AFRICAN JURISPRUDENCE AND EMERGING ISSUES IN HUMAN RIGHTS: THE NIGERIAN EXPERIENCE.

JOSHUA IGONOH
Associate Professor and Deputy Dean,
Law College, Salem University,
Lokoja Kogi State

Abstract

The peculiar circumstance leading to the birth of universal human right informs the peculiarity of its underlining philosophical theory, away from core philosophy of conventional jurisprudence. For this reason, no matter its universal outlook, but it has been known from inception to concede to social values of various communities in certain circumstances to assist enforcement of its values. However, contemporary developments in human rights, emphasizing universality in all its ramifications, including issues that contradict core values of some societies, Africa in particular, tend to create a yawning gap between human right values and societal values of each people thus creating apathy to whatever human right portends in such society. Using African core values as benchmark, this paper, by doctrinal approach interrogated effect of gap between values of each society and values of human rights on effective enforcement of universal human rights. The paper found that contemporary evolution of human rights to issues that contradict core African values is counter-productive and thus recommended the need to be more proactive towards relativising enforcement of universal human right. This paper further recommended that if human right must make a more serious impact in Africa, and in the Nigerian society in particular, it is crucial that the movement must do so within the framework of African Jurisprudence, taking local peculiarities into consideration.

Key Words: Human Rights, African Jurisprudence, and Nigerian Perspective.

Introduction

Jurisprudence, being a theoretical understanding of the structure of laws, is understandably interconnected with virtually every aspect of law that make up the legal system of each country. Thus, today we have emerging jurisprudence in religious recognition; emerging jurisprudence in human dignity; emerging jurisprudence of Constitutional Law, Morals and Religion; and emerging issues in the jurisprudence of human rights with particular reference to the need for a more indigenous jurisprudence on issues like relativism, same same-sex marriage, abortion, homosexuality, gender-transplant and the like.[1] This is why the issue of universality of human rights in the face of sociological challenges arising from moral and religious diversities of the People of Africa, poses a lot of jurisprudential question, calling for inquest in this paper, aimed at relativising human rights laws, to meet African value-profile, especially in the light of some emerging issues, which is the focus of this paper.

Universal human rights no doubt have their own norms, distinct from what they are understood to be in domestic jurisprudence but Scholars have, over the years scarcely

- Dr. Joshua Igonoh is Associate Professor and Deputy Dean, Law College, Salem University, Lokoja Kogi State, Nigeria.

[1] J.W. Harris, *Legal Philosophies* (Butherworths and Company, 1980) 178.

appreciated this fact.[2] More recently, however, a new process has begun by which judges from various jurisdictions all over the world have begun to have recourse to, and to interpret fundamental rights and obligations against the background of international human rights norms[3]. This recent awareness, has spurred "Judges and lawyers everywhere to consider the relevance of such norms and their possible application in the resolution of practical questions, determined in their courts according to law, on daily basis".[4] This is why in the application of domestic laws, there is mutuality of interest, both of individuals and of government, to ensure respect for human rights norms, without necessarily scuttling application of domestic laws or values; a situation that this paper considers as one of the "emerging issues in jurisprudence" by which it is intended that a common ground between the jurisprudence of domestic laws and that of the universal human rights may be found in form of home-grown or domestic jurisprudence.[5] This is the perspective from which the concept of relativism is discussed in this paper as an emerging issue necessitated by the fact that moral and religious values of various jurisdictions bear a lot of influence on their jurisprudential perception on several subjects, thus warranting a call for selective relativism of human rights, to ensure greater effect.

No doubt, a lot of atrocity is committed against several vulnerable groups the world over, in the name of religious, social and cultural rites but whether domestic jurisprudence, rooted in the people's religious and moral values should step aside for the jurisprudence of universal human rights is such an emerging riddle that requires resolution. The urgency of the situation is further stressed by the fact that recent evolution of human rights jurisprudence now reckons the issue of homosexuality, same-sex marriage, women and children's rights, gender-equality, gender transplant, cloaning, bioethics, abortion, genetic engineering, blood donation, assisted reproduction or IVF and such recent scientific discoveries differently perceived in various jurisdictions, as human rights issues some of which issues are averse to African core values which is the bedrock of African Jurisprudence.

Thus, in this paper, the phrase "emerging issues in jurisprudence" is modeled to include the new outlook of international human rights in domestic jurisprudence and how certain issues touted as international human rights which are averse to domestic values could fuse into domestic jurisprudence without necessarily trampling underfoot, the true value of international human rights. It is a measure adopted to determine how foreign concept affects domestic jurisprudence with particular reference to contemporary issues and how a human rights-friendly domestic jurisprudence can be evolved; to balance competing domestic values with foreign values, represented in human rights ideals.

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[2] M. Thiankolu, 'The Constitutional Review Cases: Emerging issues in Kenyan Jurisprudence'. <*www.onlinelibrary.wiley.com/doi/10.../abstract*> accessed on 08-11-2015; J. Whelan, 'The Emerging Jurisprudence of Human Dignity'. <*www.onlinelibrary.wiley.com/doi/10.../abstract*> accessed on 20-12-2020. N. Steytler, 'CLC Profs address seminar on emerging issues on devolution and jurisprudence' <*www.dullahomarinstitute.org.za/.../clc-prof-...*>; accessed on 15-03-2021; M. Mhango, 'Religious Recognition: Emerging Jurisprudence in South Africa' <*www.academia.edu/6210345/religion_recognition_emerging_juriisprudence_in _south_africa*> accessed on 13-03-2021.

[3] M.T. Ladan, *Introduction to Jurisprudence* (Malthouse Press Limited, 2010)34

[4] *Ibid; at 34*

[5] *Ibid.*, at 35; C.C. Nweze, and D. Nwankwo, (eds) *Current Terms in the Human Rights Norms* (Fourth Dimension Publishers, 2003) at 2-73.

With the growing calls to import sociological ideals as the thrust of indigenous human rights jurisprudence is the need to determine how to draw a line between beneficial values and injurious ones for a better human rights regime in Africa, and in Nigeria in particular. Such new terrain, in jurisprudential evolution constitute the pivot of emerging issues in this paper because accessing such contemporary issues as this, will help blend the people's moral and religious core-values with the principles of sociological jurisprudence and other values, to evolve an indigenous philosophy that could ensure a more functional rule of law, and more particularly, the human rights regime in Africa.

Thus, the discussion on emerging issues in this paper shall be within the frame-work of sociological core values or principles, to determine basis for aversion of several African countries to issues like same-sex marriage and homosexuality or acceptance of the concept of woman-to-woman marriage and female circumcision as moral or religious values of the societies where they are practiced. It is for this reason, discussion in this paper opens with core values in African jurisprudence and then deals with the emerging issues on human rights and core values in Nigeria with a view to decode the slow pace of human rights development in Nigeria. These are issues considered as central to this paper, which will be discussed collectively to avoid verbosity only because of their connectivity to the issue of core values, considered as serious issues in contemporary evolution of jurisprudence in Nigeria.

Conceptual Clarification

From the tone of introduction in this paper, the core concepts include African Jurisprudence and Emerging issues in Human Rights. Incidentally, these same concepts constitute core of the discussion in this paper. Therefore, to avoid verbosity and to ensure brevity, clarification of concepts would rather be made as part of the main discussion in this paper.

African Jurisprudence

The word "African" that qualifies the concept of conventional jurisprudence here implies that certain features are peculiar to African jurisprudence.[6] Before looking at those features especially regarding traditional and religious values, it is imperative to mention that since jurisprudence is all about philosophical theories of law, the term, African jurisprudence[7] presupposes existence of African law variously described from one African jurisdiction to the other.[8] Thus, the expression, African jurisprudence implies general theories or philosophy behind application of customs that have assumed the force of law from long usage, which a particular community accepts as binding in their particular relationship.[9]

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[6] J. Murungi, 'The Question of an African Jurisprudence' <*http://www.blackwellreference.com/public/tocnode?idg978140514561-chunk-g978140514567145*> accessed on 13-03-2021.

[7] H. Trevor-Roper, *Rise of Christian Europe* (Thomas and Hudson, 1964) .9; A.H. Joote, *Africa and the American Flag* (ATC Publishers, 1954) 207.

8 E.S. Hartland, 'Primitive Law' <*books.google.com/.../primitive-law*>; W. Idowu, *African Philosophy of Law*<*philosophy.oauife.edu.ng/index.php/...*> accessed on 10-03-2021; J. Murungi, 'The Question of an African Jurisprudence: Some Hermeneutic Reflection'<*http://www.britishcourt.org/voices-magazine /how-traditional-justice-nigeria-changing*>accessed on 13-03-2021.

[9] W. Idowu, 'Law, Morality and the African Cultural Heritage: The Jurisprudential Significance of the Ogboni Institution' *Nordic Journal of African Studies* (2005) 14(2) 175-192; H.O. Oruka, 'Sagacy in African Philosophy' in S. Tsenacy, (ed) *African Philosophy: The Essential Reading* (Parafon House, 1991) 77.

As diverse as African communities are, so are their customs and customary laws, characteristically flexible enough to reflect acceptable usage of each community at each given time.[10] Although evolutionary changes in law in line with societal phenomenon is not peculiar to African indigenous laws (the customary law), its peculiar feature that is relevant to the present research is its adaptability to each community and its flexibility to reflect different dispensations.[11] What this sums up to is that relativism is an indispensable feature of African jurisprudence thus explaining aversion of the people to any law that is not only alien to their values but rigid and non-reflective of their current usage.

In this paper, traditional criticism of African law will only be pointed out without detail explanation for two reasons. Firstly, so many authors have invested a lot of scholarship to defend several of the criticisms some of which reflect African philosophy several centuries ago, as if the so-called advanced jurisprudence did not pass through such dark ages in their philosophical evolution process.[12] Secondly, it is evident that some of the issues raised against African laws are Western-based, with all the prejudices against everything African, forgetting that African laws, and African philosophy must of course, reflect the peculiarities of African setting.[13] In this paper therefore, some of these criticisms will only be mentioned and those with particular relevance to the issues of traditional and religious values in African jurisprudence will form the thrust of the discussion here.

Needless to say that the impression that African jurisprudence is otiose is borne out of misconceptions including the myth that Africans do not have defined history of organized administration;[14] that Africans had little or no system of laws before the arrival of the Europeans;[15] that African jurisprudence has no respect for individual rights;[16] that African jurisprudence is only positive without negative attributes for correcting breaches;[17] that the basis of obligation in African jurisprudence is belief in or fear of supernatural powers;[18] that there is no such thing as unity of African laws;[19] that political basis of African jurisprudence is non-democratic;[20] that African jurisprudence lacks literary philosophical significance for general jurisprudence;[21] and that it does not accord with modern jurisprudential thinking.[22] These run-

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[10] D. Idowu, *op.cit*., at 11.

[11] B. Russel, *Why I am not a Christian* (George Allen and Unwin, 1957) 22; Gluckman, M., 'Order and Rebellion in Tribal Africa' in Idowu (ed)*op.cit*., at 76.

[12] J.N. Samba, *Fundamental Concepts of Jurisprudence* (Bookmakers Publishing, 2007) 15.

[13] The Ghana Interpretation Act, 1960 defines it as 'rules of law which by custom are applicable to particular communities' not being rules enacted; Sierra Leonean Local Courts Act, 1963 defines it as any rule, by which rights and correlative duties are administered in a particular case; Eastern Region of Nigeria's Courts Law no21 of 1956 and the Evidence Act cap.112 LFN, 1990 define it as African Law, being customary law as 'a rule or body of rules which obtains the force of law arising from established usage applicable to particular course, dispute or question'.

[14] Murungi, *op.cit*., at 5.

[15] *Ibid; at 5*

[16] Samba, *op.cit*; *EshugbayiEleko v Officer Administering the Government of Nigeria* (1931)AC662 at 673.

[17] F.U. Okafor, 'Legal Positivism and The African Legal Tradition' *International Philosophy Quarterly*. [1984] vol.242.

[18] Idowu, W., *op.cit*. at 78.

