but the reality which stares us in the face is that universalism has been undermined and intermixed with interest and power. The pretensions over universalism are seen under the critical lens of relativism as attempts to suppress specific forms of life. The reluctance of many African countries to accept European human rights standards is quite logical, in view of the fact that the former colonial powers have always refrained from applying human rights standards which were part of their own constitutions, to African people. In that way, the European powers denied the universality of human rights that they now so fervently proclaim (Scholze, 1992: 57). It is not at all certain that the claim to the universality of human rights, which is connected to the idea of innate or undeniable rights of human beings in 'One World', can be maintained in the face of cultural relativism and pluralism in this world (Erma Cora, 1983: 34).

Multiculturalism in human rights, however, states that the standards, and even the essence and forms of human rights, vary according to the culture and the background of the people concerned. It is claimed that cultural relativism exists, that culture among other things defines our background, who we are and what we are, and is thus the primary source of our identity (Oduwole, 2006: 60). To talk about universality is to neglect cultural identity, which is equally important in a discourse regarding human rights.

All human societies, irrespective of their level of sophistication or civilization, have some clear formulations of what constitutes human beings. In many instances, these formulations are communicated in the form of creation stories or accounts of the descent of humans from primordial times. These accounts show their understanding of the nature, meaning, goals, life, death, and the ultimate reality of humanity (Bewaji, 2006: 50). These diverse ideas on man's nature from various cultural backgrounds around the world

were brought together on December 10, 1948, for the purpose of formal endorsement as a set of minimum rights to which humans are entitled, regardless of where they live in the world. This Universal Declaration of Human Rights [UDHR] is often hailed as a document which has demonstrated a consensus on the fundamental values of human rights across the world's racial and cultural frontiers. The document, accordingly, refers to "everyone," all persons having various rights; that 'no one' shall be deprived of his rights, etc.

Article 3 of this Declaration emphasizes the need for the promotion of a 'universal' respect for and observance of human rights for 'all without distinction as to race, sex, language or religion. The idea behind a universal conception of human rights is that it does not admit of limitations or derogation based on cultural factors. Such an admission of pluralistic input would amount to reducing the efficacy of the tenets of human rights. In more forceful terms, Paragraph 5 of the Declaration of The World Conference on Human Rights, 1993, further states that:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat rights globally in a fair and equal manner, on the same footing, and regionally with the same emphasis.

The above line of argument anchors on the fact that, by definition, human right', means the entire humanity. Even though human rights may have emerged from European history through the teachings of the philosophers of the Age of Enlightenment, those philosophers merely defined an instinct and built an ideology around it (Wiredu, 1995: 68). They did not invent the human drive

for freedom. Consequently, the right to life, liberty and the pursuit of happiness are universal aspirations.

Protagonists of a Universalist approach to human rights further assert that the reproduction in various regional human rights instruments of major aspects of the Universal Declaration of Human Rights is evidence that its interpretation does not differ even at these levels. For example, The African Charter on Human and Peoples' Rights, it is argued, even deferred to universalism when it stipulated that one of its objectives is to "promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Right....." (Bewaji, 2006: 50). A growing trend that may also be said to evince a universal conception of human rights is the increasing co-operation of international community. Nongovernmental organizations [NGOS] in the field of human rights, non-Africa NGOs, such as the International Commission of Jurists [ICJ], Amnesty International and Human Rights Watch, commonly participate in and sponsor programmes of regional human rights organization and governments.

Also, the issue of an increasing number of universal problems besetting humanity is yet another justification offered for a Universalist approach to human rights. Such universal problems include challenges to human rights arising from technological advances in data processing, communication, genetics, space exploration, the environment and HIV/AIDS (Sidorsky, 1979: 88). Resolving these problems necessarily dictates co-operation and common perspectives.

Having established the universality of human rights on the foundational basis of multiculturalism in 1948, some problems started emerging. Noticeable on the front burner is the failure of the states which were parties to the treaty to fully incorporate the terms and clause in the Universal Declaration into their domestic constitutions,

in order to legalize them. The reason for this can be partly explained on the ground that some of their traditionally held rights of man in their cultural world were unrecognized in the Universal Declaration of Human Rights. And for many that were recognized in the universal treaty, it was impossible for many states to enforce them in their respective states because these human rights were generically termed as inalienable, but they ought not to be. In other words, there was no distinction between alienable human rights and inalienable human rights.

To the first problem, we can cite the American Anthropological Association (AAA)⁵ formal rejection of the Universal Declaration of Human Rights as well as the works of scholars such as Kwasi Wiredu (1996) on Akan conceptions of human rights, Tunde Bewaji (2006) on Yoruba conceptions of human rights and Francis Ogunmodede (2006) on 'human rights in Ancient Egyptian state' as characteristic and definitive expositions of some of the traditionally cherished human rights in African cultural societies, but which are ignored in the universal human rights declaration. For instance, Ann-Belinda Preis (1996:287), a member of the American Anthropological Association (AAA), sees the Universal Declaration of Human Rights as "culturally, ideologically and politically non-universal" and argues that the rights and freedom cited therein contain a Western, Judeo-Christian bias.

From an African vantage point, Kwasi Wiredu, the foremost African philosopher, recognizes the cultural relativity of human rights, using the Akan conception of a person as a basis for defending the Akan belief in human rights. Among the fundamental human

⁵ Ann-Belinda Preis discusses the details of this objection in her "Human Rights as Cultural Practice: An Anthropological Critique." *Human Rights Quarterly*. Vol. 18: 286-315, 1996.

rights identified by Wiredu (1996: 158-173) for the Akan, but which find no expression in the universal declaration of human rights, are: the right to care, love and affection in early childhood days, the right to land from the ancestral lineage holdings, and the right of decisional representation in government based on the consensual principle.

Bewaji (2006: 53), in consonance with this point stresses that “the understanding of the nature of the human being in society determines the kinds of rights that are ascribed to the human being in the society.” In other words, what constitutes human rights is a function of the contextual understanding of the religious, metaphysical, epistemological, axiological, socio-economic, legal and political contents of the construct of human beings and meaning. Using the *Ifa* literary corpus in comparison with the contemporary Nigerian experience in the light of universal ideas and ideals of human rights at large, Bewaji unearths the theoretical and practical foundations of human rights in indigenous Yoruba culture. He argues that the meaning and content of human rights as seen in the universal declaration are enshrined in the traditions of civilized humans everywhere in the world. Even though he is quick at pointing out that social, cultural and other circumstances determine the capacity of societies to enforce, promote and assure human rights, he claims that wealth, status, pedigree or other accidental matters do not affect the nature of human rights in Yoruba culture (Bewaji, 2006: 64).

Unlike Wiredu, who highlighted some peculiar culturally relative rights of the Akan, in Ghana, in contrast to the universal human rights, Bewaji’s claim is that the known rights today, as enshrined in the Universal Declaration, are not foreign to the indigenous cultural Yoruba. He argues that the Yoruba indigenous understanding and practice of human rights, even in millennia past, is still more sophisticated than the universal understanding and practice of human rights (Bewaji, 2006: 71-72). The Yoruba understanding of human rights holistically takes into consideration the meaning of the

human person, the origin of persons, the relations between persons (living, dead and unborn), relations between persons and nature, relations between persons and the gods, and the factor of human connectivity. The fundamental problem with Bewaji's analysis is that he fails to demonstrate and provide textual evidence for the truth of his assertions.

The point of the above is not only that human rights is a culturally relative concept, but also that it is only minimally a legal issue. While the universal declaration has been patterned after this minimal condition, it is instructive to note that human rights is more of an economic, cultural, social, psychological, epistemological, metaphysical and human issue that can best be appreciated and understood with reference to cultural relativism.

The fall-out of the above suggests a polarity between the universality of human rights and the polarity of human rights. The basic arguments of culturalists or relativists can be summarized as follows: that the present regime of human rights is Western-oriented and that the West's ongoing attempts to universalize human rights should thus be treated with circumspection. They believe that the universalist argument is a subtle form of cultural imperialism. It is against this background that the newly emergent nations of the world, from Asia to Arabia to Africa, began to assert a determination to reflect their own cultures and values in the conception and practice of human rights.

