



Human Rights and Domestic Jurisdiction: A Review of the Universality of Human Rights in Nigeria

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ABSTRACT

The jurisdictional divergence on the doctrine and issues of human rights and the efforts to create an international law of human rights has been largely faced with a struggle to develop effective machinery to implement agreed norms. Efforts have not brought forth machinery of notable effectiveness globally. Evidentially, there are doubts as to the universalism of rights even when it appears to exist conceptually; its applicability globally is hamstrung by jurisdictional realities, this makes the universalism and relativism of human rights a debateable discourse globally. Notwithstanding the controversies surrounding the universality of human rights in general, some rights can be classified as universal, although these are not without problems at the level of interpretation and application to some realities in some jurisdiction across the world. The paper reviewed human rights and domestic jurisdiction, it analysed the realism of the universalism of human rights within the context of African realities, using homosexual right as case study. It emphasises the pervasive but persuading factors enabling the refusal of homosexual rights in Nigeria, from the cultural, religious and legal contexts.

Keywords: Human rights; Domestic Jurisdiction; Universality; Homosexuality

Introduction

The disparity of the relationship between the rules of international law and municipal law is one of the most controversial questions of legal theory. Originally, the relationship between the two laws was a matter of theoretical importance, that is, whether international law and municipal law are parts of a universal legal order or they form two distinct systems of law. However, as long as the international community is composed of states, it is only through the exercise of the states will, that rights and duties of individuals are conferred. The Universal Declaration of Human Rights adopted by the General Assembly in 1948¹ provides for various rights to the individuals, however, since this declaration was adopted by the general Assembly, it did not impose any legal obligations on the state to give effect to its provisions.²

Thoughts on the subject human rights have developed along partly independent lines from western thoughts, although, over the last two centuries, there have been considerable western influences on issues of human rights and self-autonomy.

Human right lends itself to a multidisciplinary approach, each of which is important and deals with human welfare from its own perspective. From the point of ethics, human rights consist of ought-

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¹ Universal Declaration of Human Rights 1948 <https://www.ohchr.org> accessed 30 August, 2023

² . Agarwal H.O ‘‘ International Law and Human Rights (21st edn, Central Law Publishers, 2017)243



propositions derived from the existence of man's reasoning in search of the ultimate truth. The application and enforcement of these ethical precepts at national and international levels involves national and international policies, hence requires some familiarity with international and municipal laws, especially criminal law and constitutional laws. Note worthily, criminal law has unique impact on human rights law as it governs the qualifications and limitations a state imposes on human rights of individuals for deviant behaviours.³

Human rights agreement, even those that have establish elaborate enforcement machinery, expressly or by implication are faced with jurisdictional challenges.⁴ Over time, domestic jurisdiction have continually posed impediments to international human rights activities, much of these is derived from the propensity in International law to confound legal concepts with jurisdictional rhetoric, particularly as regards concepts that addresses the essential tension between universality of human rights, international accountability and the domestic realities.

Human rights are inalienable rights as they are attached to the human person and form an essential part of his/her humanhood.⁵ They are not ephemeral, not alterable with time, place and circumstances; they are not the product of philosophical whim or political fashion, they are fundamental and inalienable.⁶ The implication of the moral dimension of human rights is that, whilst their forces as legal claims rest on recognition by the state laws, they are not conferred or granted by the state as some other legal rights. Nwabueze, posited that

Human rights are not conferred by constitutions, conventions or governments. These are instruments, the testaments of their recognition; they are important, sometimes essential elements of the machinery for their protection and enforcement, but they do not give rise to them.⁷

Generally some aspects of human rights have birth global controversies over time, irrespective of the increasing rate of human rights violation within the Nigerian space, the state appeared proactive to curbing the menace. There are constitutional rights that the sovereign should uphold fundamental freedoms and protect these rights from interference as expressed in international documents,⁸ this expression emphasises the duty of state not to impede with individual civil rights such as rights to life, liberty and fair hearing amongst others.

³ Glanville Williams "The Challenge of a Model Penal Code" (2nd edn, Martinus Nijhoff Publisher, 1984) 3

⁴ Buergenthal Thomas, Human Rights and International Law: The Helsinki Accord (Allanheld Publishers Inc, 1997) 31

⁵ Oputa, C.A "Human Rights in the Political and Legal Culture of Nigeria" (Nigerian Law Publications, 1989) 73

⁶ Obiaraeri, N.O "Fundamental Themes on International Human Rights (Zubic Infinity Concept, 2015) 82

⁷ Nwabueze, B., Constitutional Democracy in Africa, Volume 2, Constitutionalism, Authoritarianism and Statism (Spectrum Books Limited, 2003) pp 5-6

⁸ International Covenant on Civil and Political Rights; The African Charter on Human and People's Rights; Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended)



Consequently, the intent of this paper is to review the universality of human rights within the context of Nigeria realities using homosexual right as case study. To appropriately execute this review, the paper discusses factors such as culture, religion and cultural imperialism, as factors militating against the universality of human rights in general and homosexual rights in particular within Nigeria.

THE UNIVERSALITY OF HUMAN RIGHTS

The universality of human rights has been continually reiterated that the universal nature of these rights and freedom is beyond question, although it submits to the impact of national and regional peculiarities and several historical, cultural and religious circumstances.⁹ Relativist insist that the values and even the essence of human rights differ according to the culture and the background of the people, this has birth numerous expectations to the principle of universality.¹⁰

The doctrine of universality of human rights is the bedrock of international human rights law. This emphasises the equality of all to the entitlement of human rights notwithstanding the weighty freight of rhetoric and the penumbra of uncertainties. Human right, which has its philosophical source from natural rights, is debatably a challenging discourse globally. Following the meanings arrogated to it by scholars of repute and in the Universal Declaration of Human Rights of 1948 which evidenced the diverse meaning, which in most cases showcases the universality of human rights. The Universal Declaration of Human Rights in 1948, described human rights as “*rights derived from the inherent dignity of the human person*”.¹¹ This implies that human rights are a natural endowment of any living species called human being. They are rights which belong to human basically because of humanity.¹²

Worthy of note, though hinged on universalism, individuals are the central focus of human rights. This implies that humans are members of the universal society, and possess rights that are universal, which no immediate society of any human should abuse but rather protect. They are “those minimal rights, which every individual must have against the state, or other public authority by virtue of his being a ‘member of the human family’ irrespective of any consideration.”¹³ This portends that certain rights should be upheld against alleged necessities of states. In essence, human rights are natural, hence it cannot be given up to the artificial state and its institutions this shows the primacy of an individual human person over the society, state and public authorities that may sometimes be oppressive against an individual. Although, Donnelly,¹⁴ argued that human rights are not only the instrument for limiting the state or a government, he reemphasised the essence of ensuring the universality of human rights and further submitted that both connotative and

⁹ Umuzurike, U.O, “The African Charter on Human and Peoples’ Right” (Martinus Nijhoff Publishers, 1997) 5

¹⁰ Washburn, W.E, ‘Cultural Relativism, Human Rights and AAAS’ American Anthropologist(1987) Pp. 939-42

¹¹ Universal Declaration of Human Rights 1948

¹² Dornelly, J. (2007). The relative universality of human rights. Human Rights quarterly, 29(2), 281-306.

¹³ Durga Das Basu “ Human Rights, Nature and Constituents, 2007

¹⁴ Dornelly, J. (2007). The relative universality of human rights. Human Rights quarterly, 29(2), 281-306.



denotative meanings given to it elude the capacity of a single state to define for itself and its citizenry what is a right.

HUMAN RIGHTS AND CULTURE

Human rights have become a potent instrument of diplomacy to which actions and in-actions of government are measured by developed states and a yard stick for the grant of aid by the developed countries. Despite the concern for human rights enhancement, these does not nullify the principles of interference in domestic affairs as some rights may be derogated from, abridged, limited or suspended under certain circumstances¹⁵. This curtailment is recognised in both international¹⁶ and municipal laws and further acknowledged that some rights are not absolute but may be qualified in certain circumstances. The Universal Declaration of Human rights provides thus:

In the exercise of this rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.¹⁷

Certain rights are exercised subject to the law¹⁸ hence maybe denied in circumstance prescribed by law.

Culture, as a formidable factor against the universal realization of human rights, especially rights to non-discrimination of one's sex and sexual orientation, which requires conceptual clarification. cultural relativist argues that culture is the principal source of the validity of a moral right or rule. Universal human rights standards, it is the total way of life of a people. This includes diverse practices among a people that have formed values, standards for morals, even ways of understanding or viewing actions, events and the likes. It refers to the many practices like the arts of communication and representation which have relative autonomy from the economic, social and political domains¹⁹, it inculcates a community's reservoir of what defines them as a people who in most cases represent the best that has been known and thought. Being a concept that includes a refining and elevating element, culture palliates, if it does totally neutralize the ravages of a modern, aggressive and brutalizing urban existence,²⁰ this qualifies culture as a source of identity, a set of control mechanism, plans, recipes, rules and instruments for controlling behaviours.²¹ According to Geertz²² views of culture, he argued that imbibed in culture is natural habit that has the

¹⁵ Constitution of the Federal Republic of Nigeria, section 45

¹⁶ Universal Declaration of Human Rights 1948, Article 29 (2)

¹⁷ Article 29 (2) Universal Declaration of Human Rights 1948.

¹⁸ Article 43, African Charter on Human and Peoples' Right

¹⁹ Edward W.Said, Culture and Imperialism (New York, Vintage Books, 1993) 14

²⁰ Ibid at 21

²¹ Geertz Clifford The interpretation of Culture: Selected Essays (New York Basic Book, 1973)44-5

²² Ibid



requisite implications of power and control mechanisms. This emphasis fundamentally makes culture absolute.²³

This presupposes that a culture will answer to no other standard or value than itself. The absolutism of culture has been figured and countered by Donnelly when he argued that when a culture sees itself as superior to others, or the belief that one's own culture is superior, can lead to misunderstanding of human rights and a justification of cultural practice that violates human rights. He argued that while culture plays a vital role in shaping society's understanding of human rights, no cultural practice is inherently correct.²⁴ Absolutism of culture is specious as earlier pointed out; however it is observed that the argument of cultural relativists ascribes absolutism to culture. Reliance on culture and the stifling sexual orientation on homosexuality will be troubling, although, distinct culture should be respected but not at the expense of human rights abuse.

HUMAN RIGHTS AND CULTURAL IMPERIALISM

Cultural imperialism presupposes that the universality of human right robs a people of their cultural values into accepting values from the west as standards for moral judgment. Cultural relativity sets in with the primus objective of demanding respect for cultural differences. Cultural relativity is a normative doctrine that portends that what a culture defines to be right is right. This is based on the argument that cultures differ on their conceptions of human wellbeing. Hence, what is right in community A may not be right for an individual to practice in community B. This puts culture at the position of absolutism and ethical or moral infallibility. The argument of cultural relativists runs the risk of precluding moral learning across cultures and, it leaves the people in a culture with no other standard to judge their own culture since;

standards and value are relative to the culture from which they derive so that any attempt to formulate that grow out of the beliefs or moral codes of one culture must to that extent detract the applicability of any Declaration of Human Rights to mankind as a whole.²⁵

HUMAN RIGHTS, RELIGION AND MORALITY

Donnelly²⁶, opined that human rights are not only instrument for restraining the state or a government, but a needful tool, hence, he advanced the need to ensure the universality of human rights and states further that both connotative and denotative meanings given to it should elude the capacity of a single state to define for itself and its citizenry what is human rights. Analysing human rights from the point of

²³ Njogu Kimani and E. Orchardson-Mazrui, (2008) "Gender Inequality and Women's Right in the Great Lakes: Can Culture Contribute to Women's Empowerment? In Culture, Performance and Identity: Paths of Communication in Kenya, Njogu, Kimani(Eds) TWaweza Communication <https://books.google.com.ng> accessed 28 April, 2025

²⁴ Donnelly J., 2007 "The Relative Universality of Human Rights . Human Rights Quarterly 29(2) 281-306.

²⁵ (American Anthropological Association, 1947, p.45)

²⁶ Donnelly J., 2007 "The Relative Universality of Human Rights . Human Rights Quarterly 29(2) 281-306



functionality, he²⁷ argued that respect for human rights will facilitate world peace, engender justice, fairness, and humanity needs for all individuals. Being a universal right which cannot be taken away except as a result of due process based on certain circumstances, the need to sustain the moral fabrics of a society as a culture hereby assumes the position of the special circumstances. Notably, the universality and sovereignty of human rights is rigidly constrained by cultural relativeness or differences which to some.²⁸ Precipitates western cultural Imperialism. Prominently, these has been the latent but virile factor for the resistance against the universal acceptance of human rights. In most scenario human rights are confined by state laws and religion, most especially where such rights are viewed as a religious taboo or when its outcome appears like what will rob the people of their cultural values.²⁹

Religions and their values cum their standards for moral judgment, for instance, do not allow for expression of homosexual rights. Hence, considering the enormous effect of religion on peoples around the globe; and how they contribute to social norms, social thoughts and way of life, the barrier religions place on the universality of human rights is significantly huge. However, owing to the disagreements on what constitutes the right value among religions, it could be held that effective standards for moral judgments can best be found in universal acceptance of human rights. The implication of morality imposes some obligations and a complex situation on human rights discuss with the upsurge of autonomy and corresponding decline on morality which has been classified as a religious dictum or associated with philosophical ideas and emerging debates over homosexuality and same-sex relationships, almost exclusively condemn those relationships.³⁰

Reviewing these very troubling issue of homosexuality as a right considering the universal nature of human rights and relevance of cultural relativity, it becomes absolutely necessary to pin point the most challenging clog on the wheel of advancing homosexuality right in some domain to be religion, cultural values and societal standards for moral judgment. These factors, out rightly restrains expression of homosexual rights, considering the enormous effect of religion on peoples around the globe; and how they contribute to social norms, social thoughts and way of life. Culture, therefore, places a barricade on the universality of homosexual rights.

HOMOSEXUALITY- The Nigerian Concept

Human rights standards have been thoroughly well defined over time and properly codified in regional and international legal documents. These rights constitute a set of performance standards against which duty-bearers at all levels of society and organs of government can be held accountable, by fulfilling commitments under international human rights treaties noting that all human rights are equally important³¹. This has been

²⁷ Ibid

²⁸ Tierney B, 2004 “ The Idea of Natural Rights: Origin and Resistance. *Northwestern Journal of International Human Rights* 2(1) 2

²⁹ Henkin L, (1989) The Universality of the concept of Human Rights. www.researchgate.net accessed 24 April 2025

³⁰ M. C. Green, ‘Law, Religion, and Same-Sex Relations in Africa’ (2021) 36 (1) *Journal of Law and Religion* 69

³¹ Universal Declaration of Human Rights 1948. <https://www.ohchr.org> accessed 24 April 2025



reemphasised by international community and treaties.³² Human rights are indivisible and interdependent, the principle of indivisibility recognizes that no human right is inherently inferior to any other; therefore they must be respected, protected and realized on equal footing, although some human rights obligations are immediate, while others are progressive.³³

Globally, human rights abuses are sustained because of perceived sexual orientation this has persist due to discriminatory laws and practices that criminalises expressions of sexual orientation and gender identity. The principle of non-discrimination³⁴ and the right to be equal before the law³⁵ are unanimously recognised and secured under international law. The United Nations Human rights committee posited that “Non-Discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”³⁶ The principle of non-discrimination and the rights to be equal before the law necessitates that state and its mercenaries protect people from discrimination. However, ensuring the universality of human rights in a world of widely varying cultures has always been a recurrent theme in international legal theory and practice over time, ever since the universal declaration of human rights in 1948 due to relativists opinion that considerations of right and wrong differ along cultural lines, and therefore, definitions of human rights should differ accordingly.³⁷ Homosexuality is a romantic/sexual attraction or sexual behaviour between members of the same sex or gender. It is an enduring pattern of emotional, romantic, and/or sexual attractions to people of the same sex. The issue of homosexuality is a controversial discourse in international relation today with various dimensions which have paradigm shift in the known concept of marriage between a male and female to that of people of same sex. It is a trend which is spreading across the globe with increasing support on daily basis,³⁸ it has been described as un-African, and an act of western cultural imperialism,³⁹ homosexuality was not a popular practice or it was a clandestine practice among African people.⁴⁰ Following the assertion of un-Africanness of homosexuality and ignoring actual history, non-normative sexual orientations and gender identities are dismissed on the basis that they are western imports and un-African, hence the innovation of draconian anti-gay laws in Nigeria to counteract the alleged imperialistic call for sexual rights by western actors.

³² Declaration on the rights of development 1986; the 1993 Vienna Declaration and Programme of Action.

³³ Comment No.3 of the Committee on Economic, Social and Cultural Rights.
<http://www.ohchr.org/english/bodies/cescr/comments.htm> Accessed 25 April, 2025

³⁴ Article 1(3) and 55 of the United Nations Charter : Article 7 of the Universal Declaration of Human Rights : Article 2, 4 (1) and 26 of International Covenant on Civil and Political Rights : Article 2 of the African Charter on Human and Peoples’ Rights.

³⁵ Article 7 of the Universal Declaration of Human Rights: Article 26 of the ICCPR; Article 3 of the African Charter on Human and Peoples’ Rights

³⁶ Human Rights Committee, General Comment No. 18, Non-discrimination, para, 1

³⁷ Henry J. Steiner and Philip Alston “Universalism and cultural relativism: International Human Rights in Context: Law, Politics Morals (Oxford University Press, 1996) 166-225.

³⁸ Schalkwy, J. (2000) “Culture, gender equality and development cooperation”
www.oecg.org/social/genderequalityanddevelopment. Accessed 26 April 2025

^{39,39} Ibid

⁴⁰ Okalanwon K, 2013 “Resisting the Hypocritical Western Narrative of Victimhood and Celebrating the Resistance against Homophobia in Nigeria. www.hivos.org accessed 6 April 2025



There is a continuing and dynamic debate about the causes of homosexual preferences, which is interrelated with views about the acceptability of homosexual behaviour. Although conversations on this issue have taken a different bent, some individuals continue to classify homosexuality as an illness or a perversion, or both, some wonder why people undergo medical surgery to change their sex. A larger percentage argued that homosexuality is mental or even physical diseases that will contaminate their community⁴¹ some others wonder why people may change their sexual views, behaviours, and even their identities throughout their lifetimes. Some scholars of sexuality maintain that sexual preference is not a fixed characteristic, but is a product of social experiences and can be influenced by changing circumstances. For example, prisoners may be committed to same-sex partners while incarcerated, but revert to heterosexual relationships on return to the outside world.⁴²

Homosexuality is one of the most contentious issues of our time. The United Nations and other human rights bodies have proposed that all laws that discriminate against people on the basis of their sexual orientation violate human rights. However, despite this, many countries around the world including Nigeria still maintain laws that object to homosexuality maybe, due to cultural relativism which has raised suggestive ideas, generating diverse perspectives from various segments of the political continuum. Indeed, its proliferation in international relations discourse, has become a concept that is difficult, if not impossible, to apply in contemporary human rights issues. Universalists, clearly object to cultural relativism and cautions about its application in the construction of international norms and doctrines that attempts to define definite human rights.

Homosexual activity in Nigeria has been legally prohibited, with sanctions of up to 14 years imprisonment. In addition to criminalizing homosexuality, Nigeria has enacted legislation that would make it illegal for heterosexual family members, allies and friends of the Lesbian, Gay, Bisexual and Transgender (LGBT) to be supportive. According to Nigerian law, a heterosexual ally “who administers, witnesses, abets or aids” any form of gender non-conforming and homosexual activity could receive a 10-year joint sentence.

Nigeria: Anti-LGBT Law threatens citizens’ rights to homosexuality, being described as a spectre on homosexuality. The law criminalizes public displays of affection between same-sex couples and restricts the work of organizations defending gay people and their rights. Described as draconian, the law “It undermines basic universal freedoms that Nigerians have long fought to defend and is a throwback to past decades under military rule when civil rights were treated with contempt.”⁴³

These law contradicts fundamental freedoms under international human rights treaties and standards, which the Nigerian Constitution also guarantees. The Nigerian Constitution⁴⁴ guarantees that: “*Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to*

⁴¹ Epprecht, M. Unspoken facts: A history of homosexuality’s in Africa. (Harare: GALZ, 2008) 23

⁴² Kramer, L. The sociology of gender: A brief introduction. (Oxford University Press, 2005)pp 62-63

⁴³ Graeme Reid, Lesbian, Gay, Bisexual, and Transgender (LGBT) rights, Human Rights Watch <https://www.hrw.org/news/2014/01/14/nigeria-anti-lgbt-law-threatens-basic> accessed 28 April,2025

⁴⁴ Constitution of the Federal Republic of Nigeria 1999, section 40



any political party, trade union, or any other association for the protection of his interests.” Section 17 affirms that “every citizen shall have equality of rights, obligations, and opportunities before the law. “Interestingly, there seems to be no consensus on international human rights law for the protection of homosexual, it is argued that⁴⁵ this lack of collective views is as a result of lack of universal accord on same-sex marriage/ relationship as a human right. This according to Nnamuchi, is because the United Nations General Assembly failed to adopt the ‘Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, this failure evidenced a global resolution to forever defer the instrument and push aside the notion for a universal legal framework to protect the right of gays and lesbians to marry.⁴⁶

The Nigerian same-sex Marriage Prohibition Act,⁴⁷ prohibit and deny official recognition to same-sex marriage or civil union in Nigeria respectively. The act⁴⁸ defined same-sex marriage as ‘the coming together of persons of the same sex with the purpose of living together as husband and wife or for other purpose of same sexual relationship’.⁴⁹ furthermore, the act defined civil union as ‘any arrangement between persons of the same sex to live together as sex partners, and includes such descriptions as: (a) adult independent relationships; (b) caring partnerships; (c) civil partnerships; (d) civil solidarity pacts; (e) domestic partnerships; (f) reciprocal beneficiary relationships; (g) registered partnerships; (h) significant relationships; and (i) stable unions.⁵⁰ Section 5 of the act criminalises same-sex marriage or civil union and the actions of a person who administers witnesses, abets or aids same-sex marriage or civil union or promotes same-sex activities.

Classified as Victorian-era provisions that remained after the end of British colonial rule⁵¹ Reid, argued that the Nigerian same sex marriage prohibition act is the most repressive law restricting fundamental rights of citizens since after the end of military era,” Painstakingly, Reid posited that. “*If the government can strip one group of its freedoms, then it can legislate away the rights of others.*⁵²

The 1999 Constitution of the Federal Republic of Nigeria and Nigerian same-sex Prohibition Act- A Jurisprudential Review

Can the same-sex marriage Act, take precedence over the constitution, having guaranteed equality and fundamental rights to the Nigerian citizens?

⁴⁵ O. Nnamuchi, ‘Nigeria’s Same Sex Marriage (Prohibition) Act and the Threat of Sanctions by Western Countries: A Legitimate Case of Human Rights Advancement or What?’ (2019) 25(1) Southwestern Journal of International Law 120, 127

⁴⁶ Ibid 138-141, 154

⁴⁷ Same sex marriage prohibition Act, section 1 and 2

⁴⁸ Ibid section 7

⁴⁹ SSMPA, s 7 para 3

⁵⁰ SSMPA, s 7 para 5.

⁵¹ Human Rights Watch <https://www.hrw.org/news/2014/01/14/nigeria-anti-lgbt-law-threatens-basic> accessed 28 April, 2025

⁵² Graeme Reid, Lesbian, Gay, Bisexual, and Transgender (LGBT) rights, Human Rights Watch <https://www.hrw.org/news/2014/01/14/nigeria-anti-lgbt-law-threatens-basic> accessed 28 April, 2025



The constitution is supreme.⁵³ and its provision shall have binding force on all authorities and persons throughout the federal Republic of Nigeria. It takes precedence over other laws, including the federal and state laws made pursuant to it, and therefore mandates all other legislation to conform to it.⁵⁴ Therefore, Same-sex marriage prohibition act, is an act of National assembly made pursuant to the constitution, therefore any part of the act, which is inconsistent with the provision of the constitution, shall to the the extent of the inconsistency be void following the validity legal order, which mandates all legislation to derive validity from the basic norm.⁵⁵ To guarantee the rational unity of the legal order and ascertain whether legislation conforms to the legal order, a lower norm cannot contradict or violate a higher norm from which it derives validity.⁵⁶ acts that contradict or, are not in tandem with the constitution shall not be applicable and shall be declared null and void to the extent of its inconsistency, when argued in court. Having being classified as the basic fundamental legal document, the Constitution of the Federal Republic of Nigeria 1999 , sets the basic norms and logical unity of the legal order,⁵⁷ and empowers the courts to define the validity of a norm within the legal order.⁵⁸

Summary

The principle of universality in human rights means everyone, regardless of their background, sex, colour is equally entitled to their human rights. This principle is foundational to international human rights law and is enshrined in documents like the Universal Declaration of Human Rights (UDHR). In Nigeria, this principle is recognized in the Constitution and various legal instruments.

Interestingly, the claim that human rights are rights that belongs to all human beings in the same quantity everywhere and at all times symbolizes the idea of universality. This claim is not totally accepted by all as some argued to the contrary. They opine that human rights are culturally relative, many other proponents of human rights are of the view that human rights should be applicable universally irrespective of any consideration. This connotes that the global claim of universality of human rights, like rights to equal protection and free association must be the same everywhere. This is boldly recognized in The 1948 Universal Declaration of Human Rights when it emphasizes the fact that the universality of human rights is beyond question; that the humanity of all people was to be acknowledged beyond recognition by all states, with no exceptions. All humans were to be regarded as free and equal, with no distinction given to their race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status.⁵⁹

⁵³ Constitution of the Federal Republic of Nigeria 1999, section 1(1)

⁵⁴ Ibid, section 1(3)

⁵⁵ H Kelsen, 'The Pure Theory of Law: Its Method and Fundamental Concepts, Part II' (1935)

⁵⁶ 51 Law Quarterly Review, 517

⁵⁷ S Ratnapala, Jurisprudence (2nd edn, Cambridge University Press 2013) 79

⁵⁸ CFRN 1999, s 1(1) & (3)

⁵⁹ CFRN 1999, s 4(8)

⁵⁹ UN General Assembly, Universal Declaration of Human Rights, 10th December 1948, 217 A (111) Art 2



The paper recommends that the content and scope of human rights expands according to the dictates of human experience, and in response to economic, socio-political, environmental and cultural variables.