[19] E.E. Moore 'Race and Racism in the Works of David Hume', *Journal on African Philosophy.* [2002]. Vol.1 at 1.

[20] Idowu, W., *op.cit., at 14*

[21] *Ibid*, at 56, 82.

[22] *Ibid*, at 82.

down of prejudice has no doubt relegated the growth of African jurisprudence over the years but recent thought on the need to connect the people's conception of law to their history and values, point to the need to reawake promotion of African jurisprudence for a more meaningful rule of law.[23]

An examination of traditional and religious values of various African societies and anthropological findings of various scholars would reveal that criticism of African jurisprudence arises from prejudice against the black world, resulting in scuttling the growth of African jurisprudence and consequent foisting of Eurocentric principles on Africans, including Nigerians, in the name of general jurisprudence.[24] The assertion that African jurisprudence lacks historical past or literary antecedents upon which any helpful jurisprudential developments could be built, can be easily debunked by the pride of place the history of Egyptian civilization occupies in anthropological findings, similar to anthropological findings on Ethiopia's early connection to outside world and literary representations in that behalf.[25] This is why Moore described Hume and Hegel's representations of African literary contribution to philosophical developments as racial and lacking in "empirical methodology to explain racial and cultural differences in human nature".[26]

In African traditional religion, one cannot talk of law without religion because "it is generally believed that Africans are incurably religious" and that "every sphere of African possibility is influenced by religion" including African idea of law".[27] This is why the Barotse of Zambia would rather define law in terms of general ideas about justice, equity and fairness, equality and truth represented in the "laws of human-kind or laws of God".[28] Amongst the Yorubas where traditional religion of the Ogboni fraternity oversees administrative and legal set up of the community, a form of democratic checks and balances by which a white traditional calabash was opened by the Ogboni religious body to herald end of a despotic monarchy was the vogue.[29] It is in such traditional values the Yorubas have adage such as *ikitioseniobenge*, meaning that only "the finger that offends is that which the king cuts" and *nitorri a beaseniafiiloruko* meaning that "we bear names for purpose of identification in case we commit offences".[30] The Igala people of Kogi State of Nigeria like their Yoruba *kins* hang up to traditional jurisprudential values that *magbomuenekateadalen,* meaning that both sides to a conflict must be heard because that is the standard of the gods.

It is for such inter-relationship between African traditional values and African jurisprudence that Idowu maintained that "in the traditional sense, law and morality are not especially differentiated as a means of social and communal control" because in "traditional culture, it is unlikely that what is forbidden by the moral life of the community will be found

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[23] Moore, *op.cit at 2;* A.J. Aguda, *Nigeria in Search of Social Justice Through the Law* (Nigerian Institute of Advanced Studies Publication) 1-5,7.
[24] Idowu, W., *op.cit*. at74.
[25] M. Gluckman, *The Ideas in Barotse Jurisprudence* (Yale University Press, 1965)20.
[26] Moore, *op.cit*; T. Elias, *The Nature of African Customary Law* (Sweet and Maxwell, 1956) 18
[27] Elias, *op.cit., at 7.*
[28] *Ibid; at 7*
[29] Idowu, *op.cit., at 14.*
[30] M.A. Dlamini, 'African Legal Philosophy: A Southern African View' *Journal for African Science*. [1997] Vol.22. The Jurisprudence of Igbo people of Nigeria toes the same line; I. Oraegbunam, 'The Principles and Practice of Justice in Traditional Igbo Jurisprudence' <*scholarship.lawcornell.edu*> accessed on 13-03-2021.

enjoined expressly in their laws" as "laws and morals bear the essential character of taboos and therefore have the same source; the gods of the land".[31] This is what Hartland describes as "primitive law" which Idowu attacks as misguided on the basis that justice must not be achieved by similar legal make up, insisting that the essence of law is for settlement of disputes and maintenance of law and order.[32] Explaining these functions between African and Western laws, Elias said:

> *The two functions of law in any human society are the preservations of personal freedom and the protection of private property. African law, just as much as for instance English law, does aim at achieving both of these desirable ends.*[33]

It is for this reason it is contended that European conception of law and justices have to be down played in scoring African jurisprudence because they have little or nothing in common with African culture and should therefore not be wholly used to explain the basis of a recognized code of African law, founded on the peculiarities of African principles of justice, especially in criminal matters, inheritance, paternity of children or mortgage.[34] However, this is not to say that African concept of law is totally unrelated to the European concept especially because of its long historical part in the evolution of African jurisprudence. Instead, the emphasis here is that the values on which European jurisprudence is built are not exactly the same as those of African societies so that an attempt to assess the rule of law, including the rule of human rights law of both societies on the same value indices, will be misplaced.

Indeed, a closer examination of the values of various African ethnic groups would show that the basis of African jurisprudence transcends religious values to several other traditional values that should contribute to a better justice system of all continents of the world. For instance, amongst the Barotse, the basis of obedience to law is what Gluckman calls "ideal of justice inherent of right and obligations in the right of the responsible man" involving application of laws of rights and obligations in the light of the reasonable man.[35] On punishment, African concept transcends the offender alone to his family and community as opposed to the individualistic system of the West[36] and that explains why human right law, with its individualistic disposition will not thrive in Africa, except with some adaptation African Penal system also emphasizes reconciliation in line with African value system which emphasizes sanction such as ostracization, public ridicule and withdrawal of economic cooperation with stern caution to the operators, to avoid punishing the innocent because of grave consequence of the gods to the entire society.[37] What this sums up to is that African jurisprudence, predicated on religious and traditional values tends towards mediating between communalism and the kind of individualism that is the bane of the western world, which is the pivot of universalism of human rights.

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[31] Idowu, *op.cit.*, *at 12.*
[32] Hartland, *op.cit.*, at 5.
[33] Elias, *op.cit.*, *at 12.*
[34] Ibid; at 12
[35] M. Gluckman, 'Order and Rebellion in Tribal Africa'. <*www.jstor.org/stable/2147208*>accessed on 10-03-2021.
[36] Idowu, *op.cit.*, *at 14*
[37] *Ibid; at 14*

Jurisprudence being a theoretical basis of each law therefore, it may be apt to say that African philosophical model appears to be the moderation required to curtail the unwieldy province of individualism that seeks to exclude the individual from the integrated whole of the larger society, a situation that is alien to the people of Nigeria and their values. On such note, it is obvious that Africa, the continent where Nigeria belongs, has an excellent jurisprudential thought with refined, home-grown, indigenous thoughts on law, principally built on its traditional and religious values that ought to be properly developed for a more effective justice system, in a world where the quest for rule of law is becoming elusive[38]

However, the bane of African jurisprudence and Nigeria in particular has remained the continued relegation of African for Western jurisprudence in circumstances that Taiwo describes as "the chilling presence of Hegel's ghost and the continued reverence of that ghost by the descendants of Hegel" who engage in subtle relegation of African jurisprudence.[39] In Nigeria, the relegation has been by the subjection of traditional, customary and religious values of the people to a forum of "validity test" amongst which is the "repugnancy test".[40] By this principle, several practices of various communities in Nigeria have been declared unenforceable on the claim that they are either contrary to natural justice, equity and good conscience or that they are contrary to public policy.[41] Although it is conceded that this principle is a precusor to modern outlook of several customs but its application has remained one of the most divisive in the Nigerian legal philosophy; especially because the basis for its application is subjective.[42]

In any case, it is hoped that once a clearer judicial guide is provided, relative to core African jurisprudence, a more inward looking or indigenous philosophy that takes cognizance of African core-values would have ensued in the spirit of African Charter. That was the policy that informed relativism of penal laws in Nigeria in the past, that aligned laws in Statute Books with values of each section of the people of Nigeria, thus ensuring a more workable rule of law which is the main drive of this research, in relation to all laws, particularly human rights laws applicable in Nigeria.

Emerging Issues in Human Rights and Nigeria's Experience

Values of each people are subsumed in their culture which consists of the ideals, values or rules for living, including the way of thinking, feeling, believing and everything that people have, think and do as members of a particular society.[43] Values are the beliefs, ideals and convictions that guide and direct behaviour, purpose and vision of members of each society.

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[38] D. Taiwo, 'Exercising Hegel's Ghost: Africa's Challenge to Philosophy' *African Studies Quarterly* [1998] 1,4<*www.clas.ugl.edu/africa/asq/legal.html*> accessed on 20-12-2020.

[39] *Ibid; at 14*

[40] C. Uweru, 'Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism'<*www.ajol.infojournal home*> accessed on 20-12-2020.

[41] *Edet v Essien* (1932) 11NLR 17; *Laoye v Oyetunde* (1944) A.C 170;*EshugbayiEleko v Officer Administering the Government of Nigeria* (1931) A.C 662 at 673.

[42] N. Okereaforezeke, 'Judging the Enforceability of Nigeria's Native Laws, Customs and Traditions in the Face of Official Controls', *Caroline Fourth Eastern Region Seminar in African Studies* (2001) 1-6 <*www.ccu.edu/african/senses/papers/okereaforezeke28marc1.htm*> accessed on 13-03-2021; R.N. Nwabueze, 'The Dynamics and Genius of Nigeria's Indigenous Legal Order', *Springs Indigenous Law Journal*, [2002] vol.1<*tspace.library.utoronto.ca/.../17103*> accessed on 13-03-2021.

[43] M. Ferraro, ' Culture: A way of life' <classes. Uleth.ca/200502/anth100y/p> accessed on 10-03-2021

They consist of sociological ideals, customs, beliefs and institutions of a society, by which members of a group or society are identified; and as indices for defining who they are, how they are and what they are.[44] Although Africa in general, and Nigeria in particular, is a heterogenous society, certain core values cut across ethnic, cultural, linguistic and even religious boundaries that may safely be referred to as core-values of Nigerians. Such areas constitute the unifying province that is the basis of oneness of Nigeria's Nationhood, despite diversity of ideologies of each ethnic group.

Such values include the need to show respect for elders; the requirement that already made children take care of their younger ones and their aged parents as a sign of responsibility; handshake as outward sign of acceptance of a person; the need to eat with the right hand;hissing as a mark of disrespect; the need to avoid crossing legs of an elderly person; the need to bow before an elderly person as a sign of respect; the need to show decorum as a mark of respect for the community and family where one comes from; sanctity of marriage, honesty, purity, hardwork, moral character, centralized interest of a larger family in how each person treats his wife and children; integrity and several of such rules of relationship, reflective of the central message of National Orientation Agency in Nigeria; which may be taken for granted on the basis of civility or human rights but revered in various communities in Nigeria.[45]

Although the value-system of a people or country is usually modeled by a few, and imitated by others until it attains larger acceptability but like customary law, such values with time adopt the status of a norm within the particular society as its identity, thus emphasizing their dynamism.[46] Such norms eventually assume the status of culture of the people, embracing every facet of life, including the language, dressing, food, religion, arts, craft and music of the people.[47] Thus, Nigerian core-values which constitute their culture, their drive, and propelling force is the factor that defines the beliefs, conviction, purpose, vision, direction, religion, behaviour and all that make the people who they are, as Nigerians.

From this insight, it is obvious that the people's core values or culture determine a great deal, the kind of laws and regulations that compel their obedience and compliance, most. This is where the issue of culture or core-values of a people point to the principles of sociological philosophy which insists on looking at the society as key to better understanding of the law because, law is not an absolute and static body of rules in itself but relative to time, place and society.[48] As a one-time Presidential Adviser on ethics and values in Nigeria said, every nation or entity has its own peculiar values, serving its identity, although values of each nation attract and assimilate one another thus emphasizing their dynamism.[49] This is the perspective from

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[44] T.C. Osanakpo, 'Imperatives of Core Values in the Nigerian Society' <*tcosnakoandco.com/imperative-of-core-values-in-the-nigrian-society/*> accessed on 13-03-2021.

[45] 'Seventeen African Cultural Values' <*migrationolgy.com/Africa-cultural-values-travel-africa-17/*> accessed on 20-12-2020.

[46] P. Okamayih, 'African Core Values and Identity on Precipe' <*nigerianobservernews.com/1709 213/features/features8.html#.vy4h7z*> accessed on 13-03-2021.