It suffices to recall the emergence of the African Charter, with its Africanist character, on the nature of human rights. The African Charter on Human and Peoples reflects the traditional African philosophy regarding collectivities. As adopted in 1986, the Charter parts ways with the European and Inter-American human rights Conventions by providing for group rights in addition to individual rights (Udombana, 2003: 123). Viewing individual rights as a Western

import, the African Charter stresses the sanctity of the extended family in the African cultural set-up. Articles 19 through 24 of the *African Charter on Human and Peoples' Rights* include the rights to self-determination, to the equality of peoples and the non-domination of one people by another, and to the right to dispose of natural wealth and resources in the interest of the people. Also, the provision includes the right to recover dispossessed property, the right to adequate compensation, to cultural development, to international peace and security, and to a general environment favorable to development. Additionally, the Charter distinguishes itself from its regional counterparts by enshrining individuals' duties to society in addition to their rights. These duties are owed to the family, society, the state, and even to the international community. They include duties to respect others without discrimination, to develop the family, to serve the nation, to pay taxes, and to promote African unity (Note 4, Arts. 27-29, and ACHPR).

Consequently, the protagonists of cultural specificity of human rights argue that a society's conception of human rights must have bearing and relevance to the culture from which it springs. Besides Africa, Asian and Islamic countries are also questioning the concept of universality. Women's rights, for example, they argue, cannot be left open without being incongruent with Islamic injunctions, but must be stipulated only in the context of cultural limitations and religious injunctions.

Understanding human rights in a multiculturalist world: Insights from a hermeneutic-reconstructionist study of *Ifa*

Western philosophical study of law, legal systems and human rights is not the only possible jurisprudence. It is illusionary to think (as some scholars like Rhoda Howard have held) that Western discourse on the principles of human rights, law and the structure of a legal system is the only possible jurisprudence. Howard, for instance,

insists that pre-colonial African societies were ignorant of human rights as a concept. She would swiftly dismiss arguments by African scholars (such as Wiredu, Bewaji, Ogunmodede, etc.) that indigenous traditional Africans had a conception of human rights, and that those rights were held in a social and collective context. For Howard (1984: 77), while traditional Africans had an idea of human dignity, dignity in itself should not be equated with the notion of rights. Howard is not alone in this line of thought. Isaac Nguema (1990: 302) also assumes that there were no human rights in traditional African societies.

In showing the falsehood of the views of Howard and Nguema, we shall, in the rest of the discussion, argue (using extant sources from the *Ifa* literary corpus of the Yoruba of Southwest Nigeria) that the traditional Yoruba-African indeed had a robust jurisprudential notion of human rights (of which human dignity is necessarily a part), and that the thoughts from *Ifa* can provide some insights into a plausible resolution of the dichotomy between universalism and relativism of human rights. The methodological framework for our conception is hermeneutic-reconstructionism.

Hermeneutic-reconstructionism is a novel methodological model in African philosophy that rationally integrates the constitutive strength of the methods of cultural reconstructionism and hermeneutic methods with a view to balancing the dual challenge of harmonizing the traditional techniques of philosophy with the cultural challenge of authenticity of the philosophical ruminations that are African in orientation. The method of hermeneutic-reconstructionism entails the creation/formulation of a contemporary African philosophy that recognizes, identifies and explains the intellectual foundation of ancient African philosophies within which specific ideas, beliefs and principles in oral tradition can be demonstrated (and interpreted) as critical and rational, while at the same time it tries to explore some humanistic aspects of the techno-

scientific and philosophic resources of other cultural traditions in creating a contemporary decolonized African system. A significant aspect of African oral tradition, with which hermeneutic-reconstructionism identifies, is the *Ifa* corpus of the Yoruba ethnic group of South West, Nigeria.

Our primary philosophical concern in this regard is to discover relevant jurisprudential thoughts embedded in some verses of *Ifa* and to critically identify the goals, which the authors of *Ifa* verses aim at through their thought. *Ifa* corpus offers a veritable literature and database from which traditional African thoughts and notions of law, justice and human rights can be understood. These are examined closely on the following sub-themes:

Respect for Human Dignity (Fundamental Human Rights)

Eru ku ni' le won lo sin s'oko
Omo ku l'oko, won lo sin s'ile
Beeni bi o ju ibi, bi a se b'eru l'a se b'omo
Eru ni baba ona l'o jin
Ma fiya je mi nitori mo je alejo,
bi iwo naa ba de ibomiran, alejo l'o o je.

A slave dies in the house and was buried on the farm. When the master's child dies on the farmstead, the corpse was brought home for burial. People seem to ignore the fact that one birth is not greater than the other. The slave was born exactly the way the slave owner's child was born. The slave, indeed, has a father. He is only far away. Do not ill-treat me because I am a stranger. When you get to another land, you too will become a stranger (Oluwole, 2007: 14).

