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Applicability of International Human Rights Norms: A Comparative Analysis of Foreign Jurisdictions

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Abstract

The world has wrestled with racial, religious and political hostilities for a long time in history. When mankind emerged from the bloody conflict in which the free nations of the world conquered Nazi aggression, racism, and the evil forces of hate, the people of the world established universal norms of conduct and institutionalized them in international and regional organizations. As the United Nation's Charter indicates, the foundations which established respect for and observance of human rights are indispensable to peace; human rights are universal and indivisible; and it recognizes the inherent dignity, equality, and inalienable rights of all members of the human family. The Nations of the world exemplify and extol the qualities of justice and brotherhood which create unity out of diversity, understanding out of disparity and richness out of variety. In the science and practice of law, the classic doctrine of natural justice, equity, and good conscience presupposed the existence of a basic concept of fairness which ought to inform and direct the structure and conduct of government as well as relationships between human beings. The worth whileness of international human rights norms is embraced by different jurisdictions with some deviations. It, therefore, becomes imperative to comparatively analyse the applicability of international human rights norms in foreign jurisdictions. Hence, this study advocates for application of international norms in the Nigerian legal system. The study adopted doctrinal approach and comparative analysis to arrive at its findings. Accordingly, the work observes that international human rights laws are not enjoyed by many Nigerians due to lapses inherent in our laws, for instance the 1999 Constitution. Hence, the work recommends for the review of Nigerian Constitution particularly Chapter (ii) of the Constitution should be made justiciable to conform to international best practices. Also, section 12(1) and section 6(6)(c) should be relaxed in order to accommodate international human rights norms so as to make them complementary to domestic laws. Further, the paper recommends that the National Assembly should domesticate international legal instruments which have been ratified, like the CEDAW.

Keywords: International Human Right, Norms, Advocacy and Implementation.

1.0 Introduction

Formerly, international and domestic laws were virtually and entirely separate. But now, there is increasing legal authority to support the use of international human rights norms in domestic judicial decision making. It can be made enforceable in the application of constitutional or statutory provisions reflecting universal principles stated in international treaties. According to Bangalore principles, it can also be done where there is a gap in the common law or where a

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local statute is ambiguous. The judges may then fill the gap or resolve the ambiguity by reference to international human rights norms which will ensure that domestic law conforms as far as possible to such principles. Human rights are always controversial issues among nations, they would frequently disagree. But upon the common interest of the whole planet in the achievement of human rights, there could now be no real dispute. The United Nations Commission on Human Rights comprising representatives of virtually every nation on earth (as well as international agencies, non-governmental bodies and others) canvassed to deliberate on the contributions of the United Nations in rebuilding human rights in a grievously shattered country. But still much has to be done in many uncivilized nations. The congregation with its collected assembly is a metaphor as are also the satellites circling our globe for the essential oneness of the world and its peoples and their common interests, above state boundaries, both in individual human rights and in the rights of peoples.

The United Nations Charter signed nearly a decade ago, like the covenant of the League of Nations, recognizes the primacy of the sovereign member states as the principal persons to whom international law is addressed and by whose consent it is made. The rights of peoples to self-determination remain highly controversial and often unfulfilled, great strides have been made in the past sixty-six years in the declaration of individual human rights and the creation of international and domestic instruments for their protection and advancement. The Universal Declaration of Human Rights,[1] the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights,[2] and many other international treaties, prescribe fundamental rights. They are generally expressed in terms which are familiar to lawyers of the Common Law tradition. This is because, certainly in the early days of the United Nations, those lawyers had the largest part in the drafting of the Charter, the Universal Declaration, the Covenants and Treaties giving expression to such rights.

- The judges and lawyers of the Common Law, who are beneficiaries of a millennium of developments in the refinement, expression and protection of human rights by the English speaking people, are often inclined to take such things for granted. Oftentimes they feel that they have nothing to learn from international law and its institutions. This is far from true. But for some countries, the building of the international law of human rights and the translation of its principles into daily reality are matters of the most acute practical importance. We can celebrate our blessings and our diversity, but we should also recognize the essential unity of our shared humanity. According to Justice Michael Kirby, before he changed his mentality, attitude and conversion in Bangalore, he was of the view that international law was a vague mélange of political statements and motherhood principles-not to be compared with the precise, renewable and generally just rules of municipal law made by legislatures answerable to the people and judges accountable in the courts. These were the attitudes that most judges and lawyers brought to Bangalore. They were not idiosyncratic or especially unsympathetic opinions for the tasks which lay ahead of them. Instead, they were simply reflections of their legal education, the principles of law adopted by the courts of England and Australia, reinforced by the daily grind of solving legal problems, for the solution to which the principles of the international law of human rights seemed remote, irrelevant and somehow foreign. According to them, there was no need for

[1] 1948.
[2] 1966.

the busy judge and lawyer of a Common law country to bother about international human rights norms. What Bangalore did was to expose nations to the fast-developing jurisprudence of international human rights norms. However, the question that this study brings to fore is weather, these international human rights norms are enjoyed by citizens of different nations. Secondly, weather there are lawsthat have inhibited the enforcement of these norms by our courts. If there are, are there remedies that can correct them so that people can enjoy their human rights.

2.0 Conceptual Clarification and Historical Background

2.1.1 The Concept of Right

The word "right" is derived from the Latin word *rectus*, which means correct, straight, or opposed to wrong. It may also mean in accordance with law, morality and justice[3]. The Black's Law Dictionary defines right to mean justice, ethical correctness or consonance with the rules of law or the principles of morals. In the noun form, it means power, privilege, or demand inherent in one person and incident upon another.[4] According to Hon. Justice C. A. Oputa (rtd.), a right, in general, is a well-founded claim which when recognized by civil law becomes an acknowledged claim or legal right enforceable by the power of the state[5] According to Ginsberg, in general, a person's rights are constituted by those claims he may make on his fellows in relation to the conditions of his well-being[6].

Many jurists have at one time or another defined the concept 'right'. According to Allen, it is the legally guaranteed power to realize an interest[7]. Holmes asserted that a legal right is nothing but a permission to service certain natural powers and upon certain conditions, to obtain protection, restitution, or compensation by the aid of the public forces[8]. For Divorkin, rights are trumps for justifying political decisions that state a goal for the community as a whole.[9] The key idea in the concept of right is entitlement[10]. To say that you have a right to something is to say that you are entitled to it, such as the right to life, liberty and to fair hearing. A right can also be seen as a concept, denoting an advantage, a position or benefit, validly conferred on a person, human or artificial, by rules of a particular legal system.

2.1.2 Legal and Moral Rights Distinguished

Legal rights are distinguishable from moral rights or claims. While legal right is the liberty to act or abstain from acting in a specified manner or the power to compel a certain person or persons from doing a particular thing, on the other hand, moral rights are mere assertions of notions of right and wrong without any legislative backing. One of the characteristics of a legal right is the possibility of challenging its violation in a court and either getting the right enforced or granting damages for failure to carry out the corresponding duty[11].

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[3]C Oputa, *Human Right in the Political and Legal Culture of Nigeria* (Nigeria Law Publication, 1990) 38.
[4] G Bryan, *Garner Black's Law Dictionary* (8th edn, Thomas West, 2004) 845.
[5] Oputa (n3) 44.
[6] M Ginsberg, *On Justice in Society* (Sweet and Maxwell, 1965) 52.
[7]K Allen, *Law in the Making* (Duck Worth and Co. Ltd., 1965) 82.
[8] O Holmes, *The Common Law Back Bay Books Jurisprudence*, (3rd edn, Sweet and Maxwell, 1973) 63.
[9]R Divorkin, *Talking Seriously* (Duck Worth and Co. Ltd., 1977) 232.
[10]M Ikhariale, *The Jurisprudence of Human Right Law Practice*, (vol 5, np, 1995).
[11]*Ibid*, 286.

Section 46 of the Constitution[12] makes provision for the enforcement of the Fundamental Right provisions. It gives the High Court original jurisdiction to hear and determine any application made to it for the purposes of securing enforcement of any of the rights. In so doing, the court may make orders, issue writs and give such directions, as it may consider appropriate.

2.1.3 Human Rights Distinguished from Fundamental Rights

To the positivists, human rights are part of the *Lex lata* of the particular state. They are such rights which the particular state has selected from a plethora of rights given to the citizens and other persons within its frontiers and made enforceable against the particular state or its agencies.[13] Human rights can be regarded as the genus while Fundamental right is the specie. While human right is attached to the individual at birth, fundamental rights are those recognized and supported by a state. Human rights span the range of human history, from medieval times to modern times.

On the other hand, fundamental rights are of recent development and are normally associated with written Constitutions. This point received judicial pronouncement in *Ransom Kuti and Ors v the A.G. of the Federation*[14] where Oputa J.S.C. stated that not every right is a fundamental right. Both derive from the premise of the inalienable right of man to life, liberty and the pursuit of happiness which emergent nations with written Constitutions have enshrined in their Constitutions some of these basic human rights and called them "Fundamental Right". Each right that is considered fundamental is clearly spelt out. Eso J.S.C. also, in the same Ransome Kuti's case, defined fundamental right as, "a right which stands above the ordinary laws of the land and which is antecedent to the political society." It is a precondition to civilized existence. What has been done by the Constitutions since independence is to have these rights enshrined in the Constitution,so that the right could be "inheritable" to the extent of the "non-immutability of the Constitution itself."[15]

It is crucial to note that these rights which are antecedent to the political society itself do not exist, only in societies or states without any written Constitutions. However, unless their existence is guaranteed under the state's Constitution they cannot with reference to the particular state or political society be described as fundamental rights.[16] Human Right is of prime concern in every legal system. It encompasses claims, some of which are enforceable by the law. The right is only a right in law because it is recognized and protected as such by the legal system. It is either the law gives you right or you do not have it because the law denies you of it. It, therefore, means that some rights can be enforced while some other rights cannot be enforced because they are mere aspirations to be realized in future but at present they cannot be practically enforced by law.[17]

2.1.4 The Concept of Norms

Norm is defined as a situation or a pattern of behaviour that is usual or expected (Rule) standards of behaviour that are typical of or accepted within a particular group or society; societal/cultural

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[12]*Constitution of the Federal of Nigeria,* 1999 (as amended).
[13] P Agu, 'The Role of Lawyers in the Protection and Advancement of Human Rights' *Journal of Human Right Law and Practice* (2) (2009) (3).
[14][1985] 2 NWLR (pt 6) 211.
[15]*Ibid.*
[16] J Idigbe, *All Nigeria Judges Conference Papers* (N.P., 1982) 6.
[17] O Okpara (ed) *Human Rights Law and Practice* (Chenglo Ltd, 2005) 3.

norms, a required or agreed standard of behaviour.[18] Norm is also defined as an expected or normal pattern or standard to judge other things by: A person ought to conform to the norms of behaviour.[19]

2.2 Origin of Human Rights

The 17th and 18th centuries witnessed the coming into being of natural law documents occasioned by the shift in emphasis from the duties and obligations of the natural law to the rights conferred on man by the law. The attention moved from social responsibility to the individual's needs and participation[20]. The 17th and 18th-century document drew their inspiration from very earlier documents like the Magna Carta of England (1215). The barons led a rebellion against King John. The noblemen felt oppressed by the practices of the King dealing with their fellow and ultimately compelled him to sign the Magna Carta into law at Runnymede[21]. The other documents that followed were the English Petition of Right (1679), the American Declaration of Independence (1776), the United States Constitution (1787), the American Bill of Rights (1791), and the French Declaration of the Rights of Man and Colizen (1789).

It is noteworthy that the entire document that came after the Magna Carta followed the principle that natural law requires that the state be subjected to the rule of law. The period after the revolution also witnessed a lot of abuse and terror that thousands unjustly lost their lives or suffered greatly in the name of liberty. Furthermore, most, if not all the documents, when translated into policy excluded women, people of colour and members of certain social, religious, economic and political groups. The major turning point in the internationalizing of human rights was the emergence of the United Nations Charter. Events leading up to the Charter started at Dumbarton Oaks Washington DC in 1944.

The representatives of four nations' US Oaks proposals were published in 1944 and contained only a general reference to human rights.[22] This meeting was held again as a conference in San Francisco, California by countries like USSR, USA and China in 1945 to strengthen the Dumbarton Oaks proposals. The Charter was signed in June 1945 and entered into force on 24th October 1945. In its preamble, the Charter declared the promotion of human rights as one of its purpose. The contemporary idea of human rights emerged stronger after World War II; the extermination by Nazi Germany of over six million Jews, homosexuals and persons with disabilities horrified the world. The trials of Nazi war criminals at Nuremberg took place pursuant to the Charter of the International Military tribunal annexed to the agreement for the prosecution and punishment of the major war criminals of the Europeans which was signed in August 1945[23].

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[18] A Hornby, *Oxford Advanced Learner's Dictionary of Current* (8th edn, Oxford University Press, 2010) 995.
[19] E Kitkpatrick, *Chambers Universal Learners Dictionary* (Spectrum Books Ltd 2007) 484.
[20]M Rayners, *History of Universal Human Right* (Butterworth Press, 2009) 56.
[21]A Obe, 'Human Rights Law and State Security: The Nigeria Experience' In *Journal of Human Rights Law and Practice* (1) (150) (1995).
[22] M Goff, 'Universal Rights' Online Database <http:/www.universalrightnet/minan/list17> accessed on 18th July 2021.
[23]R Lilch, *International Women Right: Problems of Law and Policy* (Little Bround & Co., 1976) 727.

Washington DC in 1944. The representatives of four nations, USSR, USA, UK and China reached a number of agreements. The meeting was held as a conference in San Francisco California by countries like USSR, USA, China in 1945 to strengthen the Dumbarton Oaks proposals. The Charter was signed June 1945 and entered into force on 24th October, 1945. The United Nations Charter of 1945, in its preamble declared the promotion of human rights as one of its purpose.

The General Assembly of the United Nation at Midnight on December 10, 1948, adopted the Universal Declaration of Human Rights. The Declaration contains an impressive list of civil, political, economic, social and cultural rights which now serve as models for international, regional, national institutions and organization. Following the Universal Declaration of Human Rights (UDHR),[24] the Commission of Human Rights of the United Nations drafted two treaties; the International Covenant on Civil and Political Right (ICCPR) and its optional protocol and the International Covenant on Economic Social and Cultural Rights (ICESR)[25] or (ECOSOC) Rights.

The United Nation adopted both Covenants[26]; the two covenants and the Universal Declaration are commonly referred to as the international bill of Rights. The ICCPR focuses on such speech, regional and voting. The ICESCR focuses on such issues as food, education, health and shelter. Both covenants also provided for the extension of rights to all persons and prohibit discrimination of any sort. Presently the UDHR, ICCPR and the ICESCR together are still known and referred to as the International Bill of Human Rights; The United Nations has adopted more other conventions and treaties for the elaboration on human rights. They include the Convention on the Elimination of all forms of Discrimination Against Women,[27] Convention on the Right of the Child,[28] the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Political Rights of Women, the Convention against Torture and other Cruel, in Human or Degrading Treatment or Punishment,[29] the covenant relating to the station of refuges,[30] and the International Convention on the Elimination of all form of Racial Discrimination[31]

3.0 Classifications and Legal Framework of International Human Rights

3.1 Classification of Human rights into Generations

The generations of rights were previously fashioned according to perceived priorities of rights and power, being played out as to its origin in whether it is western, Eastern, or others. It is however doubtful presently whether this categorization can still stand with the recent positions and understanding and nature of human rights. It is recently acceptable that all human rights are universal, interrelated, interconnected, indivisible and inter-dependent. It applies regardless of race, colour, sex, religion, etc.

[24] 1948.
[25] 1966.
[26] 1966.
[27] 1979.
[28] 1989.
[29] 1984.
[30] 1951.
[31] 1965.

3.1.1 The First Generation Rights

The first generation rights are the Civil and Political Rights. These rights are found in most constitutions as it is contained in the International Covenant on Civil and Political Rights.[32] It is believed to be western based and presumed to be of immediate application, absolute and justiciable. The first generation rights are basically rooted in natural law and have the identity of philosophers as natural rights. Protected in the Constitution of the Federal Republic of Nigeria contain the first generation of Rights. The provisions of Chapter IV of the several countries are modelled of Human Rights[33].

Articles 1-21 of the UDHR, The International Covenant on Civil and Political Rights (ICCPR) also set out the various rights, which it protects. The Rights in part III Articles 6-27 of The African charter on Human and people's Rights makes provision on civil and political rights that are similar to those in the ICCPR.

3.1.2 The Second Generation Rights

The second generation rights are the economic, social and cultural rights. Its origin is traced to the United Nation's Declaration of Human Rights but was given more vigour by the International Convention on Economic, Social and Cultural Rights[34].

These rights are contained in, for instance, chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) under the title Fundamental Objectives and Directive Principles of States Policy (in section 13-20). The second generation rights are egalitarian in nature and it consists of economic, social and cultural rights. They are predicated on the material wellbeing of the citizenry, with the state playing a pivotal role.

3.1.3 The Third Generation Rights

The third generation rights are an extension of the socio-economic and cultural rights. They, with their substantive provisions, relate to group solidarity, development, environmental and people's rights. It is intended that such rights may be realized through concerted efforts of all the action on the social scene, the individual, the state, public and private bodies and the International Community. These rights are buttressed by groups for collective rights to self-determination right to development, right to a healthy environment, right to natural resources, right to communication rights to participation in cultural heritage and rights to intergeneration, equity and sustain ability.

The aim is to establish ethical and legal norms which will protect people from the new wave of intimidation and their well-being from the state power as contained in international instruments. It is noteworthy that the third world countries place greater emphasis on the first generation of rights, giving rise to the neglect of the second and third generation of rights. It is submitted that any emphasis on any particular generation of rights shall cause undesirable infraction on the other regimes of human rights generally. They apply regardless of race, colour, sex, religion on and so on.

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[32] 1966.
[33] 1948.
[34] 1966.

3.2 Legal Framework of International Human Rights Instruments

Human Rights began to have international importance after the Second World War in 1945 following the holocaust and the slaughtering of six million Jews by Nazi Germany. Governments then committed themselves to establishing United Nations with the principal goal of conflicts prevention and resolution. It became a global call that international human rights norms should be positively protected and promoted and those governments that tried to make it a reality fought with all theirstrength. The United Nations passed so many human rights laws, now referred to as International laws however many of them are not enforced by states.

3.2.1 The United Nations Charter, 1945

This is the source of modern promotion and protection of human rights in the world. The purpose of United Nations (UN) as listed in Article 1 of the charter includes – To achieve international co-operation in solving internal problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights for fundamental freedom for all without distinction as to race, sex, language or religion[35] The most important provision of this Charter are those contained in Articles 55 and 56. Article 55 provides that the UN shall promote universal respect for observance of human rights and fundamental freedom as to race, sex, language or religion. Article 56 provides that all members pledge themselves in co-operation with the organization for the achievement of the purposes set forth in Article 55.

3.2.2 Universal Declaration on Human Rights (UDHR), 1948[36]

The UDHR is commonly referred to as the Magna Carter. That portrays that the way and manner in which each country treats its citizens no longer belonged to the exclusive jurisdiction of that country, but rather a matter of legitimate international concern.[37]

3.2.3 The International Convention on Economic, Social and Cultural Rights (ICESCR) or (ECOSOC Rights), 1966

This increased the list of Economic and social rights from six articles in the UDHR to ten more detailed articles. The provisions of ICESCR are contained in National constitutions as second generation rights why the categorization of right? The UDHR plus both covenants formed the International Bill of Rights.

3.2.4 International Covenant on Civil and Political Rights (ICEPR), 1966

The ICCPR include some civil and political rights not contained in the UDHR such as rights of detained persons, rights of the child and rights of minority[38] The provisions of the ICCPR are contained in the constitutions of most countries of the world as fundamental human rights otherwise called the first generation rights[39].

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[35] *United Nation's Charter*, 1943, Article 1(3), 10-14, 55, 56, 62(2), and 76.

[36] *Universal Declaration on Human Rights* (UDHR) 1948 was adopted on 10th Dec. 1948 by Resolution 217A (11) of the UN General Assembly.

[37] C Arinze-Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy* (Folmech Printing & Pub. Co. Ltd, 2008) 200.

[38] International Covenant on Civil and Peoples Right (ICCPR) 1966 Article 10, 11, 20, 24 and 27.

[39] *Constitution of Federal Republic of Nigeria* 1999 (as amended), Chapter 4

3.2.5 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

This Convention was adopted by UN in 1979 and entered into force in 1981. Under the Convention, member states take up different obligations towards the elimination of discrimination against women. However, after the ratification of this most important treaty, Nigeria has not yet domesticated. A cursory examination of other jurisdiction will soon reveal that Nigeria is abysmally below internationally best practices.

4.0 Comparative Analysis and Applicability of International Human Rights Norms in Foreign Jurisdiction

Several branches of international law contain norms that are relevant to nations. Many international human right Conventions to which nations are state parties, such as the International Convention on the Elimination of All forms of Discrimination; the Conventions Against Torture and other cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the child; and the International Convention on Civil and Political Rights stipulate that the obligations under these Conventions do not apply only to the territorial area of a specific state, but to all persons brought under the jurisdiction or effective control of the respective states.[40]

Human rights law is the branch of international law that affirms the universal rights and freedoms to which all human beings are entitled. Right holders are individuals or groups that have certain entitlements (e.g. life, health, education etc.) and protections (e.g. non-discrimination, right not to be subject to torture, etc.) for each right there is a corresponding duty to respect, protect and fulfil that right. The duty bearers are all states bound by human rights law. Human rights law is based upon customary international law and international treaties as well as soft-law instruments.[41]

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on 10th December 1948, contains a list of civil, cultural, economic, political and social rights. Although the Declaration is not a legally binding treaty, it may be argued that it contains an authoritative interpretation of article 55 and 56 of the United Nations Charter, which the treaty is binding on all UN member states.[42] Furthermore, at least some of its provisions have become customary international law. Human rights are also affirmed in international treaties, which are binding upon the states that ratified them: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Right (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). Furthermore, human rights are protected by regional treaties. African Charter on Human and Peoples Rights (ACHPR) 1981, solemn Declaration on Gender Equality in Africa (2004).

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[40] 'International Human Rights Law' *Online Database*<http://www.gsdrc.org/go/topic-guides/ilfhaArchived2013-07-18attheWaybackMachine> accessed 30th March, 2021.

[41] *Ibid.*

[42] W Dirie, 'Safeguarding Rights and Dignity' *Online Database*<www.forwarduk.org.uk.key .issues/fgm> accused on 10th September, 2021.

4.1 The Practice in some Foreign Jurisdictions

4.1.1 The Applicability of International Instruments in Canada

Canada is not explicit about the applicability of international human rights instruments domestically. The Canadian Human Rights Act does not refer to Canada's international obligations including the Convention on the Elimination of Racial Discrimination (CRED). Because Canada is a so-called "dualist" system, most human rights instruments would in theory have to be directly "incorporated" into Canadian law before it becomes applicable. There is however a good case that even short of incorporation, Canada's international obligations should have some value in Canadian courts. In the *Baker case*, for example, Justice L' Heureux – Dube argued (and this was supported by a majority of the court) that the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review.[43]

4.1.2 The Applicability of International Human Rights Law in United States of America

In the United States system, treaties-like statutes must meet the requirement of the Constitution, no treaty provision may have force of law if it conflicts with the Constitution *Reid v Covert.*[44] Thus, the United States is unable to accept a treaty obligation which limits constitutionally protected rights as in the case of Article 20 of the International Covenant on Civil and Political Rights which restricts the freedom of speech and association guaranteed under the first Amendment to the Constitution.[45]

In the United States system, a treaty may be "self-executing" in which case it may properly be invoked by private parties in litigation without any implementing legislation. Or it may be "non-self-executing" in which case its provisions cannot be directly enforced by the judiciary in the absence of implementing legislation. This distinction derives from the Supreme Court's interpretation of Article VI cl. 2 of the Constitution. The distinction is one of domestic law only, in either case, the treaty remains binding on the United States as a matter of International Law. In the context of human rights and treaties which recognize or create individual rights, there are self-executing and non-self-executing treaties. Non-self-executing treaties, those which ascribe rights which under the constitution may be assigned by law, require legislative action to execute the contract (treaty) before it can become applicable to law.

In *Foster v Neilson*[46] U.S Supreme Court, Chief Justice Marshall opined:

> *Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not*

[43](1999) 2SCR 817 Para. 70.

[44](1957) 354 US 1; also see similar principle reiterated in *Prosecutor v. Abu Garda*, ICC PT. Ch. APCh. II, ICC-01/04-01/073436, 7 March, 2014, [798].

[45] 'International Human Rights Law in United States of America' *Online Database*<http//www.icrc.org/ihl-nat.nsf/162d151af444dcd4412s673c005081> accessed 4th September, 2021.

[46](1982) 27 US 253, 314-15, also see: *Leung Kwok Hung & Others v HKSAR* (2005) 8 HKCFAR 229, para. 34; and the case of *Ntaganda, ICC PT*. Ch. II, ICC-01/04-02/06-309, 9 June 2014, [45].

> *the judicial department, and the legislature must execute the contract before it can become a rule for the court.*

Treaties regarding human rights, which create a duty to refrain from acting in a particular manner or confer specific rights, are generally held to be self-executing, requiring no further legislative action.[47]

4.1.3 Applicability of International Human Rights Norms in India

In 2002, India amended its Constitution and made right to education a fundamental right for children between the ages of 6-14 years. It is indeed a bold positive step worthy of emulation by developing nations such as Nigeria and accords with the Bangalore principles of broad interpretations of issues bordering on human rights. Justice Bhgwati of the Indian Supreme Court posited that judicial interpretation of ECOSOC rights in various constitutional provisions such as to advance economic and social rights thus becomes enforceable by the judiciary. Everything depends on the creativity, valor and activism of the judge deciding the particular case.

Again, India had gone ahead by their judicial pronouncement and interpretation toward fundamental rights. In *Mineral Mills v Union of India*[48], Chandrachud J. stated that: "Our decision on the vexed question must depend on the postulates of our Constitution which aims at bringing about a synthesis between fundamental rights and the directive of state policy and give it a place of pride and nature of permanence." Together, not individual, they form the core of the Constitution.

If the state fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the law will be at the mercy of the freedom of many and then all freedom will varnish. In order therefore, to preserve their freedom the privileged few must part with a portion of it. The Lordships decision accords with what the Greek legislator who lived between 638-558 BC known as Solon in his writing on Justice and Right issue posited: "Justice could be attained in the society only when those who are not injured by injustice would be as much outraged as those who have been."[49]

4.2 Comparative Applicability in the Nigerian Legal System

The international Human rights law is indeed restrictive by the provisions of re-enacting (domesticating) a treaty before its applicability and enforceability within the Nigerian state. Section 12 (1) of the Constitution[50] provides that International treaty can only be applicable in Nigeria when enacted into law by an Act of the National Assembly. Section 12(1) states that: "No treaty between the federal 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." The implication is that many of the International Human Rights instruments cannot be enforceable in our courts.

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[47] F Martin, *International Human Rights and Humanitarian* (Cambridge University Press, 2006) 221.
[48] [1995] UILR 203; also see*: R v Secretary of State for the Home Department, ex parte Daly* [2001] 2 AC 532 at para. 27.
[49] J G Gardam, *Humanitarian Law: The Library of Essays in International Law* (Ashgate Pub. Ltd., 1991) 23.
[50] (n40) chapter 2.

The Convention on Elimination of All forms of Discrimination against Women (CEDAW) 1979 though ratified, it is still not yet domesticated and as such it is inapplicable and unenforceable in Nigeria. Therefore seeking redress under the instrument is difficult if not impossible.[51] It should also be noted that of all the International Human Rights instruments only the African Charter on Human and Peoples Right (ACHPR) has been domesticated in Nigeria.

4.2.1 Leverage on CEDAW by the Nigerian Judiciary

It is mind gratifying to observe that the recent international resurgent interest in feminism is gradually impacting positively on Nigerian legal system. Recently the Nigeria Court of Appeal in *Muojekwu v Muojekwu*[52] and *Muojekwu v Ejikeme*[53] struck down at Nnewi "Oil-Ekpe" custom of inheritance of Igbo speaking are of Anambra State) which permits the brother of the deceased to inherit his property, to the exclusion of his female child of full blood, as discriminatory and therefore inconsistent with the doctrine of equity. Niki Tobi JCA, who delivered the lead judgment in the case *of Muojekwu v. Ejikeme*[54] relied heavily on CEDAW (Convention on Elimination of all Discriminatory Practices against women), an International instrument, as touchstone for the invalidation of the custom in question.

Furthermore, it should be further stressed here that despite the ratification by Nigeria of the above international instrument she has failed to domesticate same till date. The judges' judicial radicalism in the face of non-domestication of CEDAW in Nigeria is highly commendable and laudable. More of such judicial activism is solicited. It would be recall that CEDAW, aside from denouncing discrimination on the basis of gender as an abridgment of a person's right, goes on in Article 5, 6 and 12 to confront the socio-economic, cultural, political and religious causes of women's inequality. It equally demands that all cultural and customary norms which are inimical to full participation of women in political, social and economic life as equal members of the populace must be eliminated and redressed.

It must be stressed however, that while this denial of women's right to inheritance is prevalent in these parts of Nigeria afore-listed, the Yoruba and Hausa customs are however more gender friendly, as daughters and wives are acceded some measure of rights. However, their rights in such places are still not at par with those of their male counterparts. Therefore, in Nigerian society, those institutions of authority have the necessity and urgency to think of the poor in terms of acquisition of education, economic and social rights. The way forward to these malaises is for chapter II of the constitution[55] to be upgraded to fundamental right as a guide to responsive and responsible government and sets priorities. The priorities must be aimed at equity, ideals of freedom, equality and justice of all before the law without discrimination of any group or gender, women will have equal opportunity of security, adequate means of livelihood, as well as adequate opportunity to secure suitable employment. The resultant effect of this will check on further infringements on the citizens' rights with the standard set in the case of *Okafor & Anor. v A. I. G. Police Zone II Onikan & Ors* that: "In law, any action founded on impunity and thus in

[51] Arinze-umobi (n38) 36.
[52] [1997] 7 NWLR (Pt. 512) 283.
[53] (2000) 5 NWLR (Pt. 657) 402 at 418.
[54] *Supra*.
[55] (n40).

disregard of due process of law must be cut down to size and deprecated by the Court in matters before it."[56]

5.0 Conclusion and Recommendations

The human rights instruments in Nigeria are apparently deficient considering the provision in the Constitution. The diverse limitation already highlighted and the deplorable state of economic, social and cultural rights in Nigeria has made the enjoyment of the rights a mirage and a tall dream. The state of the rights have also been on steady and gradual decline, such decline no doubt is aided by the argument (beliefs) of the court albeit, by the status quo jurists that the right are non-justiciable within the constitutional framework.

The situation in Nigeria seems as if the state cannot afford to secure the enjoyment of the rights to the Nigerian populace. The writer disagrees with the view for same being very parochial and uniformed and not tenable in the legal system. It is acknowledged that record of many nations especially the commonwealth countries in the field of human rights had been poor. It is urged that the importance of converting the noble idea practical reality in the day-to-day work of lawyers and courts throughout the common wealth should be maintained. It is essential to the effectiveness of the legal system that judges and lawyers should be well qualified, courageous and independent. The court must give a liberal and broad interpretation to human rights provisions as many nations of the world have now accepted human rights instruments.

Yet for the advance of the ideals behind the Bangalore principle, it is not enough that the highest courts of Australia and other Commonwealth countries should sanction the use of international human rights norms in the work of the courts. Nor is it enough that judicial leaders should evince an internationalist attitude in keeping with the beginning of new millennium. It is essential that judicial office at every level of the hierarchy, and lawyers of every rank should familiarize themselves with the advancing international jurisprudence of human rights, that the source material for that jurisprudence should be spread through crucial decisions, professional activity and legal training; and that a culture of respect for human rights should be developed amongst all lawyers and citizens of the common wealth nations.This is very cardinal with regards to development of nations particularly the right to education.

Education is the greatest empowerment any country is recommended to give its citizen. This is because, when women are educationally empowered, they will be armed to face economic challenges and develop their nation. By making education available to all and sundry, Millennium Development Goal (MDG) No. 3 would be achieved and rights of women would be better protected. The United Nations in other to ensure global development and reduction in poverty came up in the year 2000 with the Millennium Development Goals (MDGs) which is recommended on all state actors to leverage on.

[56]*Okafor & Anor. v A. I. G. Police Zone II Onikan & Ors* (2018) LPELR-46505 (CA) Per Ebiowei, J. C. A. (pp. 13 and 14, paras. D-A).