[47] *Ibid* at 5.

[48] M. Etudaiye, 'The Relevance of the Sociological School of Jurisprudence to Legal Studies in Nigeria' In *UNILORINReading in Jurisprudence and International Law*. <*unilorin.edu.ng /publications/edtudaiye/...*> accessed on 10-03-2021.

[49] S. Jibril, 'Application of Ethics and Moral Values in Nigeria' <*nannewsnigeria.com/2015-application-of-ethics-and-moral-values*> accessed on 10-03-2021; Okumayih, *op.cit*. Centrality of African Culture by African Charter

which emerging issues in jurisprudence in Nigeria and other African nations must be approached because no matter the good intentions of any law, if it seeks to promote values that are totally removed from the core-values of the society, such law may only be honoured in breach.

In recent times, Human Rights have been interpreted to extend to freedom of women to do anything they like with their bodies, including obscene dressing, abortion, same-sex marriage, homosexuality and practices that are averse to moral and religious values of the Nigerian people, which quest has drawn a lot of public reprehension against human rights regime in Nigeria.[50] Such issues that drive human rights farther away from the core values of the people only cause apathy against rule of human rights law because every law is supposed to be the reflection of core values of its environment.

As Tambuwal, a one-time speaker of the Nigerian lower House once put it, the difference between the perception of the Nigerian State and that of the society on what constitute the rule of law, or non-entrenchment of the legal order in the value system of the people, could endanger the rule of law.[51] While it is admitted that morality and religion do not hold exclusive influence on the people's disposition to law and the rule of law, it appears that in Nigeria's heterogeneous situation with diverse religious beliefs, and in the situation of interconnectivity of some religious beliefs and moral values of adherents, the reality of the rule of law in Nigeria will be driven farther away, into the abyss than it is now, if the moral and religious values of the people are discountenanced by following the notion of law of other jurisdictions, whose core values are alien to the Nigerian situation.

In Nigeria, the factors that affect the rule of law are varied, including the philosophy upon which the entire Nigerian legal system is based. This situation has been adversely affecting rule of law, including human rights laws in Nigeria. It is for this reason, this paper is pressing for total overhaul of the philosophy of Nigerian laws, including human rights law with a view to repositioning the entire legal system, within the framework of Nigerian core-values and some other emerging indices in that behalf.

It is important to note that every society has its own peculiar values arising from or modeled out of its own experience and going-through. In a socially and economically challenged Continent like Africa, and a country like Nigeria in particular, essence of every law should be determined, not by vain pleasure of individuals but utility-value of such right to the collective population. This is where the riddle of gender-transplant, homosexuality and same-

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on Human and People's Rights as condition for better compliance of each people to the rule of law marks a major difference between the Charter and the Bills of Rights of the United Nations.

[50] B. Crossette, 'Nigeria Attracts Criticisms for Anti-gay Laws' <*passblue.com/.../Nigeria-attracts-latest…*> accessed on 10-03-2021; M. Frosbel, 'Obama Fights Nigeria's Anti-Man-to-Man Lover Law' <*www.nairaland.com/.../obamafights...*> accessed on 10-03-2021.

[51] A. Tambuwal, 'The Rule of Law as Fundamental Condition for Democracy and Good Governance in Nigeria' being a Speech Delivered by the Speaker of the Nigerian House of Representatives at the Annual Aminu Kano Memorial Lecture in Kano, on 11th April, 2013. <*elonbah.com/index. php/articles-mainmenu.15509-the-rule-of-law-as-fundamental-condition-for-democracy-and-good-governance-in-Nigeria*> accessed on 20-12-2020; A.K. Mubak, 'The Sociological Theory as Enunciated by the Utilitarian School of Jurisprudence' <*mubaklegalconsult.blogspot.com…/...*> accessed on 13-03-2021; S.M. Olokoba, and A.A. Owoade, 'Rule of Law and Justice System in Nigeria: The Command Law and Islamic Jurisprudential Approach' *Confluence Journal of Jurisprudence and International Law*, [2009] vol.2, at 166.

sex-marriage pose a lot of challenges because the question is as to what these concepts add to the needs and challenges of individuals or the society in Nigeria.

In Africa, and Nigeria in particular, *rights* are not perceived as absolute and that is why the larger family has a say in how a member treats his wife and children. Absolute or exclusive rights-concepts in America, leading to religation of family organogram or unlimited access to guns has not done that Nation any good, despite government efforts to manage the situation. This is why the bottom-line for determining the position of Nigerians in relation to human rights law and almost every other law is determined by their cultural values and interests. As Uhuru Kenyata said in his joint press conference with Obama during the latter's official visit to Kenya in 2015, the immediate challenges of African Nations include the issue of housing, health, roads, shelter, enforcement of rights of women and children and how to improve infrastructural needs of the people, as a measure to make up for what Europe and America already attained, and not the issue of same-sex-marriage, homosexuality and gender-transplant which must be regarded as an abominable; and therefore a non-issue at this point of African history.[52] Today, African Nations may have wars but not indiscriminate killing of innocent citizens by unprovoked gun trotters as in Europe and America. Today, Nigeria may be bedeviled by bad governance arising out of corruption but not how to combat the issue of gun-control, excessive drug-use and control, and major insecurity from outside infiltration in the magnitude of Europe and America.[53]

While absolute universalists of human rights resist any form of relativism in the name of abuse but a lot of them hardly remember that in Nigeria, like any other African Country, modern-day human rights remain only a weak option that attract no form of sympathy because, some of them are strictly out of tune with the people's values, thus emphasizing that only a modified form of human rights enforcement will work in Nigeria. For instance, in core Islamic communities in Nigeria, extension of human rights to freedom of women to walk nude on the streets will misrepresent the essence of human rights.[54] Extension of human rights to women, including married women to date men and be patted on the buttocks publicly is an aversion to Nigerian moral and family values. Interpretation of human rights to cover freedom of Nigerian daughters to engage in an uncontrolled sex and to procure abortion at will in the name of human rights is against our core values either as Muslims, Traditionalists and Christians, in Nigeria.[55]

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[52] E. Jonathan, 'Obama's Joint Press Conference With President UhuruKenyata'< *www.ibtimes.com/ Obama-kenya-joint-press-conference-in-kenya*> accessed on 10-03-2021. Such situation explains why Britain opted out of European Union in a recent referendum to safeguard its core-values<*www.bbc.co m /news/uk-politics-32810887*> accessed on 20-12-2020.

[53] M. Branko, 'The United States and Europe Current Issues-Five Reasons Why Migration into Europe is a Problem'. <*www.socialeurope.eu/2015/06/five-*> accessed on 10-03-2021; Corrupt Practices Bureau, 'Institution for Moral Edification' in O. Olu, *Law and Contemporary Nigeria: Reflections* (Inspired Communication Limited, 2004) 26.

[54] U.S. Imam, 'A Critical Appraisal of Indecent Dressing Under the Nigerian Law' In Law Students Association*: Essays in Honour of Justice Ahmed OlarenwajuBelgore*(Al-Fattah Publications, 2010)87.

[55] I. Okagbue, 'Pregnancy Termination and the Law in Nigeria'.<*www.ncbi.nlm.nih.gov/pubmed/2219225*> accessed on 13-03-2021; M.O. Izunwa, and S. Ifemeje, 'Right to Life and Abortion Debate in Nigeria'. <*www.ajol.info>journalhome.vol2/2011*> accessed on 10-03-2021.

These are values rooted in the people's moral and religious beliefs which will not succumb to the blackmail of the West and America too quickly, in the name of human rights; after all, only a few decades ago, some of the practices that Europe and America regard as human rights subjects today were not only frowned at but subject of criminality in those societies. Indeed, categorization of human rights into derogable and non-derogable, or first generation and second generation rights point to the realization that human rights are not the same everywhere and every time, regarding all circumstances[56] thus failure of law to follow sociological precepts is responsible for the law being ignored or outrightly contravened because society and law ought to inter-relate in their functions;[57] a need which Jegede described as "the social relations of law rather than its metaphysics or its formal logic"[58] In Nigeria, failure of laws on bigamy under the criminal code, *Osu cast* and regulation of bride price in Eastern States of Nigeria, and similar failed legislations like the embattled Land Use Act speak volumes on the need to embrace the principles of sociological jurisprudence[59]. To Telia, there is no Nation that has developed or achieved political stability that has not taken cognizance of this concept noting that "the Soviet Union (now defunct) ignored it to its own peril"[60]. Upon such reasoning, it is humbly submitted that if Nigeria as a Nation really seeks stability and progress, then it cannot afford to shun the ideals of sociological jurisprudence because to do so is to her peril. The position here is that the legislature must sensitively follow up social developments per time, per time to ensure that the law blends with the cherished values of the society in every dispensation.

In Britain for example, until the 1970s, male circumcision was adorned as hygienic practice of the Royal Family and embraced as tradition of the entire people but today, for sentiments of pain, risk and claim of the need to protect rights of the child, the practice has virtually died.[61] Indeed, a court in Germany has since declared male circumcision a violation of the child's right in consonance with the new found values of the German people.[62] As a scholar put it, this was an example of interpreting human rights principles to reflect sociological climate of the people.[63] Quite unfortunately however, Nigeria does not seem to take clue from such attitude of more developed democracies and legal systems but instead, succumb to foreign pressure to make or adopt human rights laws that do not reflect the core moral and religious values of Nigerians.[64]

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[56] Derogable rights under International Human Rights Instruments are excusable rights under special circumstances. See Article 2(1), International Covenant on Economic, Social and Cultural Rights, 1966 which makes its application subject to available resources of each member State.

[57] Etudaiye, op.cit.

[58] M. Jegede, 'What is Wrong With the Law?' *op.cit.*

[59] Wikipedia, 'Osu Cast in Nigeria' <*en.wikipedia.org/wiki/cast_system/*> accessed on 20-12-2020; Online Nigeria, 'Nigerian Marriages: A Bride Price' <*www.onlinenigereia.com/.../Bride-Price/*>accessed on 20-12-2020.

[60] Telia, *op.cit*., at 7.

[61] D. Robert and C. John, 'Circumcision is one of the Oddities of the Royal Family' <*www.telegraph.co.uk/comment/10201882/circumcision-is-one-of-the-oddities-of-the-royal-family.html*> accessed on 20-12-2020.

[62] C. Hebblethwaite, 'Circumcision, the Ultimate Parenting Dilemma <*www.bbc.comm/news/magzine-19072761*> accessed on 10-03-2021.

[63] Hebblethwaite is of the BBC News, Washington DC.

[64] The blanket provisions of 'Violence Against Persons (Prohibition) Act, 2015' criminalizing certain practices that were hitherto permitted under existing laws, in line with sociological values of Nigerians is a case in point.

Even emerging jurisprudential development now shows that various National Courts tend to interpret International Treaties to meet local, rather than International needs. That was why the US and Israeli Courts interpreted article 17 of the Warsaw Convention, 1929 to cater for their respective local exigencies even when their decisions seemed to contradict each other.[65] This, it is submitted, is why a scholar concluded that decisions in concrete legal cases are "influenced as much by what we believe to be proper" than by "the views that we entertain on the merits of the controversies before us"[66] This reflects Roscoe Pound's pragmatic sociological jurisprudence which he said is aimed at what the law maker meant by assuming the position in the surroundings in which he acted, and endeavoring to gather from the mischief relating to the particular point in controversy[67]

By this kind of approach, the Judge in his interpretative function could adjust the law into the socio-political environment or core-value of each environment, to accomplish a definite result, usually, the securing or maintenance of recognized social, political or economic values[68] This is because when the people's values suffer retrogression or are sidelined, judicial mores of justice, equity, impartiality, and established standard cannot always offer cogent remedy.[69]

For the foregoing reasoning, it is important that where adoption of a law with alien values is imperative in the special circumstance of a particular situation, as in the case of human rights laws, same should be done subtly, to blend the existing core-values with the new innovation, as a mark of jurisprudential masterpiece. The sum total of the position here is that jurisprudential evolution, either local or international should evolve beyond their respective conservative outlook in the past, to the realm where it must be understood that no matter the attractions of globalization, the social dynamics at the local level remain increasingly intertwined with other indices that cannot be discountenanced. This is the basis upon which this work canvasses for relativism of human rights laws for the reflection of moral and religious values of Nigerians, for a more effective rule of law in Nigeria; in line with sociological philosophy, in the special circumstances of the Nigerian situation.

Summary, Conclusion and Recommendation

Discussing emerging issues in human rights within the framework of African Jurisprudence, the paper explained the place of social core values in the efficacy of any law, arguing that universal enforcement of contemporary developments in human rights like same-

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[65] See a US case of *EasternAirlines v Floyd 499US530, 533* (1991) and an Israeli case of *Cie Air France v Tiechner* (1984). 39REV. FRANCAISE DE DROIT ARIEN232, 243 (1985) also reported in23EUROOP.TRANSP.L87, 102 (1988); George, C., 'Some Key Jurisprudential Issues of the Twenty-First Century' <*scholarship.law.duke.edu/.../viewcontent...*> accessed on 10-03-2021.

[66] H. Ijaiya, *The Jurisprudential Approach to Statutory Interpretation* (Uni Ado-Ekiti Press, 2004) 177.

[67] Pound, *op.cit., at 7-8.*

[68] M. Radin, 'A Short Way With Statutes'. *Harvard Law Review*, [1944] vol.56 388 at 407; H. Ijaiya, 'The Jurisprudential Approach to Statutory Interpretation'. in: Ibidapo-Obe and T.F. Yerima, (eds) *International Law, Human Rights and Development: Essays in Honour of Prof. Akintude Babatunde, Oyebode* (Uni Ado-Ekiti Press, 2004) 177. *op.cit*, at 339

[69] H. Soderland, 'Heritage Values, Jurisprudence, and Globalization' <*www.heritage/glojurist/. ../com/56843*> accessed on 15-03-2021; A.K. Appiagyei, 'Civil Society, Human Rights and Development in Africa: A Critical Analysis' <*www.unilorin.edu.ng/.../...pdf*> accessed on 10-03-2021.

sex marriage, homosexuality and gender transplant could be counterproductive, causing undue apathy against the law on human rights. On this score, the paper recommends as follows:-

a. That no matter the universal outlook of human rights, application of the first and second generation rights must be relativised to reflect core values of each people, if the huge investment of international community on human rights outfit must not waste.
b. That contemporary evolution of human rights ought to reflect peculiar circumstances resulting in the birth of universal human rights and dreams of the founding fathers of the concepts at all times.
c. That relativism of human rights must be ensured, especially in issues that border on core values of each people.

Reference

Aguda, A.J., *Nigeria in Search of Social Justice Through the Law* (Nigerian Institute of Advanced Studies Publication).

Appiagyei, A.K., 'Civil Society, Human Rights and Development in Africa: A Critical Analysis' <*www.unilorin.edu.ng/.../...pdf*> accessed on 10-03-2021.

Branko, M., 'The United States and Europe Current Issues-Five Reasons Why Migration into Europe is a Problem'. <*www.socialeurope.eu/2015/06/five->* accessed on 10-03-2021.

Corrupt Practices Bureau, 'Institution for Moral Edification' in Olu, O., *Law and Contemporary Nigeria: Reflections* (Lagos: Inspired Communication Limited, 2004)

Crossette, B., 'Nigeria Attracts Criticisms for Anti-gay Laws' <*passblue.com/…/Nigeria-attracts-latest…*> accessed on 10-03-2021

Dlamini, M.A., 'African Legal Philosophy: A Southern African View' *Journal for African Science*. [1997] Vol.22. The Jurisprudence of Igbo people of Nigeria toes the same line.

Elias,T.,*The Nature of African Customary Law* (Sweet and Maxwell, 1956)

Etudaiye, M.,'The Relevance of the Sociological School of Jurisprudence to Legal Studies in Nigeria' In *UNILORINReading in Jurisprudence and International Law*. <*unilorin.edu.ng /publications/edtudaiye/…*> accessed on 10-03-2021.

Ferraro, M; ' Culture: A way of life' <classes. Uleth.ca/200502/anth100y/p> accessed on 10-03-2021

Frosbel, M., 'Obama Fights Nigeria's Anti-Man-to-Man Lover Law' <*www.nairaland.com/.../obamafights...*> accessed on 10-03-2021.

George, C., 'Some Key Jurisprudential Issues of the Twenty-First Century' <*scholarship.law.duke.edu/…/viewcontent…*> accessed on 10-03-2021.

Gluckman, M.*The Ideas in Barotse Jurisprudence* (Yale University Press, 1965)

Harris, J.W., *Legal Philosophies* (Butherworths and Company, 1980).

Gluckman, M. 'Order and Rebellion in Tribal Africa'. <*www.jstor.org/stable/2147208*>accessed on 10-03-2021.

Hebblethwaite, C., 'Circumcision, the Ultimate Parenting Dilemma <*www.bbc.comm/news/magzine-19072761*> accessed on 10-03-2021.

Idowu, W., *African Philosophy of Law<philosophy.oauife.edu.ng/index.php/…>* accessed on 10-03-2021

Idowu, W., 'Law, Morality and the African Cultural Heritage: The Jurisprudential Significance of the Ogboni Institution' *Nordic Journal of African Studies* (2005)

Ijaiya, H., *The Jurisprudential Approach to Statutory Interpretation* (Uni Ado-Ekiti Press, 2004)

Imam U.S; 'A Critical Appraisal of Indecent Dressing Under the Nigerian Law' In Law Students Association*: Essays in Honour of Justice Ahmed OlarenwajuBelgore*(Al-Fattah Publications, 2010)

Izunwa, M.O, and Ifemeje, S., 'Right to Life and Abortion Debate in Nigeria'. <*www.ajol.info>journalhome.vol2/2011>* accessed on 10-03-2021.

Jibril, S., 'Application of Ethics and Moral Values in Nigeria' <*nannewsnigeria.com/2015-application-of-ethics-and-moral-values*> accessed on 10-03-2021.

Jonathan, E., 'Obama's Joint Press Conference With President UhuruKenyata'< *www.ibtimes.com/ Obama-kenya-joint-press-conference-in-kenya*> accessed on 10-03-2021.

Hartland, E.S.,'Primitive Law' <*books.google.com/…/primitive-law*>

Ladan, M.T., *Introduction to Jurisprudence* (Malthouse Press Limited, 2010)

Mhango, M., 'Religious Recognition: Emerging Jurisprudence in South Africa' <*www.academia.edu/6210345/religion_recognition_emerging_juriisprudence_in_south_africa*>. accessed on 13-03-2021.

Moore E.E. 'Race and Racism in the Works of David Hume', *Journal on African Philosophy.* [2002].

Mubak A.K. 'The Sociological Theory as Enunciated by the Utilitarian School of Jurisprudence' *<mubaklegalconsult.blogspot.com…/…>* accessed on 13-03-2021

Murungi, J., 'The Question of an African Jurisprudence'*<http://www.blackwellreference.com/public/ tocnode?id=g978140514561-chunk-g978140514567145>* accessed on 13-03-2021.

Murungi J. 'The Question of an African Jurisprudence: Some Hermeneutic Reflection'*<http://www.britishcourt.org/voices-magazine /how-traditional-justice-nigeria-changing>*accessed on 13-03-2021.

Nwabueze, R.N.,' The Dynamics and Genius of Nigeria's Indigenous Legal Order', *Springs Indigenous Law Journal*, [2002] vol.1<*tspace.library.utoronto.ca/…/17103*> accessed on 13-03-2021.

Nweze, C.C, and Nwankwo, D., (eds) *Current Terms in the Human Rights Norms* (Fourth Dimension Publishers, 2003)

Okafor, F.U., 'Legal Positivism and The African Legal Tradition'*International Philosophy Quarterly*. [1984]

Okagbue, I., 'Pregnancy Termination and the Law in Nigeria' <*www.ncbi.nlm.nih.gov/pubmed/2219225*> accessed on 13-03-2021

Okamayih P. 'African Core Values and Identity on Precipe' <*nigerianobservernews.com/1709 213/features/features8.html#.vy4h7z*> accessed on 13-03-2021.

Okereaforezeke N. 'Judging the Enforceability of Nigeria's Native Laws, Customs and Traditions in the Face of Official Controls', *Caroline Fourth Eastern Region Seminar in African Studies* (2001) <*www.ccu.edu/african/senses/papers/okereaforezeke28marc1.htm*> accessed on 13-03-2021.

Olokoba S.M. and Owoade A.A. 'Rule of Law and Justice System in Nigeria: The Command Law and Islamic Jurisprudential Approach' *Confluence Journal of Jurisprudence and International Law*, [2009]

Online Nigeria, 'Nigerian Marriages: A Bride Price' <*www.onlinenigereia.com/.../Bride-Price/*>accessed on 20-12-2020.

Oraegbunam I. 'The Principles and Practice of Justice in Traditional Igbo Jurisprudence' <*scholarship.lawcornell.edu*> accessed on 13-03-2021.

Oruka H.O. 'Sagacy in African Philosophy' in Tsenacy S. (ed) *African Philosophy: The Essential Reading* (Parafon House, 1991)

Osanakpo, T.C; 'Imperatives of Core Values in the Nigerian Society' <*tcosnakoandco.com/imperative-of-core-values-in-the-nigrian-society/*> accessed on 13-03-2021.

Radin, M., 'A Short Way With Statutes'. *Harvard Law Review*, [1944]

Robert D., and John, C., 'Circumcision is one of the Oddities of the Royal Family' <*www.telegraph.co.uk/comment/10201882/circumcision-is-one-of-the-oddities-of-the-royal-family.html*> accessed on 20-12-2020.

Russel, B., *Why I am not a Christian* (George Allen and Unwin, 1957)

Samba J.N. *Fundamental Concepts of Jurisprudence* (Bookmakers Publishing, 2007). 'Seventeen African Cultural Values' <*migrationolgy.com/Africa-cultural-values-travel-africa-17/*> accessed on 20-12-2020.

Soderland H. 'Heritage Values, Jurisprudence, and Globalization' <*www.heritage/glojurist/. ../com/56843*> accessed on 15-03-2021.

Steytler N. 'CLC Profs address seminar on emerging issues on devolution and jurisprudence' <*www.dullahomarinstitute.org.za/.../clc-prof*-...>; accessed on 15-03-2021.

Such situation explains why Britain opted out of European Union in a recent referendum to safeguard its core-values<*www.bbc.co m /news/uk-politics-32810887*> accessed on 20-12-2020.

Taiwo D. 'Exercising Hegel's Ghost: Africa's Challenge to Philosophy' *African Studies Quarterly* [1998] 1,4<*www.clas.ugl.edu/africa/asq/legal.html*> accessed on 20-12-2020.

Tambuwal, A., 'The Rule of Law as Fundamental Condition for Democracy and Good Governance in Nigeria' being a Speech Delivered by the Speaker of the Nigerian House of Representatives at the Annual Aminu Kano Memorial Lecture in Kano, on 11th April, 2013. *<elonbah.com/index.php/articles-mainmenu.15509-the-rule-of-law-as-fundamental-condition-for-democracy-and-good-governance-in-Nigeria*> accessed on 20-12-2020.

Thiankolu, M., 'The Constitutional Review Cases: Emerging issues in Kenyan Jurisprudence'. <*www.onlinelibrary.wiley.com/doi/10.../abstract*> accessed on 20-12-2020.

Trevor-Roper, H., *Rise of Christian Europe* (Thomas and Hudson, 1964).

Uweru, C., 'Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism'<*www.ajol.infojournal home>* accessed on 20-12-2020.

Whelan, J., 'The Emerging Jurisprudence of Human Dignity'. <*www.onlinelibrary.wiley.com/doi/10.../abstract*> accessed on 20-12-2020. Wikipedia, 'Osu Cast in Nigeria' *<en.wikipedia.org/wiki/cast_system/>* accessed on 26/05/2016.