The philosophical import in the above *Ifa* verse is the respect for human dignity, which is the core of human rights. Nevertheless, one major criticism that has been customarily leveled against the possibility of human rights in traditional Africa is that of the

prevalence of the practice of slavery, which even predated African contact with an experience of the Western trans-Atlantic slave trade. This criticism can easily be disposed of the basis of the distinction between the trans-Atlantic trade and the slavery of traditional Africa. The former was a total dehumanization of man by man. In the case of the latter, C. Williams (1976: 129) rightly noted that “the African slaves were considered as members of the community, they learnt crafts, had rights to farm, held important offices of state, and had virtually all the rights and privileges of a freeborn.” The truth of this position is well illustrated in the above verse of *Ifa* corpus.

Children’s Rights

The Yoruba give pivotal interest to children’s rights. Thus, they proverbially say:

Omode o j’obi, agba o j’oye

Adults who deny children their rights do not earn social respect

In the *Ifa* verse of Iwori Meji, it is stated that:

Owo omode o to pepe, t’ agbalagba o wo akeregbe, ise ewe be agba ki o mase ko mo, gbogbo wa ni a nise a jo n be ‘ra wa. A dia fun Orunmila eyi ti akapoo re o pe lejo l’odo Olodumare, Olodumare waa ranse si Orunmila pe ki o wa so idi naa ti ko le fig be akapoo re. Nigbati Orunmila de iwaju Olodumare o ni oun sa gbogbo agbara oun fun akapoo, o ni ipin akapooni ko gbo. Nigba naa ni oro naa to waa ye Olodumare yekeyeke. Inuu ree si dun wipe oun ko da ejo eekun kan. Ni Eledaa ba ni lati ojo naa lo omo eda kan ko gbodo da ejo eekun kan. Anikandajo, o o seun: anikandajo, o o seyan, nigba ti o o gbo t’enu enikeji, emi l’o dajo se?

A child’s hand does not reach up to the mantelpiece that of an adult cannot enter into a gourd. When a child appeals to an adult for help,

she should not refuse; we all live to complement each other. This is the oracular message for Orunmila whose priest sued him before Olodumare. And Olodumare sent for Orunmila to come to explain why he refused assistance to his priest. When Orunmila came before Olodumare, he said he tried his best for his priest; but that it was the priest's "nature" that was his problem. Then Olodumare was completely enlightened and he was happy that he did not give judgment after listening to the complainant alone. That is why the Creator made it a law from that day, that no human being should give judgment after listening to only one side. He who judges without hearing the other side does wrong; he who judges without listening to the other side is inhuman. When you have not heard the other side why did you give your judgment? (Oluwole, 1999: 94)

There are two ideas of jurisprudential relevance that could be discovered from this *Ifa* verse. One is that which expresses the complementary qualities and responsibilities that the adults and the young have to each other. Both have rights and obligations that must be respected and observed. Second, is the legal principle of *Audi alteram partem*. This principle states that parties involved in litigation must always be heard before a verdict is given.

Our above analysis thus far reveals that there are some ideas and principles of jurisprudence in *Ifa* corpus, which are congruent with the general conception of human rights, while concurrently, there are some others that are unrecognized in the Universal Human Rights Declaration. On this premise, it can be rightly argued that while there are universal human rights, there are equally some rights that are not culture-specific. The universalism perspective on human rights offers freedom and equality for all men in a humanly degraded world, while at the same time providing the basis for sustainable democracy and development. Relativism of human rights promotes tolerance towards other cultures, aids self-understanding, identity and easier enforcement of human rights. But only when the two are

conscientiously harnessed and integrated can the real essence of human rights be truly achieved and promoted.

One way of synthesizing these two perspectives on the nature of human rights is to see their essence, for which *Ifa* has some laudable insights.

K'a fi'nu didun see. Eni maa lo, ki o maa lo. Eni maa dehin, k'o maa dehin. Dandan, eniyan ni a yan ki won mu ire lo saye. Morotan, awo Orunmila, lo difa fun Orunmila. O ni awon omo-araye nbo wa bileere oro kan. A niki Orunmila rubo, Orunmila gbo, orubo. Nijo kan, oniruuru eniyan, awon eniyan rere ati awon eni ti kii je ki t'eniyan miran suwon gbaraajo. Won to Orunmila wa, won ni ipaara aye yii su wa, Orunmila. Nitorina naa, ki ojowo je ki a simi si orun. Orunmila ni: 'eyin kole sai maa paara ode-aye titi eyin yoo fi de ipo rere naa ti Olodumare ti yan fun gbogbo eniyan. Lehin naa ni eyin yoo simi si orun'. Won ni kini ipo rere? Orunmila ni 'ipo rere naa li aye rere; aye amotan, ohun gbogbo, ayo nibi gbogbo, wiwa laisi ominu tabi iberu iku, arun, ejo, ofo, oso, aje, tabi esu; laisi iberu ifarapa omi tabi ina; ati laisi iberu aini tabi osi, nitori ogbon, yun iwa rere ati agbara inu. Ohin ti yoo gbe wa de ipo rere naa ni: ogbon ti opo to eyiti a le fise akoso aye; irubo, iwa, iferan oore-sise fun gbogbo eniyan, ni Pataki julo, awon ti n se alaini, ati awon ti o nfe iranlowo lodoo wa; itara fun, ati sisa ipa lati fi kun ire ti o wa ni aye lai je ki ire eyikeyii ti a ti ni lo. Awon eniyan yoo maa losi orun, won yoo si maa pada wa s'ode aye le hin iparada won titi enikookan yoo fi de ipo rere naa. Nitori naa, nigba ti awon omo Odudua pe jo, awon ti o yan lati ko ire wa si ode aye ni a n pe ni: ENIYAN (Okunmakinde, 2006: 5).

Let us do things with joy. Those who want to go let them go. Those who want to stay let them stay. Surely, human beings have been chosen to bring good into the world. This is the oracular message for *Orunmila* whose priest, *Morotan*, interpreted the teachings of *Ifa* for *Orunmila*. He said the people of the world would come to ask him a certain question. He said that *Orunmila* should make a sacrifice. *Orunmila* heard and complied. One day all kinds of people, good and wicked, who do not respect human rights and goodness in other

peoples' lives gathered and met with *Orunmila*. They complained of their tiredness of drifting between earth and the ultra-abode. Therefore, they sought for *Orunmila*'s assistance to allow them stay in the ultra-abode. *Orunmila* replied 'you cannot avoid shuttling between the two realms, until you bring about the good condition that *Olodumare* has ordained for every human being. After that, you may then rest permanently in heaven'. They asked of what the good condition entails? *Orunmila* said: 'the good condition is a good world of open possibilities; a world in which there is full knowledge of all things; happiness everywhere; without clashes of diverse interests; without fear of disease, litigation, losses, wizards, witches, or calamities; without fear of enmity, poverty or misery. Because of your wisdom, your compelling desire for good character and your internal strength. The things needed to bring about the good condition in the world are: wisdom that is fully adequate to govern the world; sacrifice, good character, spirit of common good to all and sundry, especially the needy, indigent, down-trodden and the impoverished. The eagerness and struggle to increase good in the world and harness divergent good interests. People will continue to experience the crisis in the world until the good conditions of the ultra-abode are satisfied. Thus, when the descendants of *Oduduwa* assembled in the ultra-abode, those chosen to bring good into the world are called human beings.

What it means to be human in the submission of the above *Irosu* 'Wori verse (78:1) of *Ifa* is the proven ability to fulfill the essence of being. This condition cannot be realized with either universalism or relativism of human rights taken separately. The fundamental presupposition of this verse therefore, is that the goodness of human life is best consummated in the protection and observance of the complementary ideals inherent in both the universal and culturally relative human rights.

What emerges from the above is that human rights are prime matters of multicultural concern and no claim of universality can be totally based on them. Despite the fact that there are basic rights to

which all humans are entitled regardless of their cultural preferences and differences, i.e., universal human rights, there is still a place for cultural relativity of human rights.

To further buttress the point, consider the example of Eastern Europe where socialism is the order of the day. Socialism does not recognize rights to private property, which is enshrined in the universal declaration of human rights as inalienable. Socialism in Western Europe only recognizes a right to common property. This example shows that some claims of human rights are not universal in all cultures and that multiculturalism of human rights is possible and in fact persists.

The claims of multiculturalism can be substantiated when we realize that all civilized societies have some clear formulation of what constitutes human beings. And as Leslie Stevenson (1974: 3) rightly observes, the views that a society embraces regarding human nature determines much more about the society's determination of modes of existence. In as much as there are variations in the understanding of the nature, meaning, goals, life, death and alternate reality by different cultural societies of the world, their conceptions of what constitute fundamental human rights may likely differ. Different views about human nature lead naturally to different conclusions about who we think we are, what rights we consider fundamental, and how we can institutionalize its observance and guard against its abuse.

Moreover, a distinction needs to be made between the nature of a person and the nature of a man. Such a distinction when located within the gamut of a cultural context will indicate the cultural relativity of human rights, while at the same time underscoring the commonness in human rights. Man, generally, is conceived to be a biological being having human features such as rationality, physical body frame and being capable of psychological (and spiritual) functions. This general understanding of the nature of man is the basis

upon which human rights, as evident in the universal declaration, is formulated and structured. Rights in this regard are understood to be inalienable, universal and equal for every one irrespective of status, gender, age, race and culture and among others. The conception of a person, however, is culturally defined because it has, in addition to being a man, some cultural features of identity, which qualify a man as a person. For instance, it is the total actualization of the positive use of salient human features--mental, physical, or psychological--together with evidential moral uprightness that make a being (man) a person (*omoluabi*) in the Yoruba cultural context (Ali, 1997: 55). Human rights, with respect to a person, are alienable and are culturally determined. This distinction between a man and a person reinforces further the distinction between inalienable and alienable rights. Where universal human rights emphasize the former, human rights within the purview of multiculturalism stress the latter.

In view of the above, it can be rightly argued that while there are universal human rights, there are equally some rights that are culturally relatively based. One way of justifying universal human rights in a culturally diverse world is to see its utility. The universal declaration on human rights offers freedom and equality for all men in a humanly degraded world, while at the same time providing the basis for sustainable democracy and development. Regardless of cultures, human rights have proved useful in solving problems of tyrannical leadership, and of womens' empowerment all over the world (Oduwole, 2006: 17).

CONCLUSION

There are undoubtedly certain peculiarities in human rights that make multiculturalism possible and meaningful. Human rights can be universal and relative without a crack in the true essence of human value. Human rights are not necessarily mutually exclusive both in theory and practice. The supposed dichotomy between universalistic and relativistic conceptions of human rights becomes insignificant

when we realize that human rights in both are geared towards the same goals: respect for cultures, human values and dignity, tolerance of ideas and beliefs, promotion of peace and human development. Human rights at the universal level spell out the highest ideals, while the multicultural diversifications give the universal standards a regional flavour that eases their acceptability and implementability. A multiculturalist attitude towards human rights is therefore “neither homogenizing nor subject to the errors of relativism” (Fox, 1998: 5). A multiculturalist attitude is necessary in seeing human rights as the heritage of humanity as a whole. Attempts to claim the exclusive ‘source-rights’ of human rights do not contribute to this multiculturalist orientation.

We urge that investigative archeological researches into the different aspects of the jurisprudential content of *Ifa* orature could help foster a better understanding of the nature of human rights and the mechanism for its enforcement, of customary law, justice, constitutionalism and democracy in 21st century Africa. Such an exercise, would at the end, be of immense relevance in the efforts towards protecting and observing the thrusts of the Universal Human Rights Declaration and the African Charter on Human and People Rights in our contemporary world.

REFERENCES

- Ade Ali, S. “Person: A Yoruba Example”, *Journal of Yoruba Folklore* vol. 1. 1997.
- African Charter on Human and Peoples \ Rights*, June 27, 1981, OAU Doc.
- Bewaji, J. A. I. “Human Rights: A Philosophical Analysis of Yoruba Conceptions”, in *The Cambrian Law Review*, 2006, vol. 37.
- Bidney, David. “The Philosophical Presuppositions of Cultural Relativism and Cultural Absolutism.” *Ethics and the Social Sciences*, edited by Leo R. Ward. (Notre Dame, IN: Notre Dame, 1959). 51-76
- Cook, R. J. “Women’s International Human Rights Law: The Way Forward,” in R. J. Cook (ed.) *Human Rights for Women: National and International Perspectives*. (University of Pennsylvania Press, 1994).

- Eze, D.C. "Dissent in a Democratic Polity", in Y. Osinbajo and K. Awa, (eds.) *Democracy and the Law* (Lagos: Federal Ministry of Justice, 2001).
- Eze, O.C. *Human Rights in Africa: Some Selected Problems* (Lagos: Nigerian Institute of International Affairs, 1984).
- Fayemi, A. K. (2009) "Rethinking Personalism and Human Rights in 21st Century Africa", in *Revue de l'Enseignement et de la Recherche Philosophiques*, Numero special, Anee, Universite d'Abomey-Calavi, Republic of Benin: 239-249.
- Fox, D.J. "Women's Human Rights in Africa: Beyond the Debate over the Universality or Relativity of Human Rights," in *African Studies Quarterly*, Vol. 2 (3): 3-16 1998.
- Herskovits, Melville, J. *Cultural Relativism: Perspectives in Cultural Pluralism*. (New York: Vintage Books, 1973).
- Howard, Rhoda. "Women's Rights in English-speaking Sub-Saharan Africa," in Claude E., Welch, Jr. and Ronald I. Meltzer, eds., *Human Rights and Development in Africa*. (Albany: State University of New York Press, 1984).
- Human Development Report*, 2000.
- Nguema, Isaac. "Perspektiven der Menschenrechte in Afrika." *EUGRZ*. 17 (13/14) (Dokumentation), 1990.
- Obaseki, A.O. "The Judiciary and Human Rights", in Y. Osinbajo and A.U. Kalu, eds. *Perspective on Human Rights* (Lagos: Federal Ministry of Justice, 1992)
- Oduwole, E.O. "The Idea of Fundamental Human Rights in a Cultural Relative World", in *Journal of Philosophy and Development*, Vol. 8, Nos.1 & 2, 2006.
- Okunmakinde, O.O. *Lysander: A Critical Evaluation of Ifa and Judeo-Christian Religious Mysteries*, (Ife: Obafemi Awolowo University Press Ltd., 2006).
- Oluwole, Sophie "Socrates and Orunmila: Two Patrons of Classical Philosophy", a paper presented at the International Colloquium on Euro-African Personalism, 26-28 September, 2007, IDEE-Quidah, Benin Republic.
- Oluwole, S. *Philosophy and Oral Tradition*. (Lagos: Ark Publications, 1999).
- Ogunbemi, S. *Philosophy and Development*. (Ibadan: Hope Publications, 2007).

- Ogunmodede, Francis "Governance and Human Rights in the Ancient Egyptian State", in M. F. Aseigbu, J.A. Agbabiaka, *Philosophy and Praxis in Africa* (Ibadan: Hope Publications, 2006).
- Oyugi, E. "Human Rights in Africa." *Quest*, Vol. III, No. 1, 1989: 47-59.
- Procee, H. "Beyond Universalism and Relativism." *Quest*, Vol. vi, No. 1, 1992: 45-56.
- Preis, Ann-Belinda S. "Human Rights as Cultural Practice: An Anthropological Critique." *Human Rights Quarterly*. Vol. 18, 1996: 286-315.
- Rosado, Caleb, "Understanding Cultural Relativism in a Multicultural World." Retrieved from: <http://www.rosado.net> on 08/08/2011.
- Scholze, Wolfgang. "Human Rights. Between Universalism and Relativism." *Quest*. Vol. VI, No. 1 (1992): 57-68
- Sidorsky, D "Contemporary Re-interpretations of the Concept of Human Rights", in D. Sidorsky, *Essays on Human Rights*, (Wale: ABC publications, 1979).
- Stevenson, L (1974) *Seven Theories of Human Nature*, (New York: Oxford University Press).
- Tempelman, Sasja "Constructions of Cultural Identity: Multiculturalism and Exclusion", *Political Studies* (1991), XLVII.
- The Declaration of The World Conference on Human Rights, 1993. UNDOC\CONF. 157\23.
- Udombana, Nsongurua J. *Human Rights and Contemporary Issues in Africa* (Lagos: Malthouse Press Ltd., 2003).
- Umозurike, U.O. "Human Rights and Democracy in the 21st Century: The African Challenges", in M.T. Ladan (ed.) *Law, Human Rights and the Administration of Justice in Nigeria*, Zaria: (Ahmadu Bello Ministry press, 2001).
- Williams, C. *The Destruction of African Civilization*, (Chicago: Third World Press, 1976).
- Wiredu, K. "Philosophy and the Political Problem of Human Rights", in: Ioanna Kucuradi (ed.), *The Idea and Documents of Human Rights*, (Turkey: International Federation of Philosophical Societies and the Philosophical Society of Turkey, 1995).
- Wiredu, K. *Cultural Universals and Particulars: An African Perspective*, Indiana Polis: Indiana University press, 1996) pp. 158-173.