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LEGAL EVALUTION OF NIGERIAN LIMITATIONS ON SAME-SEX MARRIAGE

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Table of Contents

INTRODUCTION

The situation of lesbian, gay, bisexual, and transgender (LGBT) people in Africa has received international attention because of recent legislative developments across the continent. The enforcement of the Same-Sex Marriage Prohibition Act in Nigeria came about in January 2014. Despite the outcry and appeal from the LGBT community and international organizations, the signing of the bill progressed as human rights violation warnings were snubbed. As a result of their cultural background, Nigerians identify LGBT as deviants. While it has become a trend in some countries to take even more severe action e.g criminalize identifying as a member of the LGBT community as we have seen in Uganda, there are a few African countries where such values seem to be absent and that have never made same-sex sexual conduct illegal through draconian and discriminatory legislation. On the other side, a possible example is South Africa, where locally sponsored homophobia seems to be nonexistent and discriminatory attacks are rare. At the moment, this is the only country in Africa where same-sex marriage is respected by the law, and same-sex couples are also allowed to adopt.

The African Charter on Human and Fundamental Rights (hereinafter African Charter) was adopted in 1982 and entered into force in 1986. It is a regional document on human rights created to represent Africa's progress, history, and ideals. The Charter promotes not just internationally recognized individual rights but also collective rights and individual responsibility, fusing African values with international rules and creating a common human rights protection system in the African continent: still- the country's treatment of LGBT people differ. Even though Nigeria has been a member of the African Charter since 1983, the Same-Sex Marriage Prohibition Act in Nigeria was enforced on January 7, 2014. The ex-President of Nigeria, Goodluck Jonathan signed the bill into law despite an appeal from the LGBT community citing human right violation. In a contrast, the Constitution of South Africa of 1996 outlawed unfair discrimination based on sexual orientation in Article 9. As a result, it ensures that homosexual and lesbian persons be treated equally. These two countries are among the most powerful countries in Africa, but they seem to have contrasted national laws regarding the equal treatment of sexual minorities.

Relevant to the discussion of Nigeria's human rights obligation is also the global human rights protection system of the UN. Some scholars claim that international human rights law creates a universal right to marriage that includes gay and lesbian couples, thus denying legal protection to

same-sex couples would seem to violate this requirement. Both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) stipulate that everyone has the right to get married and start a family, but neither document directly mentions marriage equality for same-sex couples. Nigeria is a party to the ICCPR since 1993, at the same time the ICCPR and UDHR allow states to choose their specific marriage rules and regulations. They do stipulate that rules and regulations pertaining to marriage shall not discriminate on the grounds of race, color, sex, language, religion, political opinion, national or social origin, property, birth, or any other status. This means that states must make sure that their marriage rules and regulations are inclusive and treat everyone fairly. Refusing same-sex couples of the right to marry violates the principle of non-discrimination and the individual's right to privacy, marriage, association, and dignity.

Current research asks whether the Nigerian legislation complies with the non-discrimination principle enshrined in the African Charter of Fundamental Rights as well as applicable global human rights treaties. To this end, it first discusses, how these instruments protect non-discrimination and marriage equality and what kind of discretion do ICCPR, UDHR, and African Charter give to the State? This question also deals with the relation between the African Charter and global human rights documents and asks, how a country should interpret the principle of equality deriving from both systems and whether the African Charter's provision of non-discrimination extends to the right of family life and privacy or if there is an immediate need for the Article 2 of the Charter to break down what rights the freedom from discrimination covers explicitly.

Secondly, it will analyze whether the Nigerian Same-Sex Marriage Act is in compliance with the equal treatment requirement enshrined in Article 2 of the African Charter and related international human rights obligations.

Thus, the research explores the issue of discrimination concerning same-sex marriage in Nigeria and takes South Africa as a model for an alternative approach, focusing on the African Charter on Human and People's Rights. Both countries have ratified the African Charter, which prohibits discrimination on the basis of sex and sexual orientation, but they have different laws and attitudes toward same-sex marriage. Nigeria has a federal law that criminalizes same-sex relationships, while South Africa was the first African country to legalize same-sex marriage in 2006. This study aims to compare the ways in which Nigeria and South Africa have implemented the provisions of

the African Charter on non-discrimination and to examine the impact of these laws on the lives and rights of same-sex couples in both countries.

To answer these questions, the thesis adopts legal dogmatic and analytical methods to traverse existing case law and literature on the subject and find existing and applicable international and legal standards of equality. It secondly analyses the national implementation of these standards and analyses their compliance with them. The research also uses a comparative method intending to find regional best practices. As a result, the analysis gathered from different sources will be used to compare the study areas and give recommendations for better implementation of the principle of equality in the African Charter. The research builds on academic work, international treaties, and their supervisory practice relating to Nigeria and national legislation and court practice of the highest courts of both Nigeria and South Africa

The thesis is divided into two chapters, the first chapter will analyze the theoretical, regional, and international human rights law context of equality and same-sex marriage. It will introduce the approach of African Charter and its supervisory body on discrimination and elaborates on the influence of global international legal instruments (UDHR and ICCPR) on the interpretation of the Charter. It will evaluate the importance of African cultural backgrounds in the context of African Charter. It will also discuss the positions of experts and scholars on the debate on whether anti-same-sex marriage act violate principle of non-discrimination and freedom of privacy, family life and opinion. Relevant case laws is used to interpret the freedoms recognised and guaranteed by the African Charter. The second chapter scrutinizes the Nigerian same-sex law in the context of international human rights law and asks whether it is in compliance with them. This chapter has a comparative element by using South-Africa as a model country with a positive outcome to homophobia and as an alternative approach to implementing the principle of non-discrimination.

1. THEORETICAL AND INTERNATIONAL LAW CONTEXT

ICCPR and the African Charter are international human rights instruments that have been adopted under the auspices of the African Union (AU) and the United Nations (UN), respectively. Both initiatives work to defend and advance the fundamental liberties and rights of all people. Regarding the rights they defend, the African Charter and the ICCPR share several parallels. Both laws safeguard political and civil rights like the right to life, the right to free speech, and the right to a fair trial. They also include clauses that safeguard minority groups and prohibit discrimination. However, there are also some differences between the two instruments. The African Charter has additional provisions on economic, social, and cultural rights, such as the right to work, education, and health, while the ICCPR only has an optional protocol on economic, social, and cultural rights. Additionally, the African Charter has a provision on the rights of indigenous people, while this is not present in the ICCPR.

1.1 Prohibition of Discrimination in the African Charter

The Organization of African Unity (OAU) was founded in 1963 as a regional organization with its initial focus being the abolition of colonialism. The OAU Charter strongly upholds State sovereignty and the concept of non-interference in the internal affairs of States. The OAU for many years paid little to no attention to flagrant human rights violations. The African Charter on Human and Peoples' Rights was established by the OAU in 1981, and in 1998 it enacted a protocol to the African Charter that, once it takes effect, will establish an African Court on Human and Peoples' Rights.

The African Charter's human rights framework protects and promotes a diverse variety of rights, including economic, cultural, collective, social, and political liberties. The African Charter is considered the first regional instrument to include all types of human rights in a single document. The human rights framework enshrined in the African Charter safeguards and promoted a wide range of rights, including socioeconomic and cultural rights, as well as individual and collective rights., and civil and political rights. However, the plethora of human rights integrated into the Nigerian national law failed to protect sexual minorities. In contrast, they are being criminalized by the same law. The major fundamental rights in the African Charter comprises right to enjoyment

of rights which includes right to dignity of the human person.[1] Understandably, the integration of the LGBT population in Nigeria may seem revolting, and most people are not properly informed about the sexuality and the biology of different sexual orientations. The response and aggressiveness towards LGBT community are born out of ignorance and lack of technical know-how to handle such situations. Stories of same-sex relationship makes the headline of different social media news platform, in some cases, gays are subjected to jungle justice treatment and inhumane treatment. However, the African Commission on Human and Peoples' Rights has taken on some issues of sexual orientation and gender identity, issues that some may have considered too "controversial" but that fall squarely within the ambit of human rights.[2]

The African Charter creates the African Commission on Human and Peoples' Rights, which is tasked with overseeing the Charter's implementation and looking into cases of human rights abuses in African nations. Additionally, the Commission has the authority to receive and take into account both individual and group complaints from victims of human rights abuses, as well as to offer recommendations to African states to strengthen the protection of human rights. Out of 55 African nations, 54 have signed the African Charter, which is a crucial tool for advancing and defending human rights throughout the continent. For African states working to protect the rule of law and respect for human rights, it is still a crucial reference.

1.1.1.The Legal Framework of Human Rights Enshrined in the Charter

The African Charter's human rights framework protects and promotes a diverse variety of rights, including economic, cultural, collective, social, and political liberties. South Africa is a signatory to the African Charter, which it ratified on July 15, 1983[3]. Likewise, Nigeria has ratified the African Charter in 1983. African Charter requires national implementation of the rights enshrined in the Charter, even though, this implementation depends on the position of international treaties in the national legal systems.

According to history, the incorporation of African Charter into domestic legislation was spearheaded by Nigeria. Over the years, the precedent towards respecting African Charter was

[1] Ekhator, Eghosa Osa. "The impact of the African Charter on Human and Peoples' Rights on domestic law: a case study of Nigeria." Commonwealth Law Bulletin 41, no. 2 (2015): 253-270.
[2] Wendy, I. (06.01.2017). African Commission Tackles Sexual Orientation, Gender Identity. Pambazuka News https://www.hrw.org/news/2017/06/01/african-commission-tackles-sexual-orientation-gender-identity [Accessed 24 April 2023]
[3] African Commission on Human and Peoples' Rights

ignored when Nigeria failed to protect the sexual minorities despite the profusion of integrated human rights.

According to Article 5 of the African Charter, every individual is entitled to right to be treated with respect for his or her inherent dignity and to have his or her legal status recognized[4]. The article prohibits any form of inhuman treatment of individuals. The prohibition of degrading and inhuman treatment covers everyone regardless of their sexual orientation and gives the person protection in a considerably wider range of circumstances.[5] Article 3 of the ECHR, which stipulates that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment,"[6] is comparable in breadth to this clause. It has long been acknowledged that Article 3's language forbids a variety of treatments that deliberately causes severe suffering, mental or physical, which, in the situation, is unjustifiable, while being stricter in its linguistic composition than Article 5 of the ACHPR. In a similar vein, the ACmHPR has concluded that Article 5 of the ACHPR forbids actions which, in addition to serious physical or psychological suffering, humiliate the person or compel him or her to act against his or her will or conscience.[7] The wave of violent attacks on suspected LGBT people in Nigeria both before and after the passage of the Act are contrary to the letter of this clause.[8]

It is crucial to outlaw crimes like torture and other inhuman behaviors that degrade people and take away their dignity if we are to realize this right to dignity. As the Human Rights Committee so eloquently put it, prohibiting torture is a means of preserving the right to dignity, as well as the individual's physical and mental integrity, as a fundamental human right.[9] A resolution denouncing all types of violence motivated by sexual orientation was passed by the African Commission. The Charter's Articles 4 and 5 guarantee the rights to life and dignity, respectively. It judged such actions to be human rights violations and denounced discrimination against people based on their sexual orientation or gender identity.[10] Additionally, the South African Constitutional Court stated that criminalizing same-sex relationships violates the right to dignity in *National Coalition for Gay*

[4] Article 5 of ACHPR
[5] Gittleman, Richard. "The African Charter on Human and Peoples' Rights: A Legal Analysis." Va. J. Int'l L. 22 (1981): 667.
[6] Article 3 of the ECHR
[7] INTERNATIONAL PEN AND ORS. V NIGERIA (COMMUNICATION NO. 137/94, 139/94, 154/96, 161/97) [1998] ACHPR 1; (31 OCTOBER 1998)
[8]Adebanjo, Adetoun Teslimat. "Culture, morality and the law: Nigeria's anti-gay law in perspective." International journal of discrimination and the law 15, no. 4 (2015): 256-270.
[9] Ibid.,
[10] Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)2014

and Lesbian Equality v. Minister of Justice and Others, noting that the constitutional protection of dignity required the recognition of the value and worth of all individuals as members of society.[11]

Article 19 also states that all persons must be treated equally; they must be treated with the same respect and given the same rights. Above all, nothing can legitimize one people's dominance over another[12]. In essence, everyone is deemed equal and shall not be degraded under any circumstances whatsoever. Sadly, the people of sexual minorities do not enjoy these rights as they are constantly targeted when compared with other citizens. This repulsive aggressive rejoinder towards LGBT community in Nigeria can be traced to ideology regarding same-sex marriage which is perceived as a taboo. The African Charter on Human Rights should address specifically the issue of private life and emphasize on the need to respect people's family and private life which is adequately mentioned in other international human right instruments. Unlike Article 5 that focuses on individual rights of a person, Article 19 guarantees collective rights and equality of all people which include tribes, gender, religion, belief etc. In this case, the right of religious institutions does not supersede the right of the LGTB community, and nothing should justify the domination based on morality over others.

The African Charter being the fundamental human rights instrument of the AU, explicitly states in the resolution that LGBT people are equal rights holders, which makes the resolution historic.[13] This stance is strongly grounded in the African Charter, which guarantees rights to "everyone" and establishes an expansive list of factors—including sexual orientation and gender identity—against which nations are not permitted to discriminate. Additionally, it urges governments to criminalize and outlaw acts of violence motivated by a victim's sexual orientation or gender identity. The resolution goes much farther, urging states to establish a supportive atmosphere free from stigma, retaliation, and legal action.

ACHPR's provisions are in accord with demands of minorities as it contains section on people's right, however, it does not contain a specific provision on minorities[14]. High profile human right advocates have expressed concerns regarding the discrimination of sexual minorities in Africa. The former United National Secretary General Ban Ki-moon counselled the African Union summit to

[11] De Vos, Pierre. "Sexual Orientation and the Right to Equality in the South African Constitution: National Coalition for Gay and Lesbian Equality & (and) Another v. Minister of Justice & (and) Others." S. African LJ 117 (2000): 17.
[12] Article 19 ACHPR
[13] Viljoen, Frans. "Africa's rights commission can–and should–do more for sexual minorities." The Conversation. (2019).
[14] African Charter on Human and Peoples Rights, adopted 26 June 1981, O.A.U Doc.CAB/LEG/67/3

tackle and square up to the prejudice and intolerance of sexual orientation discrimination[15]. Due to the draconian laws spreading across Africa against LGBT community, human right defenders have described the legal landscape of Africa as the worst continent with unfriendly laws when it comes to people of sexual minorities or homosexuals[16]. The achievement of the Council of Europe through the ECHR is unlikely when compared in same context with potentials to develop pan-African human rights for sexual minorities.

1.1.2 Interpretation of Equal Treatment by the ACHPR Commission

The Charter established the African Commission on Human Rights (ACmHPR) when it entered into force in 1986. [17] The protective function of the Commission is to gather and look into complaints concerning abuses of the human rights protected by the Charter and to express through its rulings suggested courses of action to advance those rights.[18] The current subchapter analyses the Commission's stance on non-discrimination as well as questions its effectiveness of it together with its limitations. To answer this, this subchapter will investigate the ways by which complaints can be lodged to the Commission.

The prominent case of the ACmHPR where it discussed the general requirements of the principle of non-discrimination including the right to health, was in a case relating to the provisions of The Gambia's Lunatic Detention Act and the way mental patients were being handled in the case of *Purohit and Moore v The Gambia (Communication 241/2001*).[19] It was alleged that the Act failed to adequately protect patients who were deemed mentally unstable during detention and certification. It was determined that the legal framework of the Lunatic Detention Act, its application, and the conditions of confinement for those imprisoned in accordance with it constituted a violation of respect for human dignity. The Act, among other things, referred to people with mental illness as "idiots" and "lunatics." According to the African Commission, such rhetoric dehumanises people. For several reasons, including the absence of procedural mechanisms providing for the review or appeal against detention under the Act, it was determined that the respondent State had breached the right to liberty, security of the person, and the right to have one's

[15] Johnson, Paul. "Homosexuality and the African Charter on Human and Peoples' Rights: what can be learned from the history of the European Convention on Human Rights?." Journal of Law and Society 40, no. 2 (2013): 249-279.
[16]International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A. and Mendos, L.R., State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2017).
[17] Article 63(3) A
[18] Umozurike, U. Oji. "The African charter on human and peoples' rights: suggestions for more effectiveness." Ann. Surv. Int'l & Comp. L. 13 (2007): 179.
[19] *Purohit and Moore v The Gambia (Communication 241/2001*)

cause heard. However, if the case had fallen under discrimination based on sexual orientation, the victims won't be able to find recourse or even raised their concerns despite the ground-breaking resolution on LGBT rights. Threats to the independence of the Commission must be resisted for it to serve as an impartial arbiter with a focus on human rights where Africans can seek recourse and redress or, at the very least, voice their concerns – regardless of their sexual orientation or gender identity.[20]

Regarding resources, the Commission acknowledged the extent of poverty in Africa and took a stance akin to the UN Committee on Economic, Social, and Cultural Rights. The Commission declared that for the right to health to be fully realized in all its aspects without discrimination, the state must take specific, targeted actions while utilizing all of its resources. This is in accordance with Article 16 of the Charter. This is an example of the Charter ruling on a case regarding discrimination on health grounds. The million-dollar question is, can the Commission oversee a case where the right to family life and privacy has been violated?

The Commission lacked an enforcement mechanism prior to the creation of the Charter, detractors claimed that its decisions were "distant, if not practically useless," to those who had experienced human rights violations. The Commission hosts a bi-annual meeting in which it hears reports from member states, evaluates suggestions provided by Non-Governmental Organizations (NGOs), and makes recommendations to all governments in its function as a promotion body. The Commission's primary focus for most of its existence has been these promotional initiatives rather than its quasi-judicial job.

Therefore, there are currently two ways to file a complaint with the Charter: directly with the Charter and indirectly with the Commission. The Commission, member states, and African Intergovernmental Organizations may all directly apply the Charter. Additionally, when a member state has made a declaration recognizing the authority of the Charter to entertain individual petitions,[21] it is possible for civilians to apply directly as well as NGOs with "observe status" before the Commission. The Charter cannot currently be directly applied to by NGOs or individuals in the 48 states that have signed the Charter because only twelve states have made this declaration as of this writing.[22] This restriction of access is made worse in regard to homosexuality-related issues by the Commission's refusal to provide observer accreditation to any NGO with a concentration on

[20] Supra 13 Viljoen, Frans
[21] Article 34(6) of the protocol
[22] African Court on Human and Peoples' Rights

gay and lesbian rights. As the Coalition of African Lesbians' activities "do not promote and defend any of the rights guaranteed in the African Charter," the Commission denied the organization observer membership in 2010. As a result, only complaints submitted to the Commission or directly by state parties have direct access to the Charter. This clearly reflects the absence of any direct complaints or application to the Charter on matters relating to sexual orientation. More importantly, the reason for low cases since the establishment.

Making complaints concerning sexual orientation discrimination in the Commission may be viewed as having little or no value due to the fear of institutionalized prejudice against homosexuality and the potential reaction it could cause. Nonetheless, these circumstances substantially resemble those in Europe before Protocol 11 of the ECHR's reform of the ECtHR in 1998. Most applications never made it to the ECtHR since the ECmHR only accepted a very small percentage of complaints presented by gays before it was abolished.[23] This backs up the argument that any claim filed with a local human rights court will have a far lower chance of success if there isn't domestic support for gay and lesbian rights. Although the ECtHR has compelled signatory governments to pass anti-homosexuality legislation where there has been little to no public support, it regularly rejects complaints when there is a lack of support (at the state and regional levels) for the advancement of rights. A perfect example is the case of *Modinos v. Cyprus,* [24]where the Court concludes that Article 8 of the Convention has been violated. The Government declined to change Sections 171–173 to legalize homosexual behavior even while the Attorney General refused to enforce those provisions by filing lawsuits.[25] For this purpose, persons pursuing legal changes related to sexual orientation are aware that substantial domestic support is necessary for the success of a complaint to an international court. This acknowledges that human rights courts have the propensity to reflect current social relations in their jurisprudence and that the legitimacy and authority of their judgments, particularly when they urge significant legislative reform, depend on a broader social consensus.[26]

1.1.3 Impact of Culture and Religion on the Implementation of Human Rights in Africa

Individual perception, tolerance, and rejection of homosexual relationships have been heavily influenced by religious and sociocultural issues. As a result, these two factors account for most

[23] Johnson, Paul. "Heteronormativity and the European Court of Human Rights." Law and Critique 23 (2012): 43-66.
[24] *Modinos v. Cyprus* (1s070/89, 22 April 1993) A259.
[25] Ibid.,
[26] Supra 18 Johnson, Paul.

beliefs about whether homosexuality should be accepted or rejected. The largest predictor of attitudes toward homosexuality, particularly in Africa, is religion. This is because each person's religious upbringing instills values and beliefs that later shape opinions on particular social issues.[27] As a result, several African nations' cultural and political hostility against gender and sexual dissidence leaves lone organizations for LGBT rights susceptible to criticism and punishment. In response, LGBT rights organizations may form alliances with supportive local social movements and international NGOs to put pressure on social, political, and religious actors to respect gender and sexual diversity and LGBT rights. Although organizations may simultaneously build vertical solidarity ties with overseas donors and international NGOs as well as horizontal solidarity partnerships with local social movements, these partnerships have varied effects on LGBT rights groups.[28]

The ways that societies behave and express themselves over time and space are referred to as their culture. Understanding varied elements including history, language, rituals, traditions, music, art, and clothing codes of various communities helps to develop cultural literacy. Culture is dynamic and continually changed by socioeconomic, political, and environmental factors. In African societies, same-sex relationships, and gender diversity have long been prevalent.

The fact that so many books and articles have started to describe this reality is encouraging. For instance, Dr. Sylvia Tamale, a human rights activist, and professor from Uganda, examines the tradition of males marrying other men among the Shangani people of Southern Africa, adding that this was a part of their culture and way of life known as *ngochani* [male wife][29]. Although I strongly believe the presence of Islam and Christianity among the local of people of Shangani must have been at its lowest. It is evident that the two religions with the most followers in Africa are Islam and Christianity, both of which forbid homosexual partnerships. So, it is not unexpected that African clergy members who are both Christian and Islam favor the outlawing of gay partnerships. Evangelism was orchestrated in Uganda, with their preaching that condemned gay relationships by Christian organizations. They were funded by American evangelist groups advocating for heterosexual relationships and Ugandan family values. The church's stance had a significant impact

[27] Mahomed, Nadeem. "Islam and Homosexuality, Samar Habib (Ed.): book review." Journal for Islamic Studies 33, no. 1 (2013): 235-239.
[28] Currier, Ashley. “Arrested Solidarity: Obstacles to Intermovement Support for LGBT Rights in Malawi.” Women’s Studies Quarterly 42, no. 3/4 (2014): 146–63. http://www.jstor.org/stable/24364997.
[29] Mbaru, Monica, Monica Tabengwa, and Kim Vance. "Cultural discourse in Africa and the promise of human rights based on non-normative sexuality and/or gender expression: exploring the intersections, challenges and opportunities." Downloaded from the Humanities Digital Library (2018): 177.

on the national conversation about homosexuality and legislation that forbade homosexual relationships.[30] The fact that almost all African constitutions include a bill of rights that establishes fundamental human rights as universal is also encouraging. Apart from South Africa, none of them list sexual orientation and gender identity (SOGI) as a protected class against discrimination.

The legacy of the existing criminal penalties in many African countries can be traced back to their colonial origins, according to numerous legal authorities and authors. Although most of the consensual gay behavior was decriminalized in England and Wales in 1967, this came too late for the majority of Britain's colonies, many of which gained independence in the 1950s and 1960s. The famous Wolfenden Report of 1957, an official recommendation by a group of legal experts, suggested that "homosexual behavior between consenting adults in private should no longer be a criminal offense"[31] as Britain teetered near the end of its imperial dominance. From the report:The purpose of the law is to protect citizens from things that are obnoxious or harmful and to provide adequate safeguards against other people being taken advantage of or corrupted. In our opinion, the law should not attempt to impose any certain behavioral pattern on citizens or interfere with their private lives.[32] Thus, they achieved these triumphs when colonial sodomy prohibitions were in force.[33] Homosexuality is now deeply ingrained in the conversation about human rights. Considering this, policies that forbid gay marriage and other types of relationships are seen as violating basic human rights. This is due to the fact that it is seen as a minority issue, and as a result, the protection of minorities' interests against discrimination continues to be of utmost importance in today's human rights discourse. Although the legalization of homosexuality is not mandated by international law, the Universal Declaration of Human Rights promotes the defense of all human rights, including LGBT rights.[34]

The rights to life, privacy, and nondiscrimination are also regularly upheld by the United Nations Human Rights Council. It passed a resolution on gender identity, sexual orientation, and human rights in 2011.[35] The resolution was passed to confront acts of violence and discrimination against

[30] Gettleman, Jeffrey. "Americans' role seen in Uganda anti-gay push." New York Times 3 (2010): 01-10. https://www.nytimes.com/2010/01/04/world/africa/04uganda.html [Accessed April 25, 2023]
[31] Great Britain John Frederick Wolfenden Wolfenden of Westcott and Karl A Menninger. 1963. The Wolfenden Report : Report of the Committee on Homosexual Offenses and Prostitution Authorized American ed. New York: Stein and Day.
[32] Ibid.,
[33] Gupta, Alok. This alien legacy: The origins of" sodomy" laws in British colonialism. Human Rights Watch, 2008.
[34] Odiase-Alegimenlen, O. A. "Same sex marriage: Nigeria at the middle of western politics." Oromia Law Journal 3, no. 1 (2014): 260-290.
[35] (United Nations Human Rights Council, 2011)

members of the LGBT community (United Nations Human Rights Council, 2011). Even while homosexuality is still prohibited in many nations, with half of them being in Africa[36], this is despite international laws that forbid discrimination against people based on their sexual orientation and gender identity. This is because nations that pass anti-homosexual legislation view it as a domestic legal issue, which frequently results in conflicts between domestic and international law.

Culture and traditions contain a varied range of beliefs and behaviors that are frequently employed to justify human rights violations, even while positive components of diverse cultural and historical origins may help to promote and safeguard human rights and human dignity. The vast and diverse continent of Africa is home to a wide range of societies and cultures. Yet, African religious and traditional extremists have recently joined together to protect a common cause, even forming the most improbable coalitions. To defend nationalism, religion, and so-called traditional values, for instance, fundamentalist Christians and Muslims as well as traditionalists have created unions.[37] They consider the assertion of universal human rights, women's reproductive freedom, and SOGI rights to be direct assaults on the traditional values, customs, and religious beliefs of the vast majority of people. Fundamentalism blend together components from religion, nationalism, and other ideologies and traditions to produce a cultural authenticity that is stable, unchangeable, and monolithic - yet threatened by the apparently corrosive consequences of human rights.[38]

In a world where homosexuality is tolerated and legalized, Africa's laws banning same-sex relationships are indications of the continent's opposition to gay behavior. The Same-Sex Prohibition Act of Nigeria (2013) is one of the legislations that the Nigerian parliament has unanimously and quickly enacted into law since the country's return to civil government in 1999. By making gay behavior illegal and imposing severe penalties, the nation carved out a position for itself in the politics of anti-homosexual legislation. The African Charter's articles 2 and 3 discuss equality. According to the former, everyone is entitled to the rights guaranteed by the African Charter. Everyone "must be equal under the law," according to the latter. The words "such as" and "or other status" make it abundantly obvious that the list of prohibited grounds for discrimination is not all-inclusive. This statement implies that the drafters accepted the idea that the specifics of

[36] Msibi, Thabo. "The lies we have been told: On (homo) sexuality in Africa." Africa today 58, no. 1 (2011): 55-77.
[37] Human Rights Watch (S. Long) (2009) 'Together, apart: organizing around sexual orientation and gender identity worldwide', 11 Jun., available at: https://www.hrw.org/report/2009/06/11/together-apart/organizingaround-sexual-orientation-and-gender-identity-worldwide. [Accessed March 26, 2023]
[38] Ibid.,

the African Charter will change over time and that the Charter permits a growth of the specific grounds. There may be no upper limit to the amount of growth that is permissible.[39]

1.1.4 Notable Limitations to Charter Rights

The Charter might accept some sort of legal protection for gays and lesbians after all, it is still possible to make the case that other Charter articles may "restrict" these rights. The African Commission is increasingly approaching constitutional interpretation in two stages. This is done by referring to Article 27(2), which states that the rights must be exercised "with due respect to the rights of others, collective security, morality and common interest." As a result, this clause now functions as a general restriction clause that rights are to be measured against.

The complainant must first establish a prima facie breach in this two-step process. Once this has been done, it is the responsibility of the person requesting a restriction or limitation on the right—typically the state—to demonstrate that the restriction or limitation is appropriate. According to the proportionality criteria used by the African Commission, constraints "must be strictly proportionate with and absolutely required for the advantages that are to be attained" and may not erode a right to the point where the right becomes illusory in and of itself.[40]

Limitations must be strictly proportionate with and necessary for the advantages that are to be obtained, according to the Commission,[41] and not just reasonable. Therefore, while restricting the rights of sexual minorities, a state must not only demonstrate that it complies with the criteria set forth in Section 27(2) but also that it passes the Commission's test of reasonableness and necessity. Some of the limitations recognized are values, morality, and HIV prevention. Regarding African values and culture, the preponderance of evidence points to the existence of same-sex sexual activities in numerous African civilizations long before colonial authorities set foot on African soil and that these practices still exist today.[42] Also, criminalizing same-sex behavior won't help with HIV prevention because most cases happen during unprotected heterosexual sex. Therefore, all three justifications for restricting Charter rights, though, are illogical.[43]

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[39] Amusan, Lere, Luqman Saka, and O. Adekeye Muinat. "Gay Rights and the Politics of Anti-homosexual Legislation in Africa." Journal of African Union Studies 8, no. 2 (2019): 45-66.
[40] African [Banjul] Charter on Human and Peoples' Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), entered into force 21 October, 1986.
[41] Communication 105/93, 128/94, 130/94 and 152/96, Media Rights Agenda and Another v Nigeria AHRLR paras 69 and 70
[42] Murray, Rachel, and Frans Viljoen. "Towards non-discrimination on the basis of sexual orientation: The normative basis and procedural possibilities before the African Commission on Human and Peoples' Rights and the African Union." Human Rights Quarterly (2007): 86-111.
[43] Ibid.,

Even if it is agreed that same-sex marriage is against African values, the question of whether it is essential to criminalize homosexuality to uphold these values must be asked. The Human Rights Committee noted that "all laws criminalizing homosexuality have been repealed throughout Australia and that, even in Tasmania, it is evident that there is no consensus as to whether Sections 122 and 123 should not also be repealed" in response to an argument made during the Toonen case that the restriction of privacy rights caused by such penal laws is reasonable in order to uphold the morals of society.[44] The real question is whether tolerance for variety and minorities has value in a given culture, not whether "homosexuality" as a whole is an acceptable virtue.

The sympathetic tolerance of diversity and of minorities should, without a doubt, be of the utmost importance in multilingual, multiethnic, and multireligious states, which predominate in Africa. Even when expressed by Parliaments working on their behalf, the views of the majority do not definitively define how the Charter should be interpreted, according to the African Commission, even though they do have some relevance. The real question is whether tolerance for variety and minorities value in a has given culture, not whether "homosexuality" as a whole is an acceptable virtue. The sympathetic tolerance of diversity and of minorities should, without a doubt, be of the utmost importance in multilingual, multiethnic, and multireligious states, which predominate in Africa. Even when expressed by Parliaments working on their behalf, the views of the majority do not definitively define how the Charter should be interpreted, according to the African Commission, even though they do have some relevance. According to the African Commission's ruling in Legal Resources *Foundation v. Zambia*,[45] "justification... cannot be derived purely from public will, as such cannot be used to diminish the responsibilities of States Parties in provisions of the Charter."

Justice Sachs stated that the Constitutional Court does not "banish conceptions of good and wrong" in a case that was heard by the South African Constitutional Court, National Coalition for Gay and Lesbian Equality v. Minister of Justice.[46] The Constitution does not "preclude the State from enforcing morality" since it is a "document rooted on deep political morality."[47] So, rather than

[44] Toonen v. Australia, Communication 488/92, Human Rights Committee, U.N. Doc. CCPR CI50/D/488/1992 (Mar. 1994). See also Young v. Australia, Communication 941/2000, Human Rights Committee, U.N. Doc. CCPRIC/78/D/941/2000 (Aug. 2003)
[45] Legal Resources Foundation v. Zambia, Communication 211/98, African Commission on Human and Peoples' Rights, AFR. HUM. Rrs. L. REP. 84 (2001).
[46] Blake, Richard Cameron. "The Frequent Irrelevance of US Judicial Decisions in South Africa-National Coalition for Gay & (and) Lesbian Equality v. Minister of Justice 1999 (1) SA 6 (CC)." S. Afr. J. on Hum. Rts. 15 (1999): 192.
[47] Ibid.,

solely depending on societal preconceptions, decisions about (de)criminalizing are made with reference to diversity, which is essential to the Constitution's spirit and principles. According to the principles of the Constitution, it is also "tolerated" for members of society to denounce and criticize homosexual behavior. The right to privacy[48] is protected under the ICCPR but not by the African Charter. Although it seems that the right to privacy was purposefully excluded from the Charter, this was done for reasons unconnected to sexual orientation. Nonetheless, one could contend that the right to privacy is "implied" by the African Charter. Such a defense might be supported by the African Commission's stance in the SERAC case,[49] which concluded that the existence of the rights to food and shelter was "implied" by existing Charter articles. Similar to this, it might be argued that the right to privacy is a result of the rights to "respect for his life and the integrity of his person,"[50] "respect of the dignity inherent in a human being," and "liberty and security of his person."[51] It would follow that a violation of a person's "integrity" as a person and of their "inherent human dignity" would constitute a violation of their "integrity" as a person and of their "inherent human dignity"[52] if it were accepted that people view their sexual attraction to other people of the same sex as integral to their personality.

Family protection has beneficial as well as practical implications. Families can help eradicate poverty and build just, inclusive, and secure societies, according to the 2030 Agenda for Sustainable Development.[53] The Agenda specifically committed States to provide children and youth with a nurturing environment for the full realization of their rights and potential, particularly through strong communities and families. The agenda also stressed the importance of families as development agents.[54]The next chapter will discuss the rights enjoyed against discrimination under ICCPR and its influence on the African Charter.

[48] Assembly, UN General. "International Covenant on Civil and Political Rights,(adopted 16 December 1966, entered into force 32 March 1976), United Nations, Treaty Series, vol. 999." (2018): 171.
[49]The Social and Economic Rights Action Center for Economic and Social Rights (SERAC). Nigeria, Communication No. 155/96, African Commission on Human and People's Rights, 1 68 (May 2002). "International law and human rights must be responsive to African circumstances.
[50],Supra note 10. African Charter
[51] Ibid.,
[52] Ibid.,
[53] Dye, Christopher, and Shambhu Acharya. "How can the sustainable development goals improve global health? A call for papers." Bulletin of the World Health Organization 95, no. 10 (2017): 666.
[54]A/HRC/31/37 (2016) (Report of the High Commissioner for Human Rights, Protection of the Family: Contribution of the Family to the Realization of the Right to an Adequate Standard of Living for its Members, Particularly Through its Role in Poverty Eradication and Achieving Sustainable Development) [18].

1.2 Impact of Global Human Rights on the Interpretation of African Charter

The African Charter follows the methodology of the international human rights treaties that served as models and sources of inspiration while the Charter was being created. The travaux préparatoires claim that the African Charter's authors specifically took inspiration from the Inter-American Convention on Human Rights and the Covenant on Economic, Social, and Cultural Rights. Additionally, neither the European Convention on Human Rights nor any of these legal documents include sexual orientation.[55]

1.2.1 Impact of Dualist Interpretation to the Implementation of Human Rights

Broadly speaking, a dualist theoretical approach to the relationship between international and national law holds that national law governs the rights and obligations of persons inside a State while international law controls relations between States.[56] Whether or not a particular State has passed applicable domestic law (constitutional provisions or ordinary legislation) to carry out its duties under the Covenant has an impact on whether or not African States apply a "dualist" approach to international agreements. The general rule is that while "the Government may negotiate, conclude, construe, observe, breach, repudiate or terminate a treaty,"[57] such a treaty is not part of domestic law until it has been incorporated by legislation [58] in "dualist" African States, which are primarily former British colonies and follow the constitutional law of the UK.[59]

The dualist perspective holds that domestic courts must apply domestic law and not international treaties while international courts must uphold international law, or at the very least that it is up to the national court to determine which rule to uphold.[60] Therefore, unless they have been incorporated into national law (through incorporation or reception) by legislation in force to give effect to them,[61] international treaties like the ICESCR are not applicable in any national legal system, in whole or in part, and are therefore not typically enforceable by courts. The dualist theory's justification is to stop the Executive from creating laws without adhering to the domestic

[55] See M'Baye draft African Charter (prepared for the Meeting of Experts, held 28 Sept. to 8 Dec. 1979, in Dakar, Senegal, OAU Doc. CABAEG/67/1, Introduction: "The draft is largely drawn from provisions of the UN International Covenant on Economic, Social and Cultural rights and the American Convention on Human Rights

[56] Crawford, James. "Public International Law." (2012).

[57] Hill, Jonathan. "International Corporations in the English Courts." Oxford Journal of Legal Studies 12, no. 1 (1992): 135-148

[58] Lord Oliver in Maclaine Watson v. Department of Trade [1990]

[59] Dicey, Albert Venn, and Emlyn Capel Stewart Wade. Introduction to the Study of the Law of the Constitution. London: Macmillan.

[60] Supra 56 Crawfold

[61] Ssenyonjo, Manisuli. "The influence of the international covenant on economic, social and cultural rights in Africa." Netherlands International Law Review 64 (2017): 259-289.

constitutional conditions necessary for doing so (i.e., to stop the Executive from making laws without an Act of Parliament).[62]

The Covenant is applied by domestic courts as mediated by national legislation in such States applying a "dualist" approach to the ICESCR, and national legislation will prevail unless the matter can be resolved by interpretation. This means that the jurisprudence created by the ICESCR, and the rights guaranteed by the ICESCR are typically seen as being not directly enforceable unless incorporated into domestic law by legislation in "dualist" States in Africa.[63] In addition, how local courts see the application of international treaties has a bearing on the Covenant's influence. Despite the fact that some "dualist" States' constitutions, like Namibia's, state that "the general rules of public international law and international agreements" are conclusive and constitute domestic law.[64]

The Federal Republic of Nigeria's 1999 Constitution divided rights into two chapters:[65] chapter two contains the non-justiciable rights, which cannot be adjudicated upon in court when violated, and chapter four contains the justiciable rights, which can be adjudicated upon in court when violated.[66] The justiciable rights included civil and political rights, while the non-justiciable rights included socioeconomic, cultural, and solidarity rights.[67] Despite this separation, the African Human Rights Act declares that all socio-economic, cultural, and solidarity rights, as well as civil and political rights, are enforceable in court and that no exceptions may be made.[68] Nigeria used the dualism order in creating the inter-relativism of international law and national law since it prides itself on being a dualist state as per the provision of Section 12 (1) of the 1999 Constitution of the Federal Republic of Nigeria. This implies that, absent a transition, the municipal sector in Nigeria will not be subject to the binding effects of international law.[69] By December 2016, the majority of African States that took a "dualist" approach to international treaties had enacted some policy and legislative measures (constitutional provisions and/or common domestic law) to safeguard some ESC rights, but they had not passed domestic legislation explicitly incorporating

[62] Supra 59 Dicey AV
[63] Supra 61. M Ssenyonjo
[64] Constitution of the Republic of Namibia (1990), Art. 144
[65] Olomojobi, Yinka, and Jessica Oga. "NIGERIA: BETWEEN MONIST AND DUALIST STATE." (2022).
[66] Constitution of the Federal Republic of Nigeria 1999
[67] Ibid.,
[68] United Nations Human Rights
[69] Okebukola, Elijah Oluwatoyin. "The application of international law in Nigeria and the Façade of dualism." Nnamdi Azikiwe University Journal of International Law and Jurisprudence 11, no. 1 (2020): 15-28.

or giving full effect to the ICESCR into national laws in order to ensure the applicability of all Covenant rights in domestic courts.

According to monism, both domestic and international law are components of a single, overarching legal system that caters to the demands of the entire human race. According to this theory, any international agreement that a state has ratified or consented to—including agreements pertaining to human rights—is immediately enforceable within the municipal system. On the other hand, dualism maintains that there are two separate legal systems—international law and local law. As a result, each party may exclude the other, and thus, ratified treaties are not binding until the parliament enacts legislation incorporating them into local law. According to the harmonization idea, since he resides in both jurisdictions, man is the center of both areas. Theorists of harmonization say that both systems are concordant bodies of doctrine, autonomous yet harmonious in their pursuit of the common good, and therefore they reject the idea that international law and national law conflict with one another.

1.2.2 ICCPR Influence on Domestic Laws

It is genuinely astonishing to see the extreme contrast between the high, aspirational language of international human rights treaties and the domestic legislation of its signatories, not to mention formal remarks made by the leaders of those signatory nations. Zimbabwe ratified the ICCPR, promising that its own "law will prohibit any discrimination and offer to all individuals equal and effective protection against discrimination," as just one illustration of this difference. However, Zimbabwe passed legislation in 2006 making it a crime for two people of the same sex to kiss, hug, or hold hands.[70] The former president of Zimbabwe, Robert Mugabe, has publicly stated that homosexuals are "worse than dogs and pigs,"[71] and he has urged members of his party to tie up homosexuals and bring them to the police to be arrested.[72] Even in countries where domestic legislation and international treaties safeguard the rights of sexual minorities,[73] shockingly frequent violent hate crimes and other forms of discrimination nonetheless take place.

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[70] Mel Spencer (05-25-2023) President Mugabe: homosexuality will 'lead to extinction'. Pink News https://www.thepinknews.com/2012/05/25/president-mugabe-homosexuality-will-lead-to-extinction/ [Accessed April 1ST 2023]

[71] Mittelstaedt, Emma. "Safeguarding the rights of sexual minorities: The incremental and legal approaches to enforcing international human rights obligations." Chi. J. Int'l L. 9 (2008): 353

[72] McNeil Jr, Donald G. "For Gay Zimbabweans, a Difficult Political Climate." New York Times (1995): https://www.nytimes.com/1995/09/10/world/for-gay-zimbabweans-a-difficult-political-climate.html [Accessed 24 April 2023]

[73] Christiansen, Eric C. "Ending the Apartheid of the closet: Sexual orientation in the South African constitutional process." NYUJ Int'l L. & Pol. 32 (1999): 997.

A particularly graphic example comes from South Africa, which was the first country in Africa to legalize same-sex marriage and enact a constitution guaranteeing, among other things, the rights of sexual minorities. Although altering attitudes and laws are both challenging, there is a compelling case to be made for the former. Not only are laws that criminalize handholding or prohibit human rights organizations from organizing harmful to the LGBT movement, but they also directly violate values of personal privacy and liberty. Due to a lack of empirical data on the subject, most human rights organizations do not address this inequality. Additionally, as most international human rights organizations have broad mandates and so aim to apply both tactics concurrently, this hypothetical choice between altering laws and altering attitudes may not reflect an actual issue facing organizations. Whatever the motivation, criticizing legislation attracts more attention.

The HRC and the International Court of Justice (ICJ) have been content to interpret Article 2(1) "disjunctively," requiring in some situations states to uphold their human rights obligations outside of their territorial borders where they exercise "jurisdiction" despite the ICCPR's dual textual requirement that rights be secured to individuals who are both within the state's "jurisdiction" and territory. [74]The focus of today's difficulties in the international human rights discourse has shifted from the need for rights to their enforcement. One can accept that the UDHR, ICCPR, and other international and regional human rights accords have all helped to advance the process of norm-setting. In a similar spirit, the European regional human rights system has received praise for upholding fundamental liberties and human rights in accordance with the ECHR and its Protocols.[75]

The African regional system's efficacy, on the other hand, cannot be compared. This is due to the African Charter's insufficient rules and institutions to effectively ensure the protection of human rights across the continent. The African Charter was made to be dynamic where it would be open to changes. The foundation of the African Commission and the African Court on Human and Peoples' Rights are just two examples of how the African Charter has undergone some change, but the African Court of Justice and Human Rights has yet to become operational.[76] This being said, the possibility granted by articles 66 and 68 can be used to accommodate fresh perspectives on realizing Charter rights. The objective behind articles 66 and 68 is primarily to show how flexible

[74] O'Flaherty, Michael. "The concluding observations of United Nations human rights treaty bodies." Human Rights Law Review 6, no. 1 (2006): 27-52
[75] Hart, James W. "The European human rights system." Law Libr. J. 102 (2010): 533.
[76] Udombana, Nsongurua J. "Toward the African Court on Human and Peoples' Rights: Better Late Than Never." Yale Hum. Rts. & Dev. LJ 3 (2000): 45.

and reformable the Charter is. Political and civil rights are widely accepted and recognized.[77] While this group of rights makes up the majority of the UDHR on a global scale, the UN has further recognized it as the legally binding rights of people through the ICCPR. Also, the ICCPR has been deemed one of the most significant human rights accords in the modern century due to its extensive application to persons and universal coverage of rights.[78]

The constitutions of African nations show that most civil and political rights are recognized as fundamental rights, in contrast to socio-economic rights, which are recognized as Fundamental Goals and Directive Principles of State Policy.[79] International law must be enforced because human rights have no validity if they cannot be used. Implementation and enforcement of international law continues to be a major issue due to principle of sovereignty.[80] Certain international human rights instruments prohibit state parties from violating specific civil and political rights, even during times of war or other times of public emergency, in contrast to socioeconomic rights. To ensure that a rule, regulation, policy, or court order is properly obeyed, enforcement measures are adequately adhered and complied with.[81] So, the term "enforcement" is a relative one that means upholding the rights and privileges emphasized in international rules. States that ratify international treaties pledge to see them through, which includes adhering to the rulings of relevant monitoring and enforcement authorities. This, however, has proven to be the most challenging issue facing international human rights law in the twenty-first century.[82] Hence, the time and resources invested in negotiating and passing international human rights accords are wasted in the absence of effective enforcement. International human rights instruments have monitoring and enforcement procedures to achieve effective enforcement. Thus, in cases where African Charter rights and freedoms are recognized in state party legislation or the constitution, effective enforcement of the African Charter provisions requires either using the African Court and the African Commission to compel state party obedience or using national courts and other related

[77] Hernández-Truyol, Berta Esperanza. "International law, human rights, and LatCrit theory: Civil and political rights: An introduction." The University of Miami Inter-American Law Review (1996): 223-243.
[78] Sarah Joseph and Melissa Castan, The International Covenant on Civil and Political Rights: Cases, Materials and Commentary (3rd edn, Oxford University Press, 2013)
[79] See Chapter 4 of the Nigerian Constitution 1999
[80] Guzman, Andrew. "The consent problem in international law." (2011).
[81] Obodo, Chimere Arinze. "Realising the effective enforcement of civil and political rights in Africa: an analysis of the African Charter on Human and Peoples' Rights." PhD diss., 2019.
[82] Donoho, Douglas. "Human rights enforcement in the twenty-first century." Ga. J. Int'l & Comp. L. 35 (2006): 1.

institutions against individuals and government agencies. Yet, the ability of these organizations to enforce adherence to these treaties' obligations may differ.[83]

In 1966, the United Nations General Assembly (UNGA) ratified two key multilateral treaties that had the potential to subject states to international scrutiny, fulfilling the UN's goal of establishing a legally binding framework for protecting human rights. The UDHR, the two covenants, and the protocols—collectively known as the "international bill of rights"—are three UN documents.[84] The ICCPR did not grant the HRC any initial authority to handle specific complaints. With the adoption of the Optional Protocol to the ICCPR, which empowers the HRC to accept and consider complaints from individuals, such competence was formed.[85] As a result, those that ratify the Optional Protocol consent to allow people to lodge complaints against them with the HRC. Accordingly, state parties to the ICCPR are not automatically bound by the right of people to submit complaints to the HRC. But first, the state party to this Protocol must declare that it acknowledges the HRC's authority to receive and assess such complaints.[86]

The Second Optional Protocol to the ICCPR on the elimination of the death penalty is also covered by the HRC's authority regarding governments that have ratified the Protocol. As a result, this Second Optional Protocol served as the groundwork for the death penalty's abolishment in some African nations, including Benin, South Africa, Angola, Burundi, Gabon, and Cote d'Ivoire. Despite the foregoing, neither a non-state party nor a state party that has not made a declaration pursuant to article 41 may be subject to the terms of the ICCPR, its Protocols, or the HRC's authority. This is so that a state can choose to recognize the HRC's authority to receive and assess complaints from other members states alleging that it is not upholding its obligations under the ICCPR, which is a requirement for the inter-state complaints system option under Article 41. When both countries involved have already made the declaration required by article 41, an optional measure for state vs state complaints may be implemented. It is important to note that several international treaties have a similar inter-state complaint mechanism.[87]

So, the influence of such an approach on the improvement of international human rights law, and in particular, the application of civil and political rights, is of concern. Therefore, it is asserted that

[83] Ibid.,
[84] United Nations. Office of the High Commissioner for Human Rights. Human Rights: Universal instruments. Vol. 1, no. 2. United Nations Publications, 2002.
[85] Article 1 of the Optional Protocol to the ICCPR.
[86] Ibid.,
[87] United Nations. Convention against torture and other cruel, inhuman, or degrading treatment or punishment. 1985..

the member states' commitment to upholding human rights determines whether the interstate complaint system is successful. This is in light of the possibility that the incapacity of state parties to freely employ the interstate complaint mechanism against uncooperative member states could impede international progress on the ICCPR's enforcement.

The inability of state parties to exert pressure on themselves or serve as a watchdog for the HRC is thus a substantial probable outcome. Some Asian states have been reluctant to submit their state reports to the HRC, even though failure to do so constitutes a breach of article 40 (1) of the ICCPR.[88] As a result, the HRC has over time adopted a number of measures to promote state parties' compliance with article 40 (1). These measures include admonishing states, recognizing serious defaulter States, and notifying States of the HRC's intention to take into consideration state party measures adopted to give effect to the provisions even in the absence of a state report submitted by the state.[89] The clauses make it very evident that state parties' legislative and implementation efforts directly affect their ability to enjoy the ICCPR. As a result, while domestic enforcement is crucial to the ICCPR's implementation, international enforcement serves as a check and a backup method.[90] As a result, both national and international institutions have a critical part to play in ensuring that every person's civil and political rights are upheld on a global scale. According to article 2 (1) of the ICCPR, states have a duty to guarantee that civil and political rights are effectively implemented.[91] Article 2 (2) mandate to adopt legislative and other measures to give effect to the ICCPR is one example of this obligation of consequence. Although the ICCPR did not make legislative adoption the only method of implementation, it is indicated by the wording of this clause that states parties are free to employ another media. In fact, Nowak noted in his research that the language in article 2 (2), which refers to "the required actions in conformity with the constitutional processes," may allow state parties some latitude in carrying out the covenant.[92] The ICCPR shall therefore be implemented in accordance with each state party's unique constitutional procedure, dispelling the notion of a unified implementation strategy that downplays the stark differences between various legal systems.

[88] Moeckli, Daniel, Helen Keller, and Corina Heri, eds. The Human Rights Covenants at 50: Their Past, Present, and Future. Oxford University Press, 2018.
[89] Ibid,,
[90] Seibert-Fohr, Anja. "Domestic implementation of the International Covenant on Civil and Political Rights pursuant to its article 2(2)." Master's thesis, George Washington University, 1999
[91] Schachter, Oscar. "The obligation to implement the covenant in domestic law." The International Bill of Rights (1981): 323-324.
[92] Nowak, Manfred. A Commentary on the United Nations Convention on the Rights of the Child, Article 6: The right to life, survival and development. Brill, 2005.

State parties to the ICCPR are free to select the type of legislative implementation they want as long as it provides the ICCPR effect.[93] In light of this, Opsahl claims that states parties have a dual responsibility for implementation. He asserts that it is the duty of state parties to "respect and ensure that persons enjoy these rights without distinction of any sort, and to take appropriate efforts to adopt legislation or other measures to give effect to the ICCPR."[94] It is especially clear that both national and international laws respect the ICCPR's provisions. However, prior to submitting a message to the HRC, a person must exhaust all domestic remedies under the Optional Protocol's individual complaint mechanism.[95]

1.2.3 The Influence of ICESCR on Social, Economic and Cultural Rights in Africa

One may say that the protection of ESC rights in Africa is affected by the Covenant when something from the Covenant flows into and does so. Court and tribunal citations of the Covenant, treaty clauses, national legislation based on the ICESCR, the development of new norms based on the Covenant, such as the right to development, and whether the Covenant has had an impact on human rights teaching, practice, and policy in Africa can all serve as indicators of this.

The fundamental source of the Covenant's influence is Article 2(1) ICESCR, which requires State Parties to "take actions" (i.e., adopt legislative and other measures) to the fullest extent possible in order to gradually realize all ESC rights.[96] It is generally agreed that ratifying international human rights treaties has value if the rights guaranteed in the treaties have an impact on domestic (national or municipal) protection of human rights and if effective domestic remedies for violations of the protected rights are accessible and available.[97] Although the mere ratification of international treaties by nations with a poorer record on human rights without implementing them into domestic law and policy does not always lead to better outcomes in terms of the realization of those rights

[93] O'Flaherty, Michael. "The Reporting Obligation under Article 40 of the International Covenant on Civil and Poltical Rights: Lessons to Be Learned from Consideration by the Human Rights Committee of Ireland's First Report." Hum. Rts. Q. 16 (1994): 515

[94] Kanetake, Machiko. "UN human rights treaty monitoring bodies before domestic courts." International & Comparative Law Quarterly 67, no. 1 (2018): 201-232.

[95] Articles 2 and 5 (2) of Optional Protocol to the ICCPR

[96] Supra 61 Ssenyonjo, M.

[97] See Anuak Justice Council v. Ethiopia, Communication No. 299/05, 20th Activity Report, (2006) AHRLR 97, paras. 47–48.

and the redress of violations,[98] it could signify "the beginning, end, or reconfiguration of a domestic political struggle" for better human rights practices.[99]

The ICESCR is the most comprehensive international instrument defending ESC rights, it was adopted by the United Nations (UN) General Assembly in 1966.[100] Although the vast majority (90%) of African States have ratified the ICESCR, no studies have been done to determine the Covenant's "impact" on Africa. It should be emphasized that only seven African States had ratified the Covenant by the time the ICESCR went into effect on January 3, 1976. Between 1976 and 1989, further eighteen African States ratified the Covenant. Following increased global attention to the principle of the universality, indivisibility, interdependence, and interrelatedness of all human rights[101] and the adoption of new (democratic and liberal) constitutions in Africa,[102] protecting (some) ESC rights alongside civil and political rights,[103] the remaining 23 African States began ratifying the Covenant in 1990. In article 2 (3) of the ICCPR, the requirement that state parties implement the ICCPR is again emphasized. According to this clause, states parties must offer a suitable remedy and a just hearing or decision by a judicial, administrative, legislative, or any other competent institution recognized by the state party legal system. Additionally, state parties are required to make sure that appropriate authorities implement these remedies when they are granted.[104] This suggests that government agencies have the authority to decide what remedies or penalties to impose.

A clause in a treaty known as the Reservations, Understandings and Declarations (RUDs) does not apply to the "reserving" party. RUDs enable a state to join an international treaty in a qualified and conditional way, exempting itself from adhering to specific requirements under the treaty. RUDs restrict the domestic impacts of treaties and keep international treaty clauses to the interpretations given to them by state party practice. This practice is frequently observed in the USA's ratification of international human rights treaties like the ICCPR.[105] However, it is obvious that the ICCPR

[98] Hathaway, Oona A. "Do human rights treaties make a difference." Yale lj 111 (2001): 1935
[99] Goodman, Ryan, and Derek Jinks. "Measuring the effects of human rights treaties." European Journal of International Law 14, no. 1 (2003): 171-183.
[100] Ifediora, John. "A human rights approach to the economic analysis of bureaucratic corruption." (2009).
[101] Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, UN Doc. A/CONF.157/24 (Part I) (13 October 1993) p. 20, para. 5.
[102] Prempeh, H. Kwasi. "Africa's "constitutionalism revival": False start or new dawn?." International Journal of Constitutional Law 5, no. 3 (2007): 469-506.
[103] Heyns, Christof, and Waruguru Kaguongo. "Constitutional human rights law in Africa: current developments." South African Journal on Human Rights 22, no. 4 (2006): 673-717.
[104] Article 2 (3) (c) of ICCPR
[105] Henkin, Louis. "US ratification of human rights conventions: The ghost of Senator Bricker." American Journal of International Law 89, no. 2 (1995): 341-350.

also allows for reservations unrelated to reporting. Particularly, when the United States endeavored to execute it in accordance with the ICCPR, this approach has proved divisive and has drawn objections from other state parties.[106] However it is obvious that the ICCPR also allows for reservations unrelated to reporting. Particularly, when the United States endeavored to execute it in accordance with the ICCPR, this approach has proved divisive and has drawn objections from other state parties.[107] Less cynically, the ICCPR's enjoyment is at the mercy of the state parties' court systems because it lacks a judicial enforcement mechanism.

In certain situations, ratification of the ICCPR is insufficient to ensure global application. As a result, if a state party does not internalize the ICCPR, the HRC's full findings, comments, and observations may be ignored or have no impact, and people won't have any domestic remedies to exhaust before the HRC obtains jurisdiction.[108] On the other hand, it has been noted that neither states nor international organizations can fully guarantee human rights if they rely on voluntary methods to implement.[109] It is asserted, however, that states parties and maybe individuals understand that norms will be readily followed if they are supported by sanctions for non-compliance, even if they felt no moral need to do so.

In the absence of sanctions, it is envisaged that a situation will arise where state commitments under international treaties collide with government interests. Given the way the ICCPR handles interstate complaints and the lack of peer pressure from other state parties, the impact that such a lack of punishment may have will be more upsetting. When many sovereign nations join a small group within the UN, regionalism is taking place.[110] As a collective strategy, regionalism is a technique used by nations to advance their national policies or advance the shared goals of various states.[111]

Regionalism is a useful notion to comprehend voting among the groups of nations that share seats in the HRC[112] as it relates to international human rights law. Such UN subgroups, in Abebe's

[106] Ash, Kristine. "US reservations to the International Covenant on civil and political rights: credibility maximization and global influence." Nw. Univ. J. Int'l Hum. Rts. 3 (2005): xxxvi.
[107] Mutua, Makau. "Looking Past the Human Rights Committee: An Argument for De-Marginalizing Enforcement." Buff. Hum. Rts. L. Rev. 4 (1998): 211.
[108] Ibid.,
[109] McInerney-Lankford, Siobhán. "Human rights and development: A comment on challenges and opportunities from a legal perspective." Journal of Human Rights Practice 1, no. 1 (2009): 51-82
[110] Kaiser, Karl. "The interaction of regional subsystems: some preliminary notes on recurrent patterns and the role of superpowers." World politics 21, no. 1 (1968): 84-107.
[111] Freedman, Rosa. The United Nations Human Rights Council: A Critique and Early Assessment. Routledge, 2013.
[112] Etone, Damian. "African States: Themes Emerging from the Human Rights Council's Universal Periodic Review." Journal of African Law 62, no. 2 (2018): 201-223.

opinion, are required since human rights are frequently distorted to support Western practices, giving non-Western nations the opportunity to use subgroups to reflect their interests.[113] It is immediately apparent that until the emergence of regional organizations and their involvement in regional peace, security, and political concerns, the UN's human rights system was not amenable to the concept of regional implementation. In other words, the UN General Assembly Resolution 32/127 encouraging governments to examine the formation of regional human rights machinery was a result of the European human rights system not undermining the UDHR's universal application.[114] It is important to highlight that the ICESCR had an impact on the creation, development, and legal protection of ESC rights in the African Charter,[115] the main human rights document of the African Union, which was adopted on June 27, 1981, 15 years after the ICESCR. The following rights, which are safeguarded by the ICESCR, are expressly acknowledged in the African Charter's Articles 15–19: the right to self-determination; the right to employment under fair and favorable conditions; the right to enjoy the best possible state of physical and mental health; the right to education; the protection of the family; and cultural rights.

The Charter safeguards various individual or collective/group rights that are not covered by the Covenant, despite the fact that the definition of those rights is more limited than in the ICESCR. These rights include everyone's right to "economic, social, and cultural development"[116] as well as their right to live in a generally satisfying environment that is conducive to their growth.[117] Due to the lack of a clear definition of the rights to development and a clean (satisfying) environment, the African Commission has relied on international documents like the ICESCR to interpret these rights broadly.

It is crucial to emphasize that when interpreting the Charter, the African Commission is authorized to "take inspiration from international law on human and peoples' rights,"16 particularly from UN documents like the ICESCR. This gave the African Commission's doctrine on ESC rights a legal foundation upon which to be based. Considering this, the Commission has used the ICESCR to develop the extent and content of ESC rights as well as the associated State obligations. For instance, in its 2016 Resolution on the Right to Education in Africa, the Commission specifically

[113] Abebe, Allehone Mulugeta. "Of shaming and bargaining: African states and the universal periodic review of the United Nations Human Rights Council." Human Rights Law Review 9, no. 1 (2009): 1-35
[114] Supra 81 Obodo, Chimere Arinze
[115] African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), ratified by 53 member States of the African Union (AU).
[116] Ibid.,
[117] Ibid.,

considered Article 13 of the ICESCR and urged African States to 'guarantee the full scope of the right to education',[118] including the 'provision of pre-school, primary, secondary, tertiary, adult education and vocational training'. It urged States to adopt all necessary and "suitable" measures to the "maximum of available resources" in order to promote, provide, and facilitate access to education for all Africans,[119] using the language of Article 2 of the ICESCR. Furthermore, the ICESCR and the UN Committee on Economic Social and Cultural Rights (CESCR or the Committee) General Comments, which have developed the normative content of ESC rights and State obligations since the 1990s, served as major sources of inspiration for the Commission's 2010 adoption of principles and guidelines[120] on ESC rights in Africa. Therefore, the Charter has been regarded as implicitly recognizing other ESC rights (protected by the ICESCR but) not officially specified in the Charter, such as the right to social security, the right to rest and leisure, and the right to create and join trade unions. This is true even though these rights were purposefully left out of the African Charter's explicit protection in order to free young states from too many yet crucial commitments.[121]

A right to development is an inherent, individual, or collective right, to engage in all kinds of development, through the full realization of all fundamental rights, and to enjoy them without unreasonable limits,[122] according to the African Commission. As a result, States are required by the right to development to respect, defend, and uphold all fundamental rights, including civil and political rights as well as all ESC rights. Hence the Commission has confirmed that: 'The right to development will be breached where the development in question decreases the well-being of the community'.[123] All ESC rights, including the freedom to decide where to reside,[124] the right to housing, the right to water and sanitation,[125] the right to adequate food,[126] and the right to economic

[118] Resolution on the Right to Education in Africa, ACHPR/Res.346 (LVIII) 2016, 20 April 2016
[119] Ibid.,
[120] Sacco, Solomon. "An overview of the African Commission's principles and guidelines on economic, social and cultural rights: conference paper." ESR Review: Economic and Social Rights in South Africa 11, no. 3 (2010): 3-4.
[121] Rapporteur's Report on the Draft African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/Draft Rapt.Rpt. (II) Rev.4, para. 13.
[122] Mujuzi, Jamil Ddamulira. "The African Commission on Human and Peoples' Rights and its promotion and protection of the right to freedom from discrimination." International Journal of Discrimination and the Law 17, no. 2 (2017): 86-136.
[123] Ashamu, Elizabeth. "Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya: A Landmark Decision from the African Commission." Journal of African Law 55, no. 2 (2011): 300-313.
[124] Ibid.,
[125] Ibid.,
[126] Nwobike, Justice C. "The African Commission on Human and Peoples' Rights and the demystification of second and third generation rights under the African Charter: Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria." African journal of legal studies 1, no. 2 (2005): 129-146.

self-determination, or the freedom of all peoples to "freely dispose of their wealth and natural resources,"[127] are part of this well-being. The ICESCR had a significant impact on, at least in part, the content of some treaty provisions protecting ESC rights in later African Union regional human rights treaties protecting vulnerable groups, such as children, women, youth, internally displaced persons, older persons, and persons with disabilities.[128]

In several African States, the ICESCR has had a variety of effects on how ESC rights are protected by the law. In some court rulings, it has been used as a source of interpretation. Second, it has impacted how national constitutions define ESC rights.[129] Finally, it has been officially cited as a source of law in certain national constitutions, which has influenced the passage of various routine laws and regulations that are crucial to ESC rights. The rights to life, human dignity, equality, and freedom from discrimination, as well as some ESC rights, are all protected by clauses in the constitutions of all African states that govern the relationship between international treaties and domestic law.[130] In general, African States apply the "dualist" or "monist" approach to international treaties, following the practice of domesticating international treaties applied by former colonial powers in Africa, primarily Britain, France, and Portugal, although many constitutions embody both "dualist" or "monist" elements. This is true even though there is no uniform identical approach to treaties in Africa.[131]

1.3 Interpretation of Equal treatment in African Charter in the Light of Global international Human Rights Law

The main international agreement defining the civil and political rights of all people is the Rights ICCPR,[132] which is part of the United Nations framework of human rights. African nations that are ICCPR parties are obligated to uphold all duties arising from the terms of the Covenant, including the need to guarantee equal protection under the law and to protect everyone from all forms of discrimination. Also, states that have ratified the ICCPR are required to defend individuals' right to privacy from invasion. The equality provision in Articles 26 and 2.1 of the ICCPR includes the

[127] Democratic Republic of the Congo v. Burundi, Rwanda and Uganda, Communication No. 227/99, 20th Activity Report, 29 May 2003, para. 95; African Charter, above n. 13, Art. 21
[128] Supra 61 M.Ssenyonjo 2017
[129] Supra 102 Prempeh, H. Kwasi
[130] Ibid.,
[131]Aust, Anthony. Modern Treaty Law and Practice. 3rd ed. Cambridge: Cambridge University Press, 2013. doi:10.1017/CBO9781139152341.
[132] Pinto, Mónica. "International Covenant on Economic, Social and Cultural Rights." United Nations Audiovisual Library of International Law, disponível em https://legal. un. org/avl/pdf/ha/icescr/icescr_e. pdf, acesso em 11, no. 01 (2022).

rights of sexual minorities. Article 26 supports Article 2.1 by stating that "all persons are equal before the law and are entitled to the equal protection of the law without any discrimination." The main goals of Articles 26 and 2.1 are to outlaw all forms of discrimination and to ensure that everyone is given equal and effective protection against discrimination on any basis, including racial, ethnic, linguistic, religious, political, or social origin, property, birth, or any other status.[133]

In addition, the HRC noted in Young v. Australia[134] that because Mr. Young was living with a person of the opposite sex, it was evident from the State party's legislation that he has never been eligible to receive a pension, regardless of whether he could meet all the other requirements under the domestic legal framework that governs pension issues. The Committee determined that by refusing Mr. Young a pension because of his sexual orientation, the Australian government had violated article 26 of the ICCPR. In conclusion, the Committee believed that the state had failed to demonstrate a legitimate distinction between same-sex and heterosexual couples and that it was not fair nor objective to deny same-sex spouses pension benefits.[135] In view of this, we can clearly see how the government had discriminated against a person based on his sexual orientation in violation of the equality principle.

The Committee believed that no one should be subjected to discrimination because of their sexual orientation because sexual orientation cannot be used to determine lack of entitlement or access to something that is not available to the group being discriminated against. Citizens of nations that are party to the ICCPR and the Optional Protocol to the Covenant could improve their right against discrimination based on sexual orientation thanks to the rulings and interpretations made by the HRC above. Also, close examination of the APDH v. Côte d'Ivoire[136] ruling reveals that it has five main elements or unusual qualities, some of which can be used as instances of how the ruling advances international human rights law. This should an opportunity to grants the ACtHPR the authority to rely on other bilateral and multilateral conventions at the regional and international levels to which a state may be a party, in addition to the human rights treaties signed under the

[133] Huamusse, Luis Edgar Francisco. "The right of sexual minorities under the African human rights system." PhD diss., University of Pretoria, 2006.
[134] Edward Young v Australia, UN Human Rights Committee, No.941/2000, UN Doc CCPR/C/50/D/488/1992
[135] Ibid.,
[136] Tiehi, Judicaël Elisée. "L´ exécution minimaliste de l´ arrêt de la Cour africaine des droits de l´ homme et des peuples dans l´ affaire «Actions pour la protection des droits de l´ homme (APDH) c. République de Côte d´ Ivoire»: much ado about nothing?." La Revue des droits de l'homme. Revue du Centre de recherches et d'études sur les droits fondamentaux 18 (2020).

auspices of the AU. This is crucial because it would enable the ACtHPR to fill in gaps and normative ambiguities in the African human rights Charter system.

The African Charter makes no reference to "minorities" as such, although it does refer to the principle of non-discrimination. Article 2 is the basic non-discrimination provision, stating that rights under the Charter must be guaranteed "without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." In the only case dealing specifically with minority rights to date, the African Commission explained the significance of Article 2: "Article 2 of the Charter lays down a principle that is essential to the spirit of this Convention, one of whose goals is the elimination of all forms of discrimination and to ensure equality among all human beings.

Article 28 of the African Charter states that every individual "shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."

The primary responsibility imposed on state parties by the Charter is to acknowledge and implement the rights in the Charter.[137] The obligation placed on the state by a human rights instrument such as the African Charter is normally considered to have four components, namely to respect, to protect, to promote and to fulfill the rights recognized. It does not, however, mention homosexuals, lesbians, or the topic of sexual orientation.

1.4 Protection of Family

In July 2015, the UN Council, in a reaffirmation of the text of Article 23(1), requested the High Commissioner to prepare a report on the impact of the implementation by States of their obligations concerning the protection of the family and invited them to consider mainstreaming the promotion of family-oriented policies as a cross-cutting issue. This was done in part out of concern that the contribution of the family in society and in the achievement of development goals was being overlooked.[138] Since it was "self-evident, even axiomatic,"[139] as Volio put it, the family's role as the cornerstone of society was never questioned when Article 23 and its counterparts in Article 16 of the Universal Declaration and Article 10 of the ICESCR were written. The protection provided

[137] Kelsen, Hans. "Collective security and collective self-defense under the Charter of the United Nations." American Journal of International Law 42, no. 4 (1948): 783-796.
[138] Human Rights Council Resolution A/HRC/29/L.25, 1 July 2015. Report at A/HRC/31/37, 29 January 2016.
[139] Volio, Fernando. "Legal personality, privacy and the family." The International Bill of Rights: The Covenant on Civil and Political Rights 185 (1981).

by Article 23(1) directly benefits the "family," with the goal of allowing for the assertion of this as a personal human right. 22 It has characteristics with Article 24(1), which states that every child is entitled to the protective measures necessitated by their position as a minor, as a "protective" provision. Although Article 24(1) also mandates protection on the part of the child's "family," which inadvertently emphasizes the role of the family under Article 23, protection in both situations is to be provided by "society and the State."[140] Protection of human rights is an obligation and expectation from the State, but not from society. Belgium submitted a modification to what eventually became Article 23(1) in the Commission on Human Rights, declaring that the family had a right to be protected by society and the State.[141]

The ability to start a family offers a conceptually appealing way to support the procreative opportunities of lesbians and homosexual men. It is undisputed that the fundamental component of the right to establish a family is procreation, as the legal literature on China's one-child policy makes clear.[142] The Human Rights Committee itself noted that "the right to form a family entail, in principle, the ability to procreate" in its General Comment on Article 23. Some critics contend that this includes the freedom to use reproductive technologies, at least for heterosexual couples, subject to any restrictions necessary to protect the rights of others.[143] In other words, the right to start a family offers the best opportunities to address gay and lesbian reproduction as a human rights issue, at least in nations that are parties to the Optional Protocol on Individual Complaints. This is true as far as the complaints and monitoring mechanisms offered by international human rights law.[144]

When one looks at the Committee's interpretation of Article 23, (2), the Human Rights Committee's legal precedent pertaining to the right to have a family is essentially nonexistent. If the Committee has thought about the right to have a family at all, it has done so in a setting where this right simply functions as an add-on to the right to marry. Might the right to find a family be reliant on marriage given that the right to marry and the right to create a family are both located in the same ICCPR

[140] Taylor, Paul M. "Article 23: Protection for the Family." Chapter. In A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights, 630–58. Cambridge: Cambridge University Press, 2020.
[141] 'The family, based on marriage, is the fundamental unit of society. Since on these grounds it has certain inalienable and indefeasible rights, it shall be protected by society and the State').
[142] Saona, Hannah A. "The protection of reproductive rights under international law: the Bush administration's policy shift and China's family planning practices." Pac. Rim L. & Pol'y J. 13 (2004): 229.
[143] Marks, Stephen P. "Tying Prometheus down: the international law of human genetic manipulation." *Chi. J. Int'l L.* 3 (2002): 115.
[144] Assembly, UN General. "International covenant on civil and political rights." United Nations, Treaty Series 999 (1966): 171.

clause, and that the Committee has not yet investigated and found a violation of the right to find a family separately from the right to marry? As we are not concerned with establishing procreative rights for lesbians and gay men that are contingent upon their joining into (same- or different-sex) marriage, Art. 23(2) is of little help if it exclusively preserves the ability to found marriage-based families. Thankfully, it seems more logical to believe that non-marital families are included in the right to find a family.

The question of whether only married couples possess the right to start a family has not been addressed by the Human Rights Committee (or individuals who intend to marry). It has been successfully argued, however, that neither a textual nor a contextual interpretation of article 23(2) supports the idea that only married couples have the legal right to establish a family. Nowak has compared the text of the ICCPR right to establish a family with its regional equivalent in the European context—art. 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "ECHR")—in order to better understand the differences between the two.[145]

The Human Rights Committee's denial that persons have a human right to marry members of their own sex is not the issue we are currently dealing with. The Committee's actions instead indirectly established that heterosexuals who want to be single parents and lesbians and gay men do not have the right to start a family under the ICCPR. This is due to the fact that it is highly doubtful that one definition of "men and women of marriageable age" applies to the right to marriage while a different interpretation applies to the right to start a family. Can a different inference be drawn from the ICCPR's non-discrimination provision in art. 2(1) and art. 23(2) together? States parties must "respect and guarantee the rights enshrined in the present Covenant, without distinction of any sort, such as 'sex,'" according to Article 2(1). According to the Human Rights Committee, "sex" for the purposes of article 2(1) and article 26 includes "sexual orientation."[146] The ICCPR's human rights are thus guaranteed by art. 2(1) without unjustified distinctions based on sexual orientation.

The broad idea that all human rights are global, interrelated, and indivisible is another crucial context in which the reformation of the African Charter should be proposed. All human rights, including civil and political rights, economic, social, and cultural rights, as well as solidarity rights, must be taken into account when the African Charter is revised. In theory and in reality, the

[145] Johnson, Paul, and Silvia Falcetta. "Same sex marriage and Article 12 of the European Convention on Human Rights." In Research Handbook on Gender, Sexuality and the Law, pp. 91-103. Edward Elgar Publishing, 2020.
[146] Supra 37

traditional difference between them is not usually stated with clarity. According to French jurist Karel Vasak's[147] classification of human rights into various classes or generations, there is no rigorous division or compartmentalization of human rights. In general, it is believed that a person's exercise of their civil and political rights requires the state to do "nothing more than to endure these entitlements."[148]

Due to their freedom from state or political authority, these rights are regarded as negative rights. Socioeconomic rights, in contrast, are viewed as "positive rights," as their enjoyment necessitates constructive state or governmental activity. Certain of these rights, however, may necessitate both restraint and action on the part of the government. The right to a fair and public hearing by a qualified, independent, and impartial body established by law serves as sufficient evidence of this seeming conflict. It theoretically just needs state tolerance as a civil right.[149]

It is important for the state to take active steps to ensure that this right is realized. It is required to offer a public venue for these sessions. It must use interpreters when necessary for the trial to continue. It must also guarantee the impartiality and independence of tribunals or courts by, among other things, choosing for judicial office people of integrity and ability with the necessary training or qualifications, securing by law the terms of office of judges, their independence, security, adequate remuneration, conditions of service, and providing judges, whether appointed or elected, with a tenure guarantee. While it is possible that this symbiotic relationship "accommodates differences as between States Parties in their respective conceptions of the family,"[150] it is less likely to accommodate potential differences between a particular societal group and the state having jurisdiction over it in their respective conceptions of the family. This symbiotic relationship may have the impact of weakening the protection offered to homosexual and lesbian families by the ICCPR. We are left with two options if "family" is a state-defined notion for the purposes of article 23(1). Art. 23(1) is either ineffective because it only requires full recognition of lesbian, gay, bisexual, and transgender families with children in states where the law already fully recognizes them, or it is only marginally useful because it only requires full recognition of such families in states where the law already partially recognizes them. Even if it is believed that "a

[147] Steiner, Henry J., Philip Alston, and Ryan Goodman. International human rights in context: law, politics, morals: text and materials. Oxford University Press, USA, 2008.
[148] Marks, Stephen P. "Emerging human rights: a new generation for the 1980s." Rutgers L. Rev. 33 (1980): 435.
[149] Art 14 ICCPR
[150] Hodgson, Douglas. "The international legal recognition and protection of the family." Australian Journal of Family Law 8, no. 3 (1994): 219-236.

State cannot dictate a tighter definition of "family" than that adopted within that State's society," there will still be issues.[151]

[151] Sarah Joseph, Jenny Schultz and Melissa Castan, The International Covenant on Civil and Political Rights: Cases, Materials and Commentary (2"d ed, 2004) 609-10.

2 NIGERIAN LAW IN THE INTERNATIONAL CONTEXT

2.1 The Position of IHRL in the Nigerian Legal System

Nigeria adopts a dualistic approach in that international treaties to which Nigeria is a signatory are applicable. However, international treaties are not enforceable in Nigeria unless they have been enacted by the Nigerian legislature into Nigerian domestic law. Similarly in South Africa, Section 231(4) states that any international agreement, with the exception of so-called self-executing provisions, comes into force in South Africa when national legislation enacts it into law, unless it is in conflict with the Constitution, or a law passed by Parliament. According to Article 26 of the Vienna Convention on the law of Treaties, 1969, the Nigerian government is required to transmute any international treaty as a transnational duty in accordance with the *pactasunt servanda* concept.[152]

A state party to a treaty is not permitted to disregard a provision of the treaty by citing its local laws as justification. Article 27 of the Vienna Convention on the Law of Treaties (VCLT) plainly states this.[153] This suggests that while Article 27 prohibits using a local law as justification for breaking international law, Article 46 acts as a caveat. If Nigeria is successful in proving the validity of this proviso, it may be used as justification for not adhering to the relevant treaty. As a result, it is evident that there is a general requirement to bring domestic legislation into compliance with international legal duties.[154] Hence, merely signing an international treaty is insufficient, which is why we urge the National Assembly to take further action to amend and ratify unratified accords.

Even though a treaty is significant to the Nigerian state, it won't take effect until the National Assembly enacts it, according to the ruling in the case of *Abacha v. Fawehimi*.[155] The Court of Appeal ruled in *Mhwun v. Minister of Health & Productivity & Ors* that "a Nigerian Court cannot invoke and apply the provisions of an International Labour Convention until such time as such provisions have been re-enacted by an Act of the National Assembly."[156] In essence , Nigeria does

[152] 'Vienna Convention on the Law of Treaties Signed at Vienna 23 May 1969'
available at <https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm> [accessed March 16, 2023]
[153] Ibid.,
[154] The Registered Trustees of the National Association of Community Health Practitioners of Nigeria v. Medical Workers of Nigeria [2008] 2 NWLR [Pt 1072] 575
[155] Abacha v Fawehinmi [2000] 6 NWLR 228
[156] Mhwun v Minister of Health & Productivity & Ors [2005] 17 NWLR pt. 953 p. 120

not expressly allow for treaties to become a component of local law other than through domestication into national legislation. Yet, the Nigerian Constitution only grants the executive, legislative, and judicial branches limited authority, such as the ability to enact laws pertaining to fundamental goals and guiding principles of public policy. Section 12 of the Nigerian Constitution appears to be primarily concerned with giving effect to international agreements to which Nigeria is a party. The National Assembly of Nigeria has domesticated several of the legislation found under the "non-Justiciable" section of the Nigerian Constitution. These legislations include, among others, the Price Control Act[157] and the Child's Right Act of 2003.[158]

It is of the utmost importance that it is evident that numerous treaties have been codified into Nigerian domestic law since they are exact reproductions of those accords. The National Human Rights Commission (NHRC) of Nigeria[159] is a prime example. It was established under the National Human Rights Act of 1995 in accordance with a resolution of the United Nations General Assembly that calls on all member states to establish human rights organizations for the advancement of human rights.[160]The establishment of the NHRC can be argued to be based on cultural traditions and religion. This can be linked to cultural relativism which can be used as a yardstick in the context of culture. Due to varying cultural, social, ideological, economic, and religious backgrounds,[161] cultural relativism is advocated. Similarly, some proponents of cultural relativism base their claims on the necessity of respecting the many communities and nations' strong, distinctive cultural values. A representative from Nigeria spoke at the HRC on behalf of the African Group and reaffirmed that same-sex relationships are against African values and will not be tolerated or included as domestic human rights, as an illustration.[162] The stance of some of these African nations has demonstrated that it is untenable from a legal, social, cultural, and practical standpoint to see all individual rights recognized by Western nations as human rights. For instance, due to cultural, religious, and societal beliefs, many African countries have continued to firmly

[157] Nigeria's Price Control Act 1995
[158] Child's Right Act (2003)
[159] National Human Right Act of 1995
[160] National Human Rights Commission of Nigeria, 'Status NHRI' available at < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf> accessed March 16, 2023
[161] Asomah, Joseph Yaw. "Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society." African Human Rights Law Journal 15, no. 1 (2015): 129-149.
[162] Etone, Damian. "African States: Themes Emerging from the Human Rights Council's Universal Periodic Review." Journal of African Law 62, no. 2 (2018): 201-223.

oppose same-sex marriage. Moral relativism serves as a reminder that moral standards vary among countries and that culture has a significant impact on our opinions.[163]

Despite the fact that only domesticated international treaties are binding under Section 12 of the 1999 Constitution, governments are immediately bound by customary international law without the need for domestication. “Those human rights treaties that have been crystallized into customary international law are precluded from the scope of section 12 of the 1999 Constitution (as amended) and that International treaties are also applied by way of domestication by reference,[164]" it was stated in the Nigerian case of *Trendex Trading Corporation v. Central Bank of Nigeria*.[165] It is impossible to overstate the importance of treaties in the formation of the Nigerian legal system. They not only close the legal system's flaws but also broaden its horizons in Nigeria. However, the National Assembly has not demonstrated enough dedication to fulfill its constitutional duty of enacting treaties into domestic law. This has not only led to poor treaty implementation in Nigeria but has also deprived the country's legal system of the support and complementarity that those approved but undomesticated accords should have provided. The National Assembly's casual approach to enacting treaties into domestic legislation has been attributed to the fact that it was not involved in the treaty's negotiation.[166] Due to the fact that a number of treaties have been domesticated by reference and incorporated into Nigerian law, the country cannot unquestionably claim to be a dualist state. These treaties include:[167]

I. International Convention for the Suppression of the Financing of Terrorism, 1999
II. Fundamental Rights Enforcement (Procedure) Rules, 2009
III. National Human Rights Commission (Amendment) Act
IV. Terrorism (Prevention) Act, 2011
V. Anti-Torture Act, 2017

Municipal law and international law traditionally address somewhat dissimilar topics. While municipal law regulates relationships between people living within a state as well as between people and the state, international law primarily but not exclusively focuses on relationships among

[163] Velasquez, Manuel, Claire Andre, Thomas Shanks, and Michael J. Meyer. "Thinking ethically." Issues in Ethics,(August) (2015): 2-5.
[164] Okeke, C. E., and M. I. Anushiem. "Implementation of treaties in Nigeria: issues, challenges and the way forward." Nnamdi Azikiwe University Journal of International Law and Jurisprudence 9, no. 2 (2018): 216-229.
[165] Trendex trading corporation v Central Bank of Nigeria. [1977] 2 WLR 356
[166] Supra 164 Okeke, C. E and M.I.Anushiem
[167] Supra 69 Okebukola, Elijah Oluwatoyin

states. They also have very different legal systems. Both are often applied by national courts, which completely decentralizes the judicial function in international law and substantially centralizes it in municipal law.[168] The executive function is equivalent to the judicial function in certain respects. Traditional international law always relied on the injured party's initiative for its enforcement, similar to tort in domestic law. On the other hand, a responsible executive who is not aware of international law typically enforces municipal legislation.[169]

Since the emergence of the Fourth Republic, ratifying and signing a number of significant regional and international human rights treaties shows the Nigerian state has demonstrated a high level of dedication and support to the international community in the field of preserving human rights. At the international level, the country currently accedes to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the (ICCPR) and its Optional Protocol on Individual Communications, and the (ICESCR). Others include "the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and its Optional Protocol."[170]

Nigeria is a signatory to various human rights conventions across the African continent. The African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of Children, and the African Charter on the Rights of Women in Africa[171] are a few examples of these. She is the first nation in Africa to have "domesticated the Charter on Human and People's Rights" while making a concerted effort.[172] Nigeria has made progress toward implementing international and regional human rights accords through this action.[173] Nigeria has also written and filed human rights reports to the African Commission and the United Nations as part of her commitment to safeguarding human dignity and rights. Examples of such reports include the Report on CRC and CEDAW.

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[168] Duru, Onyekachi. "International Law versus Municipal Law: A Case Study of Six African Countries; Three of Which Are Monist and Three of Which Are Dualist." *Three of Which are Monist and Three of Which are Dualist (September 6, 2011)* (2011).
[169] Ibid.,
[170] International Federation for Human Rights, Nigeria: Defending Human Rights: Not Everywhere Every Right: International Fact-Finding Mission Report, April 2010, available at: https://www.refworld.org/docid/4bed03412.html [accessed 19 March 2023]
[171] Ibid.,
[172] Ibid.,
[173]National action plan for the promotion and protection of human rights in Nigeria https://www.ohchr.org/sites/default/files/Documents/Issues/NHRA/nigeria.pdf [accessed 19 March 2023]

The African Commission's report on the African Charter on Human and Peoples' Rights is one example of this on the regional level.[174] In the field of international human rights, Nigeria has also made significant accomplishments. Nigeria fielded a candidate and valiantly earned membership in the United Nations Human Rights Council (HRC) in 2006. She has also successfully established her presence and reputation within the global community by active involvement, particularly in recent times. Even while the importance of Nigeria on the international and continental stages should be recognized, it is important to keep in mind that the idea and concept of human rights are not wholly foreign to Nigeria. Yet, following her independence in 1960, Nigeria officially started to acknowledge the significance of safeguarding human rights and individual dignity in modern times. Human rights have been acknowledged throughout Nigerian constitutions dating back to "the 1960 Independence Constitution, the Republican Constitution of 1963, the 1979 Constitution, and the current 1999 Constitution," all of which have given them the full consideration they need. These constitutions include sufficient protections for human rights. In reality, the 1999 Constitution, which is still in effect, comprises two chapters and 26 sections devoted to concerns pertaining to human rights.[175] Practically speaking, there is little doubt that the Fourth Republic has greatly improved Nigeria's human rights status. Terence P. McCulley, who served as the US ambassador to Nigeria from 2010 to 2013, unambiguously attested to this assertion in a statement by stating that during his three years there, the country made progress in the area of human rights. The committed efforts at reconciliation in the North, the passage of the Freedom of Information Act (FIA), and the apparent efforts of the House of Representatives towards managing security and corruption-related cases in the nation—including its recent ordering of an investigation into rising cases of extrajudicial killings—were all mentioned by McCulley in support of his point.[176] Nigeria has also set up mechanisms and adopted laws aimed at ensuring respect for human rights, including for example the establishment of the National Human Rights Commission and the creation of State Directorates for Citizens Right, according to an analysis of other significant advancements in the field of human rights.[177] Despite Nigeria's admirable efforts and accomplishments in the national, regional, and international human rights contexts, the country still faces certain significant obstacles that limit her adherence to international human rights instruments.

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[174] Ibid.,

[175] A, Dada J. "Human Rights under the Nigerian Constitutions: Issues and Problems." International Journal of Humanities and Social Sciences, (2012): 33-43. Accessed March 19, 2023.

[176] McCully, T. P. (2013, April 29). Nigeria's commitment to human rights http://www.chidoonumah.com/nigerias-commitment-to-human-rights/# [Accessed March 19, 2023]

[177] Supra 160 IFHR 2010

2.1.1 Nigeria's Challenges Regarding the Implementation of the International Human Rights

The major barrier to Nigeria's commitment to, and compliance with international human rights treaties stems from the core proposition of the Blackstonian doctrine,[178] which is described as "doctrinal relationship between the international human rights instruments and the domestic (municipal) law, which includes the constitution". In concordance with the principle of the Blackstonian concept, this relates basically to the Nigerian internal legal system and the superiority attached to the constitution country's above international laws including human rights accords.[179] An inherent flaw in Nigeria's Constitution's Section 12 provided the foundation for evaluating the status of all treaties within the nation's legal system. No treaty between the federation and any other country shall have legal effect, except to the extent that such a treaty has been voted into law by the National Assembly, according to the aforementioned part of the Constitution.[180] This represents a serious flaw that could seriously jeopardize the advancement of human rights. Similar to this, Nigeria's sociopolitical climate is insufficiently hospitable or supportive of an effective human rights framework. By routinely disobeying court decisions, the administration frequently demonstrates unfortunate authoritarian tendencies and fosters a culture of impunity. Two main schools of thought, namely monism and dualism, have evolved on the link between local law, which includes the Constitution, and international human rights agreements. The harmonization theory is a less popular explanation that has been put out in addition to these dominant hypotheses.[181]

The provision of Section 12 of the 1999 Constitution states that the dualist or indirect system is applicable in Nigeria.[182] It is clear from the preceding that Section 12 of the Constitution significantly hinders the nation's commitment to and performance of its obligations under the international human rights instruments to which it is a party. According to the Blackstonian doctrine's justification, Nigeria's ratification of the various human rights treaties will have little to no impact unless the National Assembly of the nation accepts and re-enacts them, as those agreements are not inherently obligatory on Nigeria. As a result, Nigeria's simple signature on a number of international human rights treaties has no practical impact on the overall climate for

[178] Supra 175 Dada 2012
[179] Ibid.,
[180] Federal Republic of Nigeria. (1999). Constitution of the Federal Republic of Nigeria, 1999 (with amendments 2011)
[181] Großklaus, Mathias. "Appropriation and the dualism of human rights: understanding the contradictory impact of gender norms in Nigeria." Third World Quarterly 36, no. 6 (2015): 1253-1267.
[182] Ibid.,

human rights because the government is not bound by the agreements.[183] Sadly, the Supreme Court did not give a clear ruling about the incompatibility between international law and other national laws. The court did observe that "this country (Nigeria) provided that the treaty shall rank at par with other ordinary municipal legislation in incorporating African Charter.[184] It is argued that the best and preferred perspective is that international instruments, especially human rights instruments, should take precedence over domestic legislation. The Nigerian administrations and its judicial institutions are not legally allowed to deviate from those rules because Nigeria has subscribed to them by ratifying the treaties. Therefore, it is important to interpret and apply international human rights standards in a way that gives international human rights instruments priority over domestic law.[185]

The Supreme Court goes on to say that although treaties have the same legal standing as domestic law and are equivalent to it, the Constitution has priority over treaties. In support of its claim, the court quotes the African Charter on Human and People's Rights (Ratification and Enforcement) Act as follows: “It is a statute with an international flavor. Being so, if there is a conflict between it and another statute its provisions will prevail over those of other statutes for the reason that it is presumed that the legislature does not intend to breach an international obligation. The Charter possesses a greater vigor and strength” than any other domestic statute but that is not to say that the Charter is superior to the constitution”[186]. Furthermore, the current situation of Nigeria's 1999 Constitution posed a significant barrier to international law and human rights objectives because its section 12 provision serves to deter the Nigerian government from upholding its international obligations in accordance with the various international human rights instruments to which the nation is a party.

Human rights concerns go beyond the sole domestic purview of States, it is ideal for national constitutions to be guided by international human rights instruments in order to properly defend the human rights enshrined in international agreements. Successive governments in the nation would be enjoying unjustified immunity from international human rights accords as long as section 12 of the 1999 Nigerian Constitution is still valid and effective. One of the main barriers to the full realization of human rights objectives in Nigeria is the country's inadequate legal system and the

[183] Ifejika, Solomon I. "The Nigerian State and International Human Rights Laws in the Fourth Republic." Pertanika J. Soc. Sci. Humanit 29, no. 1 (2021): 10-47836.
[184] Ibid.,
[185] Dada, Jacob Abiodun. "Impediments to human rights protection in Nigeria." Ann. Surv. Int'l & Comp. L. 18 (2012): 67.
[186] Supra 175 Dada, J.A 2012

reprehensible conduct of government security agencies, which are institutions designed to defend and protect citizens' rights. According to the Nigeria's Civil Society Organizations (SCO) Coalition, Nigeria's current judicial administration system is woefully insufficient. Access to population-wide rights abuses, such as extrajudicial killings. According to rumors, the military and the policy have been known to use roadblocks to extort money, and in some instances, they have killed people who refuse to pay. Looking at the current scenario, it is abundantly evident that Nigeria's court system and security forces provide a significant obstacle to the country's aspirations for human rights. The hope of the average person is diminished when these two crucial institutions for the advancement of respect for and protection of human rights are themselves complicit in citizen human rights breaches.[187]

The history of extra-judicial killings by the military stems from years of military intervention in politics. Military governments—whose legality is in doubt—are notorious for being essentially dictatorial and autocratic, seemingly intoxicated by the power emanating from the rifle. They also typically lack constitutional safeguards. Military dictators typically display a lack of decorum, decency, and adherence to the law. Massive violations of human rights have occurred in Nigeria over its lengthy military history. The defense and advancement of human rights are incompatible with several aspects of military administration. These were incisively and extensively recognized as dimensions which are: exclusion of courts' jurisdiction, lack of mechanisms for appeal in military decrees and edicts, employment of Special Military Tribunals to try cases, and detention without trial.[188]

One of the main obstacles to democracy and sound administration in Nigeria regarding the defense of citizens' fundamental rights has long been recognized as political corruption. Nigeria has undoubtedly been included among the most corrupt nations in the world by several international agencies dedicated to good governance and anti-corruption. Several scholars have identified corruption as one of the main issues Nigeria's human rights systems is currently facing.[189] Moreover, Nigeria's government officials and/or political office holders have a culture of institutionalized corruption and impunity that substantially impedes the defense and advancement of human rights. The US Department of State and United States Department of State and Bureau of Democracy, Human Rights, and Labour (BDHRL) made clear that while Nigerian law stipulates

[187] Supra 183 Ifejika, Solomon I.
[188] Ibid.,
[189] Ikpeme, Nya John. "A review of socio-cultural factors militating against human rights in Nigeria." *International Journal of Humanities and Social Science Invention* 3, no. 3 (2014): 25-32.

criminal punishments for official corruption convictions, the pace at which officials continued to act corruptly and with impunity remained very concerning due to the law's ineffective application. Nigeria continues to be plagued with massive, persistent, and widespread corruption in all areas and at all levels of the government, including the security agencies.[190] The immunity provision in Section 308 of the 1999 Nigerian Constitution protects those who occupy political office, including the president, vice president, governors, and deputy governors, from being sued on both civil and criminal grounds while in office. Hence, they conceal themselves behind the shield of constitutional immunity to continue corrupt acts that jeopardize the citizens' basic human rights.

The Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the two main Nigerian anti-corruption authorities designed to handle cases of corruption involving government officials, seem to be ineffective. Political meddling and influences weaken the anti-corruption organizations.[191] Nigerian residents lose their rights to essential social goods and services due to corruption, which impedes effective and responsive government. It is a factor that fuels a vicious cycle in which the hard realities of subpar political and economic performance are inextricably linked to and erode human rights understanding. Political upheaval, violations of human rights,[192] and lack of growth are all caused by and a result of corruption. According to corroborating evidence, corruption in the Nigerian context causes money to be diverted from the development of crucial socioeconomic infrastructures that would enable businesses to thrive, draw foreign direct investments, and generate job opportunities.[193] In Nigeria, it is also noted that officers who are supposed to use their positions to advance human rights frequently take bribes and ignore the horrendous human rights abuses perpetrated on the populace.[194]

The issue of access to justice is one of the most obvious ways that great poverty undermines human rights in Nigeria. The right of Nigerian citizens to legal representation and court access is recognized as a fundamental right and is protected by Section 46 of the Nigerian Constitution. Despite this, the overall quality of life in Nigeria is threatened by extreme and utter poverty, and poor Nigerians primarily view access to justice for the protection of their rights as the exception rather than the rule. Although the economy of Nigeria is paradoxically expanding, a growing

[190] Supra 183 Ifejika, Solomon I.
[191] Ibid.,
[192] Supra 189 Ikpeme, Nya John
[193] Supra 176 McCully, T. P. (2013, April 29).
[194] Supra 189 Ikpeme, Nya John

number of Nigerians are living in poverty. So, even when their fundamental rights are violated, the poor Nigerian would rather utilize the limited financial resources at his disposal to provide for himself and his family's daily needs than go to court to spend them. This is especially true given how expensive litigation is in this nation. Again, the majority of Nigerians lack trust and confidence in the country's legal system; they believe that justice can be tainted even in cases where their rights have been clearly violated because of the corrupt tendencies of a few "bad eggs" in the system, such as corrupt judges who are eager to wed wealthy oppressors.[195]

The promotion and protection of fundamental rights and human dignity in the nation are severely hampered by the high rate of illiteracy and specific cultural practices in Nigerian society. The threat of illiteracy plays a significant role in Nigeria's awful human rights situation today. This portrayal of the situation in Nigeria is accurate. Due to widespread illiteracy, many Nigerians do not understand their rights, let alone how and where to seek justice when such rights and fundamental freedoms are infringed. They consequently continue to be somewhat mute despite flagrant instances of ongoing breaches of rights by state managers and the educated. The rate of illiteracy in Nigeria is concerning. Up to 35% of adult Nigerians lack literacy, according to the Nigerian National Commission for Mass Literacy, Adult and Non-Formal Education (NMEC).[196] Given this alarming rate of illiteracy, it is clear why most Nigerians are unaware of their rights and do not know how to exercise their basic liberties. Liberation from ignorance, oppression, and denial or deprivation is a result of education. Another key obstacle to the development and defense of human rights in Nigerian society is cultural orientation. For instance, the idea that men should dominate women is a particular barrier to the country's efforts to advance human rights.

The protection of minorities should not be a herculean task as Nigeria has taken commendable steps in ensuring equality based on gender policy. The Strategic Implementation Framework and Plan of Action for operationalizing the National Gender Policy were adopted by Nigeria in 2008. To combat stereotypes, harmful cultural practices impacting women and children, and all forms of violence against women and girls, a number of legal and policy instruments were established at the federal and state levels as part of the accomplishments attained.[197] Female genital mutilation, detrimental widowhood customs, harmful traditional practices, and all other types of violence

[195] Ibid.,
[196] This day (April 2019) The Growing Illiteracy in Nigeria https://www.thisdaylive.com/index.php/2019/04/12/the-growing-illiteracy-in-nigeria/ [Accessed 26th March, 2023]
[197] United Nations (14.07.2023) Committee on the Elimination of Discrimination against Women examines the reports of Nigeria https://www.ohchr.org/en/press-releases/2017/07/committee-elimination-discrimination-against-women-examines-reports-nigeria [Accessed 23rd March 2023]

against people in both private and public life were all outlawed under the Violence Against Persons Prohibition Act of 2015.[198]

2.1.2 Right to Private Family Life in Nigeria and South Africa

Human rights in Nigeria have a longer history than colonial domination. Traditional Nigerian societies recognized basic freedoms and human rights. Yet, the modern understanding did not include the concept of rights. Values including the freedom of thought, speech, association, and family, the enjoyment of private property, and the opportunity to take part in the management of societal matters were fiercely maintained.

The development of a political culture that respects human rights was one of the stated goals of South Africa's truth and reconciliation process. So, fostering a set of cultural norms among the public that would make the egregious human rights abuses that defined the apartheid system difficult, if not impossible, to re-implement in the future, was part of the "reconciliation" sought by the truth process. The people behind the truth and reconciliation initiative believed (or hoped) that learning the truth about the nation's apartheid past would somehow aid in the growth of such a culture.[199] Despite having robust legislative safeguards, South Africa nevertheless faces violence against LGBT people.[200]However despite Nigeria's commitment towards enhancing human right laws, the minorities are exempted from enjoying such right as the draconian law does not work in their favor.

Political developments in Nigeria suggest that Human Rights Watch's and other well-known human rights advocacy organizations' strategies may not be as successful as those organizations expect and may even be doing more harm than good to the LGBT rights movement. This Remark specifically suggests that international pressure on countries to recognize the rights of sexual minorities may cause some countries to affirmatively approach these rights in an unfavorable manner.[201]South Africa unlike many other African countries offers a particularly graphic illustration; it was the first African country to legalize same-sex marriage and to draft a constitution

[198] Violence Against Persons (Prohibition) Act 2015
[199] Gibson, James L. "Truth, reconciliation, and the creation of a human rights culture in South Africa." Law & Society Review 38, no. 1 (2004): 5-40.
[200] Graeme Reid (22 June 2022) Progress and Setbacks on LGBT Rights in Africa — An Overview of the Last Year https://www.hrw.org/news/2022/06/22/progress-and-setbacks-lgbt-rights-africa-overview-last-year [Accessed 26th March 26, 2023]
[201] Supra 71 Mittelstaedt, Emma.

guaranteeing, among other things, the rights of sexual minorities. A number of countries have lately enacted domestic legislation that is still pending that directly violates treaties to which those countries are signatories; other countries still have laws in place from before treaties that do the same. Some of these countries address the questions of international law that are brought up by their activities, but most don't even go that far. Countries in all groups typically express open contempt for international law on this specific issue. The official attitude of Ghana is that international conventions and Charters that recognize LGBT rights do not supersede national laws, which is typical of the justifications offered for disobeying treaties.[202]

Prior to Nigeria's 2014 same-sex marriage act, a bill titled "A Bill for an Act to Make Provisions for the Prohibition of Sexual Relationship between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith," also known as the "Same Sex Marriage (Prohibition Act)," would subject anyone who "goes through the ceremony[203] of marriage with a person of the same sex to a five-year prison sentence."[204] The circumstances surrounding Nigeria's presidential elections in April 2007 caused the bill to become stuck in the legislature. The political situation has remained unpredictable since the violent election, making it unclear what the status of the law is at the moment. International human rights organizations have ceased their objections, but a resurfacing of the law was still very likely. Nigerian officials have offered a justification for the bill's necessity based on two interconnected factors: a moral and religious reason and a protectionist one.

Peter Akinola, the Archbishop of the Anglican Church of Nigeria and one of the most outspoken advocates of the legislation, has made statements that are clearly moral in nature.[205] He argues that the legislation will safeguard societal morality and values.[206] The protectionist component is also evident in House of Representatives floor arguments. The issue of homosexuality has become more urgent, according to Abdul Ningi, the then-leader of the House of Representatives, as a result of the rise in the population of LGBT people in Nigeria.

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[202] Ebenezer Hanson, Ghana: No Room for Gays and Lesbians, Public Agenda (Accra) (May 21, 2007 https://allafrica.com/stories/200705211573.html [Accessed 26th March, 2023]

[203] Human Rights Watch, Nigeria: Ani-Gay Bill Threatens Democratic Reforms: Homophobic Legislation Restrains Free Speech, Assocation, Assembly (Feb 28, 2007) https://www.hrw.org/news/2007/02/28/nigeria-anti-gay-bill-threatens-democratic-reforms [Accessed 26th March, 2023]

[204] Supra 71 Mittelstaedt, Emma.

[205] Ibid.,

[206] Nigeria Moves to Tighten Gay Laws, BBC News (Feb 14, 2007) http://news.bbc.co.uk/2/hi/africa/6362505.stm [Accessed 26th March, 2023]

With a constitution that forbids discrimination based on sexual orientation, South Africa became the first and only nation in Africa to legalize same-sex unions in 2006. A measure to penalize hate crimes and hate speech was also submitted in 2018, and in 2020, South Africa's President Cyril Ramaphosa signed the Civil Union Amendment Act into law, which forbade marriage officials from refusing to perform same-sex marriages.[207] Equal rights need the legalization of same-sex relationships, which also benefits LGBTQ+ groups' psychological, physical, and social well-being. With LGBT travelers apparently making up between 5 and 10% of all tourists worldwide, nations that are LGBTQ+ welcoming also frequently experience an increase in tourism. It's crucial to keep in mind that legalizing same-sex partnerships is only the first step and that LGBTQ+ populations may continue to experience oppression, discrimination, and violence even after same-sex relationships are made legal.[208]

It is also useful to notice that important instances involving ESC rights have been decided by South African domestic courts. As a result, they offer useful African examples of the impact of the ICESCR in Africa. South Africa signed the Covenant on October 3, 1994, even though it approved the ICESCR on January 12, 2015. Its obligation to "refrain from acts which would defeat the object and purpose of a treaty"[209] as a signatory for nearly 21 years (before ratification) had an impact on the protection of human rights in the South African Constitution of 1996, which enshrines both civil and political rights and ESC rights (for example, the right of "everyone" to have access to adequate housing;[210] access health care services; enough food and water; and social security;[211] and right to education.[212]

Two key international law-friendly provisions are found in the Constitution. It first states that courts or tribunals "shall regard international law"[213] while interpreting the Bill of Rights. Although this clause outlines the options available to South African courts for applying international law (treaties and the case law of pertinent international tribunals/bodies), the requirement, not a choice, is to just "examine" rather than to implement international law. Second, according to the Constitution, "when interpreting any law, every court shall prefer any just and proper reading of

[207] Aaron Rakhetsi (02.25.2021) Global Citizen 5 Countries in Africa That Have Legalized Same-Sex Relationships in the Past 10 Years https://www.globalcitizen.org/en/content/countries-legalized-same-sex-relationships-africa/ [Accessed 26 April 2023]
[208] Ibid.,
[209] Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, 8 ILM 679, Art. 26
[210] Constitution of the Republic of South Africa (1996), sect. 26.
[211] Ibid.,
[212] Ibid.,
[213] Constitution of the Republic of South Africa (1996), sect. 39(1)(b),

the law which is consistent with international law over any other interpretation which is inconsistent with international law."[214] With particular reference to the rights of access to health care, adequate housing, water, electricity, basic sanitation, and education, the South African Constitutional Court has developed helpful jurisprudence on the justiciability of ESC rights (based on the model of reasonableness review) on the basis of the pertinent constitutional provisions.[215]

As a result, it is argued that the narrative that is popular in Nigeria—that sexual minorities must adjust their behavior or face the wrath of the law—is telling someone to stop being themselves. It is even disturbing to learn that Nigeria is one of the 10 nations where gay offenses call for the death penalty.[216] Nigeria is one of the 12 northern states where the Sharia law is in effect. The rights of the minority should still be safeguarded[217] just because the majority views being homosexual or lesbian as "un-cultural." The Nigerian Constitution, which is meant to be the foundation of the nation, is violated by the criminalization of same-sex sexual behavior among consenting adults and the discrimination against sexual minorities. The Nigerian Constitution supersedes all other legislation. According to the Constitution's Section 1(1) and (3),

(1) The Federal Republic of Nigeria's authorities and citizens must abide by the terms of this Constitution, which is paramount and whose provisions have legal effect.

(2) This Constitution takes precedence over any other laws that conflict with its provisions, and those other laws are invalid to the extent of inconsistency.[218]

Criminal law may develop into a tool for restricting human liberty and freedom if the purpose of a behavior's criminalization is not understood. It is necessary to analyze the rationale behind why specific behaviors are classified as crimes and subject to corresponding punishments.[219] The same-sex Act is divided into eight sections that cover the following topics: the legalization of homosexual associations; the prohibition of same-sex marriage; offenses and punishments; jurisdiction; interpretation; and citation. Goodluck Jonathan, a former president, signed the bill into law, and it became effective on January 7, 2014. It expressly forbids weddings or civil unions between people

[214] Ibid.,
[215] Supra 61 Ssenyonjo, M
[216] Agada Akogwu, L. L. D. "Death for Love? A Critical Interrogation of the Capital punishment for Homosexual Conduct in Nigeria against the Backdrop of Mill's Harm Principle."
[217] Pew Research Centre. (2013). Global acceptance of homosexuality. Retrieved from Pew Research Centre: http://www.pewglobal.org/2013/06/04/global-acceptance-of-homosexuality/
[218] Arimoro, Augustine Edobor. "The criminalisation of consensual same-sex sexual conduct in Nigeria: A critique." Journal of Human Rights and Social Work 4, no. 4 (2019): 257-266.
[219] Allen, Mischa, Janet Loveless, and Caroline Derry. Complete criminal law: text, cases, and materials. Complete, 2020.

of the same sex and stipulates that any such unions are not recognized as legitimate marriages in the country and are not entitled to the privileges of one. This implies that a marriage will not be recognized in Nigeria if it occurs in a nation where same-sex marriage is permitted, such as South Africa. A very good example is Mr. Eric Mayooraz, a married homosexual Swiss ambassador to Nigeria. According to reports, Mr. Mayooraz traveled to Nigeria with his husband, Mr. Carlos, a Brazilian citizen. Despite the Ambassador's diplomatic immunity, allegations of a probe by the Nigerian foreign ministry said that the husband of the Ambassador would not receive any preferential treatment.[220]

It follows that same-sex couples who marry abroad, whether or whether they are Nigerian citizens, would not be eligible for the benefits of a legitimate marriage and that such a marriage would not be recognized by a Nigerian court of law. The Act makes it illegal to contract a marriage or civil union between people of the same sex in a Nigerian church, mosque, or other house of worship. According to the Act, only marriages entered between men and women are recognized in Nigeria. Sections 1 to 2 of the same-sex Act are implied to violate both the right to equality and the prohibition of discrimination by virtue of the clauses.[221] Similar to this, Nigeria's ratification of the ACHPR by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004 results in a violation of Article 2 of the same-sex Act. Discrimination is illegal under Article 2 of the ACHPR on a number of grounds. The right to equality is guaranteed by Article 7 of the ICCPR, while the prohibitions against discrimination are upheld by Articles 2.3 and 26. The registration of LGBT clubs, societies, and organizations, as well as their maintenance, processions, and meetings, are prohibited by Section 4 of the same-sex Act. Also, it makes it illegal to openly or indirectly display a same-sex romantic relationship in public.[222]

Once more, section 40 of the 1999 Constitution of the Federal Republic of Nigeria, which guarantees the right to freedom of association and assembly, conflicts with section 4 of the same-sex Act. As previously mentioned, the Constitution's supremacy requires that section 4 of the same-sex Act be declared void to the extent that it conflicts with section 40 of the Constitution. Similar to this, Articles 10 and 11 of the ACHPR and Articles 21 and 22 of the ICCPR are violated by the same-sex Act's provision in both language and spirit.[223] Section 37 of the 1999 Constitution (as

[220] Bayo Nelson (11-04-2016) Swiss Ambassador Eric Mayooraz, Probed by FG for Bringing Gay Husband to Nigeria https://www.gistmania.com/talk/topic,288112.0.html [Assessed 29-03-2023]
[221] Supra 218 Arimoro, Augustine Edobor 2019
[222] Ibid.,
[223] Ibid.,

modified), which guarantees the right to privacy and private family life, is also in conflict with the same-sex Act.

The rejection of sexual minorities' right to marriage is a flagrant violation of their basic human rights. It is crucial to keep in mind that Nigeria's anti-gay laws, including the more recent same-sex Act, violate not only the 1999 Federal Republic of Nigeria (as amended) Constitution but also serve as a constant reminder of the country's failure to uphold its obligations under international human rights instruments until they are repealed.[224]

Table 1. LGBT Rights in Nigeria

Homosexuality		Gay Marriage	
			
Censorship	✕ Imprisonment as punishment	Employment Discrimination	✕No protections
Discrimination	✕No protections	Donating Blood	Ambiguous
Adoption	✕ Single only	Housing Discrimination	✕No protections
Military	✕Illegal	Public Display of Affection	✕Illegal
Age of Consent	N/A	Co-habiting	✕Illegal

Source: Equaldex Report on LGBT Rights

As stated above, data retrieved from Equaldex illustrates the situation regarding the rights of LGBT in Nigeria.[225] Equaldex is a website that tracks LGBT+ rights and equality around the world. Same-sex couples are not permitted to publicly exhibit their affection, and LGBT+ people frequently experience harassment, assault, and prejudice. There is no protection against discrimination in the workplace which shows a lack of inclusiveness, diversity, and equality. It is also impossible to enlist in the Nigerian army or any enforcement agencies. As a result, the Nigerian Constitution from 1999 completely violates the fundamental human rights of the minority by enacting anti-gay

[224] Supra 8 Adebanjo, Adetoun Teslimat.
[225] LGBT rights in Nigeria: Equaldex https://www.equaldex.com/region/nigeria [Accessed 30th of March 2023]

legislation. In particular, the freedoms to peacefully assemble and associate,[226] to express one's beliefs, and to practice one's religion,[227] as well as the freedom to live a private life[228]and raise a family without interference or racial or other forms of discrimination.[229] The idea of the rule of law asserts that people's human rights must be upheld and that it is the state's responsibility to enact laws to maintain its citizens' public order, peace, and well-being.[230]

Table 2. LGBT Right in South Africa

	Homosexuality		Gay Marriage
			
Censorship	✓ No censorship	Employment Discrimination	✓Sexual orientation and gender identity
Discrimination	✓ Illegal	Donating blood	✓ Legal
Adoption	✓ Legal	Public Display of affection	✓ Legal
Military	✓Legal	Co-habiting	✓ Legal
Age of Consent	✓Equal		

Source: Equaldex Report on LGBT Rights

As stated above from equaldex, the information shows the LGBT right enjoyed in South Africa. Contrary to the situation in Nigeria, discrimination based on sexual orientation and gender identity is prohibited by the Constitution of South Africa, and LGBT+ individuals have the right to marry and adopt children.[231] The South African Constitution upholds the principle of equality and protects

[226] Section 40 of the Nigerian Constitution 1999 (as amended)
[227] Section 38 of the Nigerian Constitution 1999 (as amended)
[228] Section 37 of the Nigerian Constitution 1999 (as amended)
[229] Section 42 of the Nigerian Constitution 1999 (as amended)
[230] Section 4 of the Nigerian Constitution 1999 (as amended)
[231] LGBT Right in South Africa: Equaldex https://www.equaldex.com/region/south-africa [Accessed 30th of March 2023]

everyone from unjustified discrimination.[232] It goes a step farther by admitting that affirmative action policies are required to advance underprivileged populations.[233]

Public attitudes, which in turn were shaped by a wide range of religious considerations, sovereignty issues, and national interest considerations, had an impact on the adoption of anti-homosexual laws in Nigeria. About 98 percent of Nigerians have negative attitudes of homosexuality, according to a Pew Research Institute poll of popular perception and attitude.[234]

In Nigerians' social lives, upholding traditional family values takes center stage. Hence, most Nigerians disapprove of homosexual behavior as a whole and work to make it illegal, regardless of their ethnic or religious backgrounds. The administrations of previous President Goodluck Jonathan and current President Muhammadu Buhari have emphasized that the Anti-Homosexual Act reflects the desires of Nigerians in keeping with the public's support for such legislation.[235]

The prohibition of homosexuality gives the police and other members of the public the right to attack and harm LGBT people. The rights of LGBT people are restricted as a result of the criminalization of homosexuality.[236]The Court in some cases had to throw a case against some men charged with homosexual activities after prosecutors failed to appear or call witnesses to corroborate claims of violating the same-sex law.[237] As same-sex behavior has been made illegal, homosexuals are now treated like regular criminals. Since same-sex relationships are illegal in Nigeria, decent Nigerians who make significant contributions to a society run the risk of being targeted, detained with common criminals, tried alongside hardened criminals, and possibly sentenced to prison time because of their sexual orientation rather than because they are predisposed to a life of crime other than the 'crime' of being homosexuals.[238]

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[232] Section 9 (2) of the Constitution of South Africa
[233] Section 9 (4) of the Constitution of South Africa
[234] Cox, D. "Nigeria's intolerance of homosexuality disturbs human rights activists." The Pendulum. Retrieved on 4 (2014).
[235] Onuche, Joseph. "Same-sex marriage in Nigeria: A philosophical analysis." International journal of humanities and social science 3, no. 12 (2013): 91-98.
[236] Chris Ewokor (31.07.2017) Mass Nigerian arrests for 'homosexual acts' in Lagos State. BBC NEWS https://www.bbc.com/news/world-africa-40774930 [Accessed March 30, 2023]
[237] Temilade Adelaja (10.27.2020) Judge Dismisses Case Against 47 Men Charged Under Nigeria's Anti-Gay Law. New York Times https://www.nytimes.com/2020/10/27/world/africa/Nigeria-anti-gay-law.html [Accessed March 30, 2023]
[238] Arimoro, Augustine Edobor. "When love is a crime: is the criminalisation of same sex relations in Nigeria a protection of Nigerian culture?." Liverpool Law Review 39, no. 3 (2018): 221-238.

2.2 Way Forward on Improving Rights and Equality of LGBT Rights

International treaties, whether included in a single instrument, two or more connected documents, or whatever their specific title, are international agreements reached between nations and controlled by international law.[239] In that the parties create legally binding responsibilities for themselves, they superficially resemble contracts and can be a significant source of a nation's law.[240] It is assumed that the states parties acknowledge the obligation and responsibility coming from the treaty when sovereign states join together to negotiate and agree on its wording.[241]

The enforcement of human rights has been a major area of weakness. Nigeria has built what appears to be a solid institutional framework to protect human rights in the nation because the implementation of human rights mostly relies on the internal workings of national governments. The National Human Rights Commission,[242] the Public Complaints Commission,[243] the Legal Aid Council,[244] and the judicial system make up the institutional infrastructure. Unfortunately, the various institutional structures are weak or incapable of offering suitable and effective platforms for significant human rights promotion and protection. Hence, claiming incapacity owing to lack of domestication is proof of dishonest faith. In fact, in dualist countries, especially those in the third world, the necessity for and lack of domestication of treaties are frequently the guise used by some persons to evade their commitments under the terms of treaties they have signed.[245] The significance of this is shown by the significance of treaties in both international and local law. It serves as the primary mechanism for reaching an agreement in international law and is regarded as the closest analog to legislation available.[246]

Nigeria is a signatory to numerous important international and regional human rights treaties, including the UDHR, ICCPR, and ICESCR. Human rights are more than a collection of formal norms: they are dynamic political, social, economic, and legal, as well as moral, cultural, and philosophical conditions that define the intrinsic value of man and his inherent dignity.[247] The

[239] Article 2 (1)(a) of the Vienna Convention of the Law of Treaties 1969
[240] Okeke, