

Research Article

Jus Cogens, Social Contract and Human Rights in Nigeria: Evaluating the Enforcement of Fundamental Rights through Legislation and Regional Courts, Jurisprudence and Practice

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Abstract

In the Customary International Law Jurisprudence, Jus Cogens (Compelling Law) is a fundamental principle of international law that refers to a set of peremptory norms that are universally applied to all states and international organizations. It cannot be derogated from or modified by treaty or agreement. It is inalienable in nature and cannot be waived or surrendered. There are four primary sources of Jus Cogens; Vienna Convention on the Law of Treaties (1969), Article 53; International Court of Justice (ICJ), United Nations General Assembly Resolution and Customary International Law. The Chapter 4 of the Constitution of Federal Republic of Nigeria (CFRN) 1999, as amended dedicated to the Fundamental Rights from section 33 to section 46; this section was captured from the Universal Declaration of Human Rights (UNHR) 1948 in its (General Assembly Resolution 217A). By definition, "every individual holding Nigeria Citizenship and recognized in the Nigerian Constitution is inherently entitled to those rights. To an extent, Jus Cogens Customary International Law can be Likened to *Fawehemi v Abacha* (2000) and some other case laws like *Ogwuche v Federal Republic of Nigeria*, *Usman v Cop* (2020), were the Fundamental Rights of the citizens were enforced by the court. In our essay, we recognized and define social contract as an agreement between two or more parties creating obligations that are enforceable or otherwise recognize by the law. We also put the key elements of social contract into four categories: (1) Consent: citizens agree to be governed and abide by the rules. (2) Sovereignty: the state has authority to make and enforce laws. (3) Protection: the state provides security, justice and protection of rights. (4) Obligation: citizens have duties and responsibilities to the state and each other.

Keywords: Jus Cogens, Social Contract and Human Rights.

1. Introduction

The principle of jus cogens represents the highest echelon of international legal norms, serving as the inviolable foundation upon which the international legal order is built. These norms, while primarily international in nature, have profound implications for domestic legal frameworks, particularly in countries like Nigeria that are signatories to various human rights treaties and conventions. Jus cogens norms are not subject to derogation or modification, meaning that no state, under any circumstance, can deviate from or violate them, even through treaties, customary law, or legislation. In the Nigerian context, the relevance of jus cogens is apparent in several ways. The Nigerian Constitution of 1999 (as amended) enshrines fundamental human rights in Chapter IV, which reflects core human rights principles aligned with jus cogens norms. Provisions such as right to dignity of the human person, and right to personal liberty are illustrative of Nigeria's commitment to these peremptory norms. These sections resonate with jus cogens principles like the prohibition against torture, slavery, and arbitrary deprivation of life, ensuring that the Nigerian state remains bound to respect and enforce these rights.

Beyond the domestic framework, Nigeria is also a signatory to international treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter

on Human and Peoples' Rights (ACHPR). These treaties embody jus cogens norms and obligate Nigeria to uphold them through its domestic legal mechanisms. For instance, the African Charter has been domesticated into Nigerian law through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, making it part of Nigeria's legal corpus and reinforcing jus cogens norms. Despite these constitutional and legislative guarantees, the enforcement of jus cogens norms in Nigeria faces significant challenges. The tension between state security and individual rights, particularly during times of internal conflict or emergency, has often led to situations where these fundamental rights are violated. Examples include cases of extrajudicial killings, arbitrary detentions, and torture, often by security agencies. Such actions run contrary to the jus cogens principles that Nigeria is obligated to uphold. The Nigerian judiciary plays a crucial role in interpreting and enforcing these norms. Through landmark cases like *Fawehinmi v Abacha*, the judiciary has demonstrated its willingness to uphold human rights, even in the face of executive rascality.

Furthermore, the 1999 Constitution outlines the conditions for the domestication of international treaties, underscoring the need for Nigeria to internalize international legal obligations. While this provision of the constitution enables Nigeria to domesticate treaties containing jus cogens norms, the enforcement and actual implementation of these principles are often obstructed by political and institutional challenges such as lack of political will, bureaucratic inefficiency, corruption and weak judiciary. Ultimately, jus cogens norms play a critical role in shaping Nigeria's human rights landscape, both in terms of constitutional guarantees and international obligations. The challenge lies not in recognizing these norms but in ensuring their effective enforcement in a manner consistent with Nigeria's international and domestic obligations.

Social contract theory, as articulated by philosophers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, suggests that individuals agree to create a society and a governing body in order to protect their rights and ensure their well-being. In return, the government is responsible for protecting these rights. In Nigeria, the principle of the social contract is echoed in the Constitution, where the state is tasked with promoting and protecting the fundamental rights of its citizens, particularly under Chapter IV of the 1999 Constitution, which outlines fundamental human rights.

Human rights enforcement in Nigeria remains a complex and evolving area. While Nigeria is a signatory to international conventions and treaties that recognize jus cogens norms, the enforcement of these principles domestically has often been met with challenges. Legislative frameworks exist, such as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Anti Torture Act, Child Rights Act and so on, but their implementation is often hindered by political, social, and legal obstacles.

In Nigeria, case law has been instrumental in shaping human rights enforcement by providing judicial interpretations of constitutional provisions, international treaties, and domestic law. Courts have consistently faced the challenge of balancing state security and individual rights, especially in contexts where government actions have been perceived as violating fundamental freedoms. This tension has often spurred judicial activism, where courts actively defend human rights against governmental overreach. One of the landmark cases in this regard is *Fawehinmi v Abacha*. In this case, Gani Fawehinmi, a prominent human rights lawyer, challenged the repressive actions of the military regime under General Sani Abacha. Fawehinmi sought to enforce provisions of the African Charter on Human and Peoples' Rights, which Nigeria had ratified and domesticated. The Nigerian Supreme Court held that the African Charter, being part of domestic law, must be upheld in Nigeria. This case emphasized that international human rights treaties, once domesticated, could be used to challenge state violations of human rights, reinforcing the judiciary's role in protecting individual liberties. Similarly, the case of *Ubani v Director of State Security Services* highlights the judiciary's role in safeguarding individual freedoms. In this case, some political activists were arbitrarily detained by the State Security Service (SSS), and the applicants sought enforcement of their fundamental

rights to liberty and freedom from unlawful detention, as provided under Sections 35 and 36 of the Nigerian Constitution. The Court of Appeal ruled in favor of the applicants, affirming that arbitrary detention without trial violated their fundamental rights. This ruling underscored the importance of constitutional protections, even in situations where national security is cited as justification for such detentions.

The balance between state actions and individual rights was also addressed in *Ogugu v. The State*, a case that involved a challenge to the death penalty. The appellant argued that the death sentence violated his right to life under Section 33 of the Nigerian Constitution and Article 4 of the African Charter on Human and Peoples' Rights. Although the Supreme Court upheld the death penalty, it affirmed the crucial role of Nigeria's Constitution and international obligations in protecting human rights. This case reinforced the delicate balance between constitutional rights and international human rights norms within the Nigerian legal system.

In another notable case, *Okojie v. Attorney-General of Lagos State*, The Lagos State Government, in its efforts to standardize education, passed laws that effectively took over the control of mission and private schools, including those run by religious bodies such as the Roman Catholic Mission. Archbishop Anthony Olubunmi Okojie, acting on behalf of the Roman Catholic Mission, challenged this government action, claiming it violated the rights of the mission to establish and administer educational institutions in accordance with its religious beliefs. The Supreme Court ruled in favor of Archbishop Okojie and the Roman Catholic Mission, declaring that the Lagos State Government's takeover of mission schools was unconstitutional. The court held that the government had violated the mission's right to religious freedom, which includes the right to establish and manage educational institutions.

The case of *Adamu v. Attorney-General of Borno State* also reaffirmed the judiciary's role in upholding fundamental rights. In this case, Nigerian Court of Appeal sitting in Abuja, ruled in favor of plaintiffs from Gwoza Local Government Area, Borno State. The plaintiffs argued that Christian parents in Gwoza were required to fund their children's Christian education, while Islamic education was state-funded, which constituted unequal treatment and a violation of fundamental human rights. The court declared this practice unconstitutional, affirming that fundamental rights must be upheld even in the context of state policy objectives.

The case of *Uzoukwu v. Ezeonu II*, is a Nigerian Court of Appeal case where the court, sitting on July 22, 1991, addressed issues related to the enforcement of fundamental human rights. The appellants sought reliefs for alleged violations of their rights under sections 31 and 39 of the 1979 Nigerian Constitution. They claimed that their fundamental rights, including protection from discrimination and human indignity, were being violated due to their social status and circumstances of birth. The trial court had previously granted them leave to file a motion for these rights' enforcement. The Court of Appeal upheld the enforcement of these fundamental rights, emphasizing the protection against discrimination and indignity.

2. Jus Cogens and Human Rights

Definition and Principles of Jus Cogens Norms and Relationship with Human Rights

The section 12 of the Nigeria Constitution (1999) as amended, incorporated jus cogens norms into the Nigerian law. It states that:

No treaty between the federation of Nigeria 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 national assembly can make laws for the federation or any other part there - of with respect with matters not included in the exclusive legislative list for the purpose of implementing a treaty.

In considering the above provisions of the constitution, jus cogens can be considered as a treaty under the international law and can be treated as an agreement between the federation and any other country which is:

Ratified by the national assembly or

Has been entered into by the president in pursuance with the provisions of the constitution or of an act of the national assembly.

However, without prejudice to the foregoing, a treaty shall not have the force of the law except to which any such treaty has been enacted into law by the national assembly. However, section 12 does not expressly mention jus cogens but the supreme court of Nigeria has held that jus cogens laws is part of Nigerian law even if they are not expressly mentioned in the Nigerian constitution. In the case of *Abacha v Fawehinmi (2000)* the Supreme Court stated that jus cogens norms are universal and peremptory principles of international laws that are automatically incorporated into the Nigerian municipal laws.

In practice, Nigerian courts have applied jus cogens norms in various cases including those related to human rights, torture and international crimes.

Having critically analyze the provision of the Nigeria Constitution 1999 as amended expressly stating section 12, it is important to define jus cogens and its principles.

According to Wigwe C. C. in his book title: (Jurisprudence and Legal Theory) stated that jus cogens norms means a body of the principles of International Law which binds all states and does not allow any exemptions which is basically compilation of norms that lay down the international obligation which are essentially for the protection of the fundamental interest of the International community and violation of this norms is hereby recognize as a crime against the community as a whole.

Wigwe C. C. further opine in his book title: (Jurisprudence and Legal Theory) that a treaty based definition of the term jus cogens can be found in the Vinne Convention on the law of treaties were the term is defined as follows:

For the purpose of the present convention, a peremptory norms of general international law (that is to say "a jus cogens norm") is a norm acceptable and recognized by the international community of states as a whole and as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same characteristics.

The Relationship between Jus Cogens and Human Rights

Jus cogens as a positive International Law gives judicial effect to the natural laws prohibition of the conduct violation of aspects of the terms of transnational common good that reflects absolute human rights.

The influential reinstatement on foreign relations of the united states (Restatement) defines jus cogens to include at a minimum the prohibitions against genocide; slavery or slave trade; murder or disappearance of individuals; torture or other cruel inhuman or degrading treatment or punishment; prolonged arbitrarily.

Generally, jus cogens as part of the international Laws prohibits slavery, piracy and acts of aggression or illegal use of force and some certain Human Rights Provisions like those prohibiting racial discrimination are also under jus cogens.

The relationship between jus cogens and human rights can be summarized as follows:

Provides the foundational framework for Human Rights

Represents the fundamental principles of Human dignity and well - being

Universal and non-derogable

Peremptory in nature; taking precedence over the international Law and domestic Law.

The human rights is built upon the foundation of jus cogens norms and have a detailed and specific protections for individuals including the mechanisms for enforcement and implementations of the jus cogens Laws.

The jus cogens norms are the connections of Human Rights Law as both are universal non-derogable and peremptory.

In its holistic form, human rights law elaborate and expands on Jus cogens norms because together, both jus cogens and human rights provides a comprehensive frame wok for

protecting human dignity and wellbeing.

In summary, jus cogens and human rights are essential for the overall development of the international society in line for the effective monitoring of human rights in our various international, regional and state communities.

3. Social Contract and Human Rights

Overview of Social Contract Theory

A contract is defined as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable in law. The social contract theory is a political philosophy that tends to concern itself with the legitimacy of the authority of the state over the citizens or individuals who call the State their home. This explains the origin and legitimacy of government and the relationship between citizens and the state. A social contract is not a physical contract but an agreement between individuals to live peacefully, respect one another's rights and obey the laws of the country where they find themselves. It posits that individuals voluntarily surrender some of their natural rights and freedoms to a central authority in exchange for the protection of their remaining rights. The key elements of the social contract are as follows:

Consent: Citizens agree to be governed and abide by the rules.

Sovereignty: The state has authority to make and enforce laws.

Protection: The state provides security, justice, and protection of rights.

Obligations: Citizens have duties and responsibilities to the state with each other. The social contract theory is rooted in the works of philosophers like Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. These philosophers had different theories/thoughts of the social contract theory but they all agreed that the social contract theory entails people surrendering their respective liberties and rights in exchange for protection of lives, property and liberties by a sovereign, to whom all these collective freedoms and rights were surrendered.

Thomas Hobbes in his work emphasized the need for a strong central authority to maintain order.^{3°} He believed that the human nature is necessarily and exclusively self-interested hence all men pursue only what they perceive to be in their own individually considered best interests. Everything man does is motivated solely by the desire to better his own situation, and satisfy as many of his own, individually considered desires as possible. By this man is mechanistically drawn to that which he desires and repelled by that to which he is averse. In addition to being exclusively self-interested, Hobbes also argues that human beings are reasonable as they possess the rational capacity to pursue their desires as efficiently and maximally as possible. To Hobbes, the justification for political obligation is that men are naturally self-interested, yet they are rational hence they will choose to submit to the authority of a Sovereign in order to be able to live in a civil society, which is conducive to their own interests.

John Locke in his works focused on individual rights, consent, and the right to revolt if the government fails to protect those rights. He refuted the argument that political authority was derived from religious authority and the concept of the Divine Right of Kings, which was a very dominant theory in seventeenth-century England and portrayed his view of the aims and justification for civil government. He believed that individuals agreed to form the civil society (and thereby to leave the state of nature) in order to institute an impartial power capable of arbitrating disputes and redressing injuries. Accordingly, Locke was of the view that the obligation to obey civil government under the social contract was conditional upon the protection of the natural rights of each person, including the right to private property. Thus, sovereigns who violated these terms could be justifiably overthrown. Locke thus stated one of the fundamental principles of political liberalism and democracy to the effect that there can be no subjection to power without consent—though once political society has been founded, citizens are obligated to accept the decisions of a majority of their number. Such decisions are

made on behalf of the majority by the legislature, though the ultimate power of choosing the legislature rests with the people.

Jean-Jacques Rousseau argued that the social contract is a collective agreement among citizens to form a general will, which represents the common good. Civil society, according to Rousseau, came into being to serve two purposes which are to provide peace for everyone and to ensure the right to property for anyone lucky enough to have possessions. It was thus of some advantage to everyone, but mostly to the advantage of the rich, since it transformed their *de facto* ownership into rightful ownership and kept the poor dispossessed. The above notwithstanding Rousseau also believed in the possibility of a genuine social contract, one in which people would receive in exchange for their independence a better kind of freedom which is to be found in obedience to what Rousseau called common good or the common interest. To Rousseau the state is a moral person whose life is the union of its members, whose laws are acts of the general will, and whose end is the liberty and equality of its citizens. It follows that when any government usurps the power of the people, the social contract is broken; and not only are the citizens no longer compelled to obey, but they also have an obligation to rebel. The social contract theory has shaped modern initial philosophy, influencing ideas about government, democracy, and individual rights. It remains a fundamental concept in understanding the relationship between citizens and the state and it forms the basis of modern democratic governance, where the legitimacy of government authority is derived from its responsibility to protect the rights of its citizens. It focuses on the reciprocal obligations of the state to protect human rights and the citizens to uphold their responsibilities. This section will explore how the social contract concept can be utilized to strengthen human rights protection in Nigeria.

Social Contract Theory and its Application in Nigeria

In Nigeria, the social contract theory is embodied in the relationship between the government and the citizens as outlined in the 1999 Constitution of the Federal Republic of Nigeria (as amended). The preamble to the 1999 Constitution implies that Nigerians have willingly and collectively surrendered their respective freedoms and liberties to the government of Nigeria, in return for the protection of their lives, property and the provision of guarantees to enjoy certain natural rights like the right to life, right to freedom of expression, right to freedom of movement among others. This presupposes, therefore, that the 1999 Constitution subsists as the legally binding contract agreement between the Nigerian people and the Nigerian government. In Chapter II of the Constitution of the Federal Republic of Nigeria the Fundamental Objectives and Directive Principles of State Policy were clearly stated. By section 13 thereof, it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.

The need foster national prosperity by establishing a dynamic and self-sufficient economy in a manner that ensures the welfare, liberty and contentment of all was encapsulated in section 16 of the Constitution while the principles of freedom, liberty and justice were emphasized in section 17 thereof. The lofty and promising provisions of Chapter II of the constitution are, unfortunately, held to be non-justiciable as by virtue of section 6 (6)(c) which provides that the powers vested in the Judiciary shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

The Constitution guarantees fundamental rights for citizens such as the right to life, dignity of the human person, personal liberty, fair hearing, freedom of expression, and freedom from discrimination amongst others. The government is expected to protect these rights and provide security, justice, and welfare for all citizens. However, the frequent breaches of this social contract, exemplified by human rights violations and inadequate law enforcement, have

led to widespread social unrest and calls for reform.

Implication of the Social Contract Theory on Human Rights Enforcement in Nigeria

As a member of the international community Nigeria is bound by the jus cogens norms, which include fundamental human rights. Nigeria has ratified several international human rights treaties, but enforcement remains a challenge. These include:

International Covenant on Civil and Political Rights (ICCPR)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

African Charter on Human and Peoples' Rights (Ratification and Enforcement Act, 1983)

These instruments impose obligations on Nigeria to respect, protect, and fulfil human rights in accordance with international standards. In addition to the above, Nigeria has made significant progress in human rights legislation and case law, but challenges persist.

Human Rights Enforcement in Nigeria

Overview of human rights legislation

Case law analysis (2-3 notable or locus classicus: Supreme Court case)

The human rights in Nigeria are a complex and challenging issue. Here is an overview of key institutions of human rights enforcement in Nigeria.

National Human Rights Commission Act (NIRC) which was established in 1995 to promote and protect human rights.

Nigerian Police Force (NPF) responsible for maintaining law and order. The Police Force in Nigeria has often been criticized for human rights abuses.

Judicial Courts plays a pivotal and important role in enforcing human rights through Judicial reviews and decisions but however, the judicial decision has been compromised by the Executive arm of the government due to undue interference and influence of the wealthy and the power blocks.

Ministry of Justice: Various states ministry of justice in Nigeria with the Apex Federal Ministry of justice oversees human rights polices and implementations but there is a problem here because of the undue and incessant manners which some of the Attorney General enters into Nolle-Prosequi (Latin word for unwilling to prosecute) and thereby obligating justice.

The above statutory acts and laws have not captured the holistic human rights approach because of some certain challenges such as; extra judicial killings and police brutality, corruption and impunity, electoral violence and manipulation, Boko Haran insurgency and terrorism, child labour and human trafficking, gender-based violence and discrimination, environmental degradation and pollution, and so many others.

Overview of Human Rights Legislations

The Universal Declaration of Human Rights which was adopted by the UN General Assembly on 10 December 1948, was as a result of the experience of the second world war. Drafted the representatives with diverse legal and cultural background from all regions of the world; the declaration was proclaimed by the United Nations General Assembly in Paris (General Assembly resolution 217 A) as a common standard of achievement to all peoples and all Nations. The United Nations of human rights provides for (30) thirty declaration which in summary stated; that everyone has the right to life, liberty and security of persons, no one shall be held in slavery or servitude, slavery and slave trade shall be prohibited in all their forms, no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.

The chapter 4 of the Constitution of Federal Republic of Nigeria (CFRN), 1999 as amended, dedicated to the Fundamental Rights from section 33 to section 46, primarily, were adopted from the Universal Declaration of Human Rights (UNHR), 1948, in its (General Assembly resolution 217 A); by definition, every individual holding Nigeria's citizenship as recognized in the Nigerian constitutions; is inherently entitled to these fundamental rights.

Overall, the Nigerian Constitution contains fourteen (14) sections of the fundamental

human rights of a Nigerian, while the United Nations provides for thirty (30) Declarations of the Universal Human Rights.

In the Nigeria Constitution; the fundamental rights captured in chapter 4, with fourteen (14) sections includes:

- Right to life
- Rights to dignity of Human persons
- Right to personal liberty
- Right to fair hearing
- Right to freedom of thought
- Rights to private and family life
- Right to freedom of expression and the press
- Right to peaceful assembly and association
- Right to freedom of movement
- Right to freedom from discrimination
- Right to acquire and own immovable property
- Compulsory acquisition of property
- Special jurisdiction of High Court and legal aid
- Right to compensation for property taken

Looking at the chapter 4 of the Nigerian constitution, with its fourteen (14) sections capturing the fundamental right of a citizen: how effective can we say that the fundamental rights of Nigerian's has been effectively implemented? It is important, for every citizen of Nigeria to know our fundamental rights, as captured in the Constitution, and ensure that it is fully implemented. If we know that the Constitution is not fully implemented in our fundamental rights, it is important we seek the conventional means of addressing the issue through some organised civil organizations and court (Judicial) system to buttress our points.

Case Law Analysis (2-3 notable locus classicus: Supreme Court cases)

In the Nigerian legal palace, a lot has been mentioned on some infringements of the fundamental rights of some citizens by the government and some of the cases has demonstrated progress in human rights enforcements in Nigeria.

Here are some notable case laws that have contributed to human rights enforcement in Nigeria:

Case Law Analysis

Ogwuche v Federal Republic of Nigeria: the plaintiff Festus Ogwuiche, a lawyer, broadcaster and the head of the crown field solicitors, a firm of solicitors that engage in human rights advocacy, advancement of democracy and good governance received a letter dated May 30th, 2014 titled "Additional Regulation for live political Broadcast" from the Nigerian Government through the national Broadcasting Commission stating that because some political live programmes were airing content that are instigating violence, was provocative or highly divisive and threatened the peace and the unity of the country, the plaintiff and all the broadcasting houses must give 48 hours prior notification to the commission before airing any live political program. The commission further threatened withdrawal of broadcast license, outright closure of broadcast outfits, direct censorship of all broadcast equipment of any organization that does not comply with the directives of the said letter.

In response to actions taken by the commission to stop their radio, television and media Advocacy, the plaintiffs, asked the commission for any specific proof of abuse of transmission program which threatens the peace and unity of the country, the plaintiff received no response.

The plaintiffs initiated a case at the ECO WAS Community Court of Justice on March 18, 2015. In its preliminary objection, the government of Nigeria argued that the court did not have jurisdiction because the issues raised in the suit by the plaintiffs are non-justiciable under the Nigerian Constitution of 1999, the National Broadcasting commission was performing oversight as allowed the law, and the suit was frivolous because no human rights violations occurred. This

objection was subsequently struck out.

The ECO WAS Court led by Asante in a three man panel comprised of Asantë Atoki and Costa relying on Article 9(4) of the 2005 protocol on the court as amended; which states that “the court has jurisdiction to determine cases of violations of Human Rights that occur in any member state”

While Article 10(d) of the 2005 protocol on the court as amended states:

“Individual on application for relief for violations of their Human Rights; the submission of application for which shall:

Not be anonymous nor

Be made whilst therein matter has been instituted before another international court for adjudication”

Relaying on the above article the learned jurist held inter-alia:

“That a new regulation imposed by the Nigerian government against a human rights group was tantamount to censorship and violated their freedom of expression”.

The court examined international and regional human rights instruments to find that the government of Nigeria failed to establish proof that Ogwuche’s media programs constituted a sufficient threat to justify the restriction and therefore, ordered that the restriction as such, was an excessive burden. Therefore, the court ordered that the restriction be withdrawn.

Usman v COP (Commissioner of Police) in Nigeria

In 2020, the Federal High Court ruled in favour of a Nigerian citizen Usman in a fundamental rights enforcement suit against the commissioner of police.

Usman was arrested and detained without charge for participating in a peaceful protest; the police alleged that Usman’s actions constituted a breach of public peace.

The plaintiff Usman filed a suit, alleging violations of his fundamental rights to freedom of expression, assembly and movement.

The court held that:

The arrest and detention were unlawful, an Usman actions were constitutionally protected.

The police violated Usman’s rights –freedom expression, assembly and movement.

The court awarded damages in favour of Usman.

The two cases of Ogwuche v Federal Republic of Nigeria and Usman v COP sets a precedent emphasizing the importance of upholding human rights and the rule of law in Nigeria.

4. Intersection and Analysis

How Jus Cogens and Social Contract Impact Human Rights in Nigeria

Jus Cogens (Latin for Compelling Law) and social contract theory significantly influence human rights in Nigeria. Jus Cogens is fundamental Principles of International Law that cannot be derogated from. Its impact on Human Rights in Nigeria are:

Universal applicability; such as prohibition of torture and slavery which apply universally including Nigeria.

Non-derogability which made it impossible for Nigerian Government to justify violations of Jus Cogens norms, even in times of crisis.

Customary International Law; Jus Cogens norms are point of customary international law binding on Nigeria as an independent state.

There are several examples of Jus Cogens norms relevant to Nigeria and are enshrined in Chapter 4 of the Nigerian Constitution 1999, as amended. Section 33 to section 46, is entirely dedicated to the fundamental rights of the citizens with such international human rights laws like; prohibition of genocide, protection from torture, and cruel treatments and Rights to life and dignity.

Social Contract Theory

The social contract theory is a philosophical concept that individuals surrender some

rights to a governing authority in exchange for protection and security. The social impact on Human Rights in Nigeria are:

Legitimacy of Government: Nigerian government legitimacy stems from its ability to protect citizens rights and provide security.

Limitation Power: social contract theory implies limits on government power, preventing abuses and ensuring accountability.

Citizens Participation: encourages citizens engagement in governance and human rights promotion.

Some of the key contract theorist like Thomas Hobbes (*Leviathan*, 1651), John Locke (*Two treaties of Government*, 1689) and Jean Jacques ROUSSEAU (*the Social Contract*, 1762) has been elaborately discussed in our topic 3.

The fore-mentioned theorist was the key proponents of the social theory who shaped the powers and duties of government and her responsibilities to her citizens and that of the citizens duties to the government by giving up their inalienable rights to the Government in exchange to security and Protection from the government.

Impact of human Rights in Nigeria

The inter-sectional analysis of Jus Cogens and Social contract theory and its impact on Nigeria cannot be overemphasized because both theories are interdependent with the same commonalities:

Protection of Human Dignity: both concepts prioritize human well-being and dignity.

Limitations on Power by the government.

Finally, according to Asogwa F.C and Nnamchi C.O in their essay titled (*Social Contract, Nigerian State, Theory, Hobbes, Synthesis*):

The emergence of state in the society is premised on man's indispensable demand for survival, safety and co-existence and other fundamental principles aimed at addressing the basic necessities of life. This is as a bid to forestall the state of anarchism evident in the state of nature. This demand led to an agreement referred to as social contract by the people to freely submit their will and right to an authority with the onus to provide peace, security and order in return for obedience from them.

Asogwa and Nawachi are critically postulating in their essay, that for a just society to leave in peace and co-existence, that the social contract by the people to freely submit their will and right to the sovereign must be met for the authority to provide peace, security and order in return for obedience from them.

Asogwa and Nnamchi went further to say that; "This postulation therefore bestows on every society, the rules (Sovereign) and the ruled that legitimizes the existence of the sovereign". Based on the above theory, the Nigerian Government has seriously come under attack and criticisms by scholars and opinion molders on whether it has a social contract status or not.

5. Conclusion

Conclusively, it is evidently clear that Jus Cogens and Social theory are interrelated. interdependent and interconnected in its holistic approach to the customary international laws and treaties that govern member states.

The key institutions in Nigeria earlier mentioned in our essay are still facing some challenges to efficiently discharge their responsibilities because of unnecessary interference by the power block and corruptions. Therefore, there is the need to examine the success or failures of both norms in Nigeria and how efficient it has been so far, with a view of making suggestions that can make them to be a better tool in the Nigerian International Customary Law Jurisprudence. Base on the above, we have formulated the following recommendations

6. Recommendations

We recommend that the key institutions in Nigeria that are involved in the enforcement of the

fundamental rights should be strengthened and ensure independence.
Enhance public awareness and education
Address corruption and impunity
Improve funding and resource allocation
Promote international cooperation and collaboration

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