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AN APPRAISAL OF THE NATURE AND HISTORICAL DIMENSIONS OF HUMAN RIGHTS

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Abstract
This paper digs into how the idea of human rights has evolved by pairing two often-separated angles: their philosophical 'nature' and their unfolding historical trajectory. It traces the moral roots of rights in natural law, human dignity, and social contract traditions, then maps how these ideas shifted as societies confronted empire, industrialisation, global conflict, decolonisation, and twenty-first-century governance. By reading these dimensions together, the paper shows that human rights are neither timeless givens nor political inventions; they are dynamic norms shaped by cultural encounters, power struggles, and shifting understandings of what it means to be human. It argues that contemporary debates on universality, cultural pluralism, and emerging rights such as environmental and digital rights make sense only when we acknowledge this dual character. The paper highlights that the historical layering of rights claims explains both their global appeal and their persistent contestation, especially in regions navigating postcolonial realities and rapid technological change. Ultimately, the paper offers a refreshed framing: human rights enure not because they are static truths, but because they continuously adapt to new moral insights and collective experiences while still grounding demands for justice, accountability, and human flourishing.

Keywords: *Nature, Dimension, Human Right*

Introduction.

Human rights did not just appear fully formed; they grew out of centuries of debate about what makes every person deserving of protection and respect.[1] This statement alludes to the journey and philosophical foundations of rights with the historical forces that pushed them into global consciousness. It shows how ideas about human dignity, freedom, and justice evolved through religion, political theory, revolution, colonialism, and international law. By tracing these intertwined dimensions, the paper will demonstrate that understanding human rights today requires seeing them as both moral claims and historical products, constantly adapting to new social realities and emerging struggles for recognition.[2]

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[1] M Ishay, 'What are Human Rights? Six Historical Controversies' *Journal of Human Rights* (2004) 3 (3) 359-71.

[2] B Gregg, *Human Rights As Social Construction* (Cambridge University Press 2011).

Origin and Nature of Fundamental Human Rights

Human Rights were arguably created by King Ur-Nammu, the King Ur in 2050BC[3] and later in Mesopotamia by Hammurabi in 1780BC.[4] The Hammurabi[5] code, which is the most preserved example of a document containing rights, rules and punishments for those rules, which encompass a variety of matters, including women, children and slave rights, is also a key historical reference point in this regard.

The unprecedented principles of human rights were established by the Persians under Cyrus the Great[6] in the 6th century BC through the Cyrus Cylinder. This Cylinder declared that citizens of the empire would be allowed to practice their malicious beliefs freely. It also abolished slavery, hence all palaces of Persian Kings were built by paid workers in an era when slaves typically did such work. These two reforms are reflected in the books of Judeo-Christian teachings. The Bible in Chronicles[7] and Ezra[8] states that Cyrus released the followers of Judaism from slavery and allowed them to return to their land. Some of the oldest sources of human rights, therefore, include the Vedas[9] , the Bible,[10] the Quran[11] and the Analects of Confucius,[12] which all addressed the questions of people's rights, duties and responsibilities.

In the 18th Century BC, several European philosophers, notably John Locke,[13] proposed and debated the concepts of natural rights that belong to a person by nature and because he is a human being and not by virtue of his citizenship in a particular society or membership in a religious or ethnic group.

The American Declaration of Independence (1776) includes concepts of natural rights and famously states 'that all men are created equal, that they are endowed by their creator with certain inalienable rights, among these are life, liberty, and the pursuit of happiness'. The French Declaration of the Rights of Man and the Citizens (1789) also defined a set of individual and collective rights of people, not only to French citizens but to all men without exception.

[3] Wikipedia, the free internet Encyclopedia http://en.wikipedia.org/wiki/Natural_rights
[4] 6th of the 1st Amorite dynasty. Formulated the Code of Hammurabi, an advanced set of 282 Laws. (Guinness Book of Knowledge - Anne Marshall et all ed. (1997) Guinness Media Inc.)
[5] Encyclopedia online
[6] Weston H. Burns: Human Rights in Encyclopedia Britannica
[7] Il Chronicle 36:22-23
[8] Ezra Chapter 1
[9] Macintyre, Alasdair: (1981) After Virtue p. 69-70
[10] Leviticus 19:18; Deuteronomic Bible, NRSV, Tobit 4: 15; Matthew 7:12
[11] No one of you is a believer until he desires for his brother that which he desires himself". (Sunnah); Hurt no one so that no one may hurt you" - Muhammad, the Farewell Sermon
[12] Analects of Confucius 6:30; 15:24.
[13] R Singh, 'John Locke and the theory of natural law' *Political Studies* (1961) 9 (2) 105-18.

In the 20th century, many groups and movements achieved profound social changes in the name of human rights. In Europe and America, labour unions brought about laws granting workers the right to strike, establishing minimum working conditions and forbidding or regulating child labour. Workers' rights movements succeeded in gaining for many women the right to vote. Movements by long-oppressed minorities have succeeded in driving out colonial powers from many countries.

Human rights are sometimes divided into negative and positive human rights.[14] The negative human rights, which follow mainly the Anglo-American legal tradition, denote actions that the government should not take. These are codified in the US Bill of Rights, the English Bills of Rights and the Canadian Charter of Rights and Freedoms and includes right to life and security of person; freedom from slavery; equality before the law and due process under the rule of law; freedom of movement; freedom of speech, religion and assembly.

Positive human rights, on the other hand, follow from the Rousseauian continental European legal tradition[15] and denote rights that the state is obliged to protect and provide. Examples of these rights are rights to education, to a livelihood, and to equality. These positive rights have been codified in the Universal Declaration of Human Rights and in many 20th century constitutions.

Another categorisation of human rights is that offered by Karel Vasek,[16] which he called 'Three Generations of Human Rights'.[17] These are: First Generation, which includes civil and political rights (right to life and political participation), Second Generation Rights, which are social and cultural (rights to subsistence) and Third Generation rights, which are rights to peace and a clean environment.

Human rights are natural rights (also called moral rights) and are termed as universal rights, which are not contingent upon being granted by the government. The government may violate these rights, but by so doing, it cannot eliminate their existence. According to John Locke,[18] human rights are inalienable because they cannot be bought, sold or transferred but are derived from common human nature. Inalienable rights (unalienable rights) refer to a set of human rights that are said to be absolute, not awarded by human power, not transferable to another power and incapable of repudiation. Human rights are a set of principled ideas about the treatment to which all individuals are entitled by virtue of being human beings, and over time, these ideas have gained widespread acceptance.

[14] Robert, Norzk (1975) Anarchy, State and Utopia; Oxford: Blackwell
[15] Brooks, Thom (Ed) (2005) Rousseau and Law: Ashgate
[16] A Czechoslovakian and first Secretary-General of the International Institute of Human Rights in Strasbourg (1969-1980)
[17] Proposed in 1979 by Karel Vasek at the International Institute of Human Rights in Strasbourg
[18] In "On Human Rights: The Oxford Amnesty Lectures". Shute, Stephen &Hurley, Susan (eds.) (New York: Basis Books 1993}.

The existence of natural rights may be derived by individuals in various ways, such as through philosophical reasoning or religious study. Immanuel Kant, for example, claimed to derive natural rights through 'reason' alone. [19] The term 'natural rights' lost popularity, particularly after World War II and was replaced with the term human rights, because natural law had become very controversial. Ultimately, the term 'human rights' is often itself an appeal to a transcendent principle without basing it on existing legal concepts. The term 'humanism' refers to the developing doctrine of such universally applicable values.[20] The court held in *Chief Omu Uzoukwu & 5 Ors v Igwe Chukwudebelu Ezike Ezeonu II Igwe of Atani & 9 Ors*[21] that 'It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilised society must accept as belonging to each person as a human being. This brings us to International Human Rights Norms.

International Human Right Norms

Human Rights are a set of principled ideas about the treatment to which individuals are entitled by virtue of being human. Over time, these ideas gained widespread acceptance as international norms defining what was necessary for humans to thrive, both in terms of being protected from abuses and provided with the elements necessary for a life in dignity. The human rights discourse is universal in character and includes claims of equality and non-discrimination.

Most international human rights treaties agreed upon after 1945 regulate the domestic behaviour of governments towards their own citizens. Before the second half of the twentieth century, human rights had not been a significant issue in international politics. With the expansion of such regimes within the past fifty years, state actors face growing formal and informal limits to the policy choices they have. Human rights have become part of a norms cascade in the past two decades and have contributed to a significant transformation of the international system.

International norms such as human rights emerge and gain acceptance when they are embraced and promoted by a hegemon or a dominant group of states.[22] What has emerged more recently is the idea that not only states, but individuals can be subjects in international law, and human rights should be an integral part of foreign policy and international relations. Indeed, the growing influence of human rights norms in international politics makes us more aware of their violations and the often inadequate responses by governments and international organisations. The success has also led to numerous challenges of the universal and secular character of the rights language and opened important debates by governments and international organisations about potential

[19] Straus, Leo, Natural Rights and History, University of Chicago Press, 1965. 22 The Webster's Dictionary of English Language, International Edition (Lexicon 1995) 23 [1991] 6 NWLR (Pt. 200) 719
[20] The Webster's Dictionary of English Language (International Edition Lexicon 1995)
[21] [1991] 6 NWLR (Pt. 200) 719
[22] G Ikenberry. John & Kupchan, Church (1990) Socialization and Hegemonic Power: International Organization.

conflicts among rights. Human rights are international moral and legal norms that aspire to protect all people everywhere from severe political, legal, and social abuses. Examples of human rights[23] are the right to freedom of life and religion, the right to a fair trial when charged with a crime, the right not to be tortured, and the right to engage in political activity. These rights exist in morality and in law at the national and international levels. They are addressed primarily to governments, requiring compliance and enforcement.

The philosophy of human rights addresses questions about the existence, content, nature, universality, and justification of human rights. The strong claims made on behalf of human rights (e.g., that they are universal, or that they exist independently of legal enactment as justified moral norms) often provoke scepticism. Reflection on these doubts and the responses that can be made to them has become a subfield of political philosophy with substantial literature.

The Universal Declaration of Human Rights (UDHR), United Nations 1948,[24] sets out a list of specific human rights that countries should respect and protect. The UDHR does not include group rights, but subsequent treaties do. Group rights include protections of ethnic groups against genocide and the ownership by countries of their national territories and resources.

The general idea of human rights can be explained by setting out some defining features. It answers the question of what human rights are with a general description of the concept rather than a list of specific rights. Two people can have the same general idea of human rights even though they disagree about whether some particular rights are human rights.

Human rights are political norms dealing mainly with how people should be treated by their governments and institutions. They are not ordinary moral norms applying mainly to interpersonal conduct (such as prohibitions of lying and violence). As Pogge[25] puts it, "to engage human rights, conduct must be in some sense official. But we must be careful here since some rights, such as rights against racial and sexual discrimination, are primarily concerned with regulating private behaviour.[26] They forbid governments to discriminate in their actions and policies, and they impose duties on governments to prohibit and discourage both private and public forms of discrimination.

Second, human rights exist as moral and/or legal rights. A human right can exist as a shared norm of actual human moralities, as a justified moral norm supported by strong reasons, as a legal right

[23] See footnote 20
[24] This is the main source of the contemporary conception of human rights and the many human rights documents and treaties that have followed in its wake.
[25] Pogge, Thomas (2000) The international Significance of Human Rights, Cosmopolitan Responsibilities, and Reforms. Cambridge: Polity Press, p 47 48
[26] 'Feminism, Women's Human Rights and Cultural Differences' Hypatia 13:32-52; Okin 1998; United Nations 1979.

at the national or municipal level (here it might be referred to as a 'civil' or 'constitutional' right), or as a legal right within international law.

The most obvious way in which human rights exist is as norms of municipal and international law created by enactment and judicial decisions. At the international level, human rights norms exist because of treaties that have turned them into international law. At the national level, human rights norms exist because they have, through enactment, judicial decision, or custom, become part of a country's law. When rights are embedded in international law, we speak of them as human rights; but when they are enacted in national or municipal law, we more frequently describe them as civil or constitutional rights. As this illustrates, it is possible for a right to exist within more than one normative system at the same time. The human rights movement aspires to see its international norms enacted in the constitutions and laws of countries around the world.

Although enactment in national and international law is one of the ways in which human rights exist, many have suggested that this is not the only way. If human rights exist only because of enactments, their availability is contingent on domestic and international political developments. Many people have sought to find a way to support the idea that human rights have roots that are deeper and less subject to human decisions than legal enactments. One version of this idea is that people are born with rights, that human rights are somehow innate or inherent in human beings. One way that a normative status could be inherent in humans is by being God-given. Rights plausibly attributed to divine decree must be very general and abstract (life, liberty, etc.) so that they can apply to thousands of years of human history, not just to recent centuries. For practical purposes, however, legal enactment at the national and international levels provides a far more secure status.

Human rights might also exist independently of legal enactment by being part of actual human moralities. It appears that all human groups have moralities, that is, imperative norms of behaviour backed by reasons and values. These moralities contain specific norms (e.g., a prohibition of the intentional murder of an innocent person) and specific values (e.g., valuing human life). One way in which human rights could exist apart from divine or human enactment is as norms accepted in all or almost all actual human moralities. If almost all human groups have moralities containing norms prohibiting murder, these norms could constitute the human right to life. Human rights can be seen as basic moral norms shared by all or almost all accepted human moralities.

Human rights declarations and treaties are intended to change existing norms, not just describe the existing moral consensus. Human rights are mainly about the obligations of governments. Ordinary interpersonal moralities often have little to say about what governments should and should not do. This is a matter of political morality and depends not just on moral principles but also on views of the dangers and capacities of the contemporary state.

The main source of the contemporary conception of human rights is the Universal Declaration of Human Rights and the many human rights documents and treaties that have followed in its wake.

Universal Declaration of Human Rights (UDHR)

On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. The Universal Declaration of Human Rights (the UDHR) has come to be regarded as possibly the single most important document adopted in the twentieth century as the accepted world standard for human rights. The UDHR is seen as an essential foundation for building a world in which all human beings can look forward to living in dignity and peace.

The preamble to the UDHR declares its

> ...recognition of the inherent dignity and... equal and inalienable rights of all members of the human family... and through that recognition provide 'the foundation of freedom, Justice and peace in the world.

Article 1 reflects the inspirational nature of the instrument. It proclaims that

> 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.

The reason for including it in the main text is to state the basis of all human rights firmly, the rationality of human persons and their obligation to deal fairly with everyone else, regardless of race, sex, wealth and so on.

Article 7 follows up on this theme by saying that all are to be equal before the law and have a right to protection against any form of discrimination. Articles 3 and 27 are probably the core of the substantive provisions in the Declaration. They give every human being the rights to life, to liberty, to security of person[27] and to an adequate standard of living.[28] The first three are core civil and political rights, and the last is an economic and social right. The right to an adequate standard of living is interesting in that it specifies within it the right to health and well-being not only of a person but of his or her family, and also the right to necessary food, clothing, housing and medical care, and the right to social security.[29]

[27] Article 3 31
[28] Article 27
[29] Also covered in Article 22

There are 30 Articles in the Declaration, of which 17 could be regarded as relating to civil and political rights, and 8 to economic and social rights. Article 30 is also of high importance because it underlines the responsibility all people have to their community, not to their state.

The Growing Stature of the UDHR.

The UDHR emerged successfully from the complex and politically initiated processes of the United Nations to become its human rights flagship. To be sure, the Declaration has today achieved a stature in the world that even the most optimistic of its founders in 1948 would not have expected. *First*, it has become accepted, with varying degrees, as an influential statement of standards, even by countries that are doubtful about the whole human rights enterprise. Thus, when accused of human rights violations, states do not question the existence of the Declaration or the human rights corpus but take every step to defend themselves against such allegations of violations.

Second, the UDHR has become almost an extension of the UN Charter. Although the Charter has only a few articles that refer to human rights and fundamental freedoms, it is now usual to refer to the UDHR as setting out the content of those rights and freedoms. Therefore, it has become a part of the fabric of the UN itself and is often referred to in resolutions of the UN General Assembly and in its debates. It was referred to extensively in relation to the Declaration on the Granting of Independence to Colonial Countries and Peoples, of 1960. Not surprisingly, in Tehran in 1978, to mark the 30th anniversary of the UDHR, the UDHR was proclaimed to be a *common understanding of the people of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community*.

Third, most, if not all, the provisions of the UDHR have become part of international customary law. Moreover, the fact that the rights stated in the UDHR are commonly recognised as well-founded in moral and legal terms underscores the fact that it has become part of international customary law. The implication of this is that, unlike treaties, which only bind a country on acceptance of the treaty obligations, all countries in the world are bound by its provisions, whatever their particular view may be. A country cannot repudiate international customary law as it can a treaty obligation. The UDHR has thus become an increasingly powerful instrument for the achievement of human dignity and peace for all.

Worldwide influence of the Universal Declaration of Human Rights and the International Bill of Rights.

From 1948, when the Universal Declaration of Human Rights was adopted and proclaimed, until 1976, when the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force, the Universal Declaration stood alone as the international standard of achievement for all peoples and all nations. Today, the Universal Declaration, along with the covenants, makes up the International Bill of Rights.

Nearly all international human rights instruments adopted by the United Nations bodies since 1948 elaborate principles set out in the Universal Declaration of Human Rights. The ICCPR states in its preamble,

> In accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his or her economic, social and cultural rights, as well as his or her civil and political rights.

The coming into force of the Covenants, by which state parties accepted legal as well as moral obligation to promote and protect human rights and fundamental freedoms, has not diminished the widespread influence of the Universal Declaration of Human Rights.

The UDHR provided inspiration for a number of important international conventions and treaties. They include: the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. [30] These clearly define the nature and scope of the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief contained in the Universal Declaration and the International Covenants.

The Universal Declaration has informed the constitutions of nation-states, and its principles have been included or adopted by the Council of Europe, the African Union, and the American Convention on Human Rights in Costa Rica in 1969. Judges of the International Court of Justice have invoked principles contained in the International Bill of Human Rights as a basis for their decisions. 'The Universal Declaration has come to be regarded as a historic document articulating a common definition of human dignity and values. The Declaration is a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards everywhere on earth.' [31] At the 1993 World Conference on Human Rights in Vienna, over 150 countries once again reaffirmed their commitment to the Universal Declaration of Human Rights, expressed in the Vienna Declaration and Program of Action.

African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights is an adaptation by the Organisation of African Unity (now African Union) of the Universal Declaration on Human Rights. The African Commission is responsible for the promotion and protection of the rights guaranteed in the regional

[30] Proclaimed by the General Assembly in 1981.
[31] Excerpts from the Centre for Human Rights, 1996 United Nations

treaty. The African Charter on Human Peoples' Rights, which was adopted in 1981, entered into force in 1986.

The African Charter on Human and Peoples Rights has been described as 'autochthonous'[32] or as capturing the essence of the African concept of human rights. In particular, the argument that groups took precedence over the individual who was absorbed in it and the fact that the right to development has (unlike in any other Convention) been placed on a legal pedestal, give the Charter its specific African character.

This is because human rights occupied an important part in the traditional African societies. The rights of members of a community are respected and regarded as part and parcel of the rights of the community. The rights of the members were thus not isolated or held against the community, but formed a great admixture with community rights so that members had an interest in the well-being of other members. The society was socialistic and communalistic. There were, however, notable exceptions based on sex and status. The major differences from the modern concept were that rights were restricted to the members of the community and not regarded as universal. Even then, there were notable exceptions in favour of neighbouring communities, in favour of special relations based on common ancestry, marriage, etc. [33]

Foreign intervention in Africa changed all this. These interventions came through the Atlantic trade in African slaves, complemented by the Arab operators in East and Central Africa and the Industrial Revolution in Europe. The slave trade was succeeded by colonialism, and both responded to the economic changes in Europe. All these had such a devastating effect on human rights that it required decades of redemptive work to revive the tradition of respect for human rights in Africa.[34] The colonial period witnessed a systematic subjugation and exploitation of the people for the benefit of Western States. The regaining of independence did not immediately ensure respect for human rights because the new leaders tended to extend the same treatment they had suffered under the colonialists to their own people. The customary principle of domestic jurisdiction was often used by such states. The Cold War era had its toll on human rights, for pliable regimes. Those attracted to the Cold War orbit were supported even if they had the worst human rights records. The credibility of such regimes was suspect, as found by outside powers, despite their internal weaknesses.[35] Such cases were epitomised in the 1970s, when human rights were in a deplorable state in independent Africa. The worst excesses were in Uganda under Idi Amin, the Central African Republic under Jean Bokassa and Equatorial Guinea under Francisco Macias Nguema. In

[32] Osita, C.E., African Concept of human Rights in Kalu, A.U. and Osinbajo, Y., (eds), Perspectives on Human Rights, Infodata Bureau Services, Lagos, 1992) 8-31.
[33] UO Umozurike, 'International law and Colonialism in Africa' *Howard Law Journal* (1971) 33-349
[34] Ibid
[35] Ibid

the Monrovia summit of 1979, the Assembly of Heads of States and Government directed the Secretary General of the OAU to set the machinery in motion for an African Charter on Human Rights. The result of this laborious effort was the African Charter on Human and Peoples Rights that was adopted at the Nairobi Summit in 1981, and which came into force on 21st October 1986 with the ratification of a simple majority of the African States. All states of the OAU have now ratified the Charter.[36] Two states have made reservations to the Charter.[37]

With the ratification of this Charter, Africa joined Europe and the Americas as one of three world regions with its own human rights convention.[38] The great majority of African states had previously ratified the United Nations Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. This notwithstanding, the African Charter was still deemed necessary as Okoth-Ogendo argues that it is because many African leaders felt the 'need to develop a scheme of human rights norms and principles founded on the historical traditions and values of African civilisations rather than simply reproduce and try to administer the norms and principles derived from the historical experiences of Europe and the Americas'.[39]

The African Charter is a binding treaty that reflects the African philosophy of law and values of African societies. Four main categories of rights and duties are covered by the African Charter: individual rights, rights of peoples, duties of States, and duties of individuals. The combination of the specific needs and values of African cultures and the international human rights standards has resulted in some distinctive features, compared to other regional human rights Charters. Significantly, the Charter confers rights upon peoples. The recognition of collective rights can be explained by the reference made in the preamble to the importance of 'the virtues of African historical tradition and the values of African civilisation'.

In addition, Article 20 of the Charter calls for the right to self-determination and independence. This article stems from the idea that a number of people inhabiting Afnca used to be independent and possess their own lands before colonialism. [40]

[36] Ethiopia and Eritrea were the last to ratify in 1999
[37] Zambia and Egypt
[38] For a comparison of the regional systema see, BO Okere, 'The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systema' *Human Rights Quarterly* (1984) 4 141.
[39] HWO Okoth-Ogendo, 'Human and Peoples' Rights; What Point is Africa trying to make?' in R Cohen, G Hyden and W Nagen, (eds), *Human Rights and Governance in Africa* (Gainesville, FL, University Press of Florida, 1993) 76.
[40] Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 Article 15 it says: 'In tame of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this convention to the extent strictly required by the exigency of the situation, provided that such measures are not inconsistent with its other obligations under international law'.

Second, the Charter is unique in emphasising the duties of the individual *vis-à-vis* the community and the state. Duties only apply to individuals and not to people. For example, Article 29 (3) obliges everyone not to compromise the security of the State, whose national or resident he or she is.

Article 60 provides that.

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

Civil and Political Rights: Articles 3 and 5 of the Charter guarantee without qualifications the right to equality before the law, human dignity and inviolability. It prohibits all forms of degrading treatment and exploitation, especially slavery, torture and degrading punishment.[41] The right to a fair hearing is guaranteed, and the elements of these are enumerated in Article 7: the right to appeal, presumption of innocence, right to defence counsel of one's choice and a trial within a reasonable time by an impartial court or tribunal. Retroactive criminal legislation is prohibited, and only the offender may be personally punished.[42] Other rights are qualified, for example, the rights to life,[43] liberty,[44] freedom of association, assembly and movement.[45]

Although the Charter does not mention refugees, Article 12(1) provides for freedom of movement within the borders of a state once a person is legally within it. An individual has the right to leave a country, including his or her own and to return to his or her own country. Every persecuted person has the right to seek asylum in accordance with the law of the country in which he takes refuge and in accordance with international conventions.[46]

Every citizen is guaranteed the right to participate in government directly or through freely chosen representatives in accordance with the provisions of the law. The independence of the judiciary is

[41] 25/89, 47/90, 56/91, 100/93 World Organisation Against Torture, Lawyers Committee for Human Rights, Union Interafricaine des Droits de |!' Homme, Les Temoins de Jehovah v Zaire, the commission held that allegations of torture, detention and arbitrary.
[42] In cases of *Constitutional Rights Project v Nigeria (in respect of Wahab Akamu and others)* and *Constitutional Rights Project v Nigeria (in respect of Zamani Lekwot and others)*, the commission found that a trial by a tribunal that includes army and military personnel under a law that excludes the right of appeal to a court of law contravened article 7 of the Charter. See
[43] Article 4
[44] Article 6
[45] Article 11
[46] See further on refugees G Melander, 'The Two Refugee Definitions' in Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Report No.4; S Goodwig Gill, The Refugee in International law, 1989.

protected.[47] The Charter provides equal access to public services. The mass expulsion of non-citizens is prohibited.[48]

Social, Economic and Cultural Rights:

The Charter protects the right to property but provides that it may be encroached upon in the interest of the public need or the general interest of the community and in accordance with the provisions of appropriate laws.[49] There is no mention of the standard, whether "prompt, effective or adequate" in the traditional Western slogan to be adopted in the event of compensation or the 'appropriate or reasonable' concept in the UN sense. The Charter provides for the right to work under equitable and satisfactory conditions and to pay equally for equal work.[50] African states do not usually discriminate against women in pay, although the Charter does not guarantee the right to work. This would be impossible considering the present economic conditions.

Under Article 16, individuals are entitled to enjoy the best state of physical and mental health. States are obliged not only to protect the health of people but also to ensure that they receive medical attention when they are sick.[51] The right to education is also provided for, but the level of the right is not indicated.[52] However, it seems that a minimum of free primary education would suffice.

People's Rights

The Charter asserts the oft-repeated right of self-determination of people, enabling them to freely determine their political, economic and social development.[53] People are entitled to dispose of their wealth and resources and to lawful recovery or compensation in the event of spoliation or dispossession.[54] States are called upon to eliminate all forms of foreign economic exploitation, particularly as practised by international monopolies.

The Charter guarantees the right to national and international peace and security.[55] It cites the example of asylees being engaged in subversive activities against any country, actions which members must suppress, nor should they allow their territories to be used as bases for such activities.

[47] Article 26
[48] Article 12 (5) Mase expulsion 1s defined under the clause aa that directed against national, racial, ethnic or religious groups.
[49] Article 14
[50] Article 15, see 39/90 Annette Pagnoule (on behalf of Abdoulaye Mazou) v Cameroon
[51] See communications 137/94, 139/94, 154/96, 161/97 International Pen, Constitutional Rights Project, Interights on behalf of *Ken Saro Wiwa Jr. and Civil Liberties Organisation v Nigeria*.
[52] Article 17
[53] Article 20.
[54] Article 21.
[55] Article 23

The emergent concept of common heritage of humanity, evident in the current Law of the Sea dealing with the resources of the deep-sea bed outside national jurisdiction and of outer space law dealing with the natural resources of the celestial bodies, finds expression in the Charter. All people shall have the right to the equal enjoyment of the common heritage of mankind. Four disadvantaged groups are especially protected, namely, women, children, the aged and the disabled.[56]

Article 22 provides for the right to development in economic, social and cultural matters. States are obliged to ensure the exercise of the right to development and to create a favourable atmosphere for it.[57] Interpretations can also be drawn from Article 1 of the UN Declaration on the Right to Development. This states: 'the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and to enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised. The right to development is a relatively new right, if it is a right at all. Umozurike suggests that the human person is identified as the beneficiary of the right to development, as of all human rights. The right to development can be invoked both by individuals and by peoples. Right to development imposes obligations both on individual States - to ensure equal and adequate access to essential resources - and on the international community - to promote fair development policies and effective international cooperation.[58]

Duties

The Charter is unique in that it includes the duties of individuals in an international instrument.[59] It recognises the duties of the individuals to the family, to preserve the harmonious development and cohesion of the family, respect for parents, and to maintain them in case of need, to serve the nation, preserve its independence, security and solidarity; and pay taxes.[60] The Charter also recognises duties to the international community.[61] There is also a duty to preserve the positive African cultural values and a commitment to the achievement of African unity.[62]

The African Charter reflects not only the discourse on human rights prevailing internationally at the time of its adopted but also contains several distinctive features, including incorporation of African philosophy of law and conception of human rights and attempts to embrace all three generations of human rights (civil and political rights, economic, social and cultural rights and solidarity rights, in particular the right to development). The most important of these features is the presence of 'peoples' in the title, which refers to group rights or collective rights, among them the

[56] Article 18
[57] Article 22
[58] M Bedajaoui, 'The Right to development and Jus Cogens' *Lesotho Law Journal* (1986) 2 (2) 93
[59] See Chapter I1
[60] Article 29
[61] Article 27
[62] Article 29(8).

right of people to self-determination, to development and to their environment and the right to freely dispose of natural resources.

The Charter also established the African Commission on Human and Peoples' Rights and the African Court of Human and Peoples' Rights for the effective implementation and interpretation of the Charter.

Fundamental Human Rights in Nigeria

A fundamental right is a right that has its origin in a country's constitution, or that is necessarily implied from the terms of that constitution. The fundamental rights usually encompass those rights considered natural human rights. Any restrictions on these rights are treated with the same strict scrutiny as restrictions on enumerated rights in the Constitution. If they are denied to anyone, it is an issue of substantive due process, but if they are denied to some individual but not others, it is an issue in equal protection.

Section 12 (1) of the 1999 Constitution provides that: '*No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.*' In practice, every international instrument to which Nigeria wishes to be bound ought to be transformed into municipal law. The Supreme Court held that an international treaty, even if transformed into domestic law while superior to other statutory legislation, is still subordinate to the Constitution. In the case of ***Abacha v Fawehinmi***[63] , Justice Ogundare, who delivered the leading judgment, confirmed this concerning the African Charter, which had long been transformed into municipal law.

Of all the international instruments dealing with torture of which Nigeria is a party, specific mechanisms to enhance implementation by way of judicial pronouncements are only in place concerning the African Charter. As the African Charter does not contain any specific implementation procedure, Nigerian courts have held that in the absence of such a procedure, an action based on the provisions of the Charter can be commenced by way writ of summons or by any other permissible procedure, such as the Fundamental Rights (Enforcement Procedure) Rules 1999. It is instructive to note that the court held in ***Ubani v. Director of State Security Services & Anor.***[64] The fundamental human rights protected in the African Charter Act are superior to all municipal law in Nigeria and cannot be ousted by decrees of the military government.

[63] (2001) CHR 20 at 42
[64] (1999) 11 NWLR 129

The African Charter on Human and Peoples' Rights became effective in Nigeria through the enactment of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. [65]

Fundamental rights are absolute rights that inure a Nigerian by virtue of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The court held in ***Miss Adeyinka Abosede Badejo v Federal Minister for Education & Ors.,***[66] that 'A fundamental right is certainly a right which stands above ordinary laws of the land'. It follows, therefore, that the fundamental rights bestowed by virtue of Section 33 (6) (e) of the Constitution cannot be waived, see ***Edwin v State***.[67]

It must be mentioned that Chapter IV of the Constitution, as amended, provides for these civil and political rights, such as the right to life, personal liberty, freedom of movement and so on. Some of these rights are also contained in the African Charter, the ICCPR and the ICESCR.

Conclusion

The above analysis has shown that human rights are neither static nor culturally neglected; they are the product of a long historical struggle to articulate the moral worth of the human person in the face of power, domination, and exclusion. From natural law traditions and early social compacts to post-war internationalisation and contemporary rights discourse, human rights have evolved as both a normative ideal and a practical instrument for limiting authority and advancing human dignity. It must be stressed that appreciating their historical contingency does not weaken their universality; rather, it deepens our understanding of how human rights must continuously be re-interpreted and defended to remain responsive to changing social, political, and economic realities. The UDHR has inspired the immutability and relevance of human rights, which have not been adopted by other human rights instruments and conventions such as the International Convention on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The African Charter, following the example set by these conventions, added a uniquely African perspective to these rights by incorporating African cultural values and perspectives on peoples' rights, including the right to development and the right to self-determination in the social, economic and political areas. It is hoped that these innovative approaches, embedding African perspectives, will result in a more comprehensive approach in the interpretation and enforcement of human rights.

[65] Cap. 10 Lawe of the Federation of Nigeria 1990. With this singular act of Ratification and Enforcement, the Charter became part and parcel of Nigerian Law and was reduced and enshrined in the Constitution of the Federal Republic of Nigeria 1999 as reviewed and analysed.
[66] (1996) 9 - 10 MAC 119, 130
[67] [1992] 2 NWLR (Pt 222) 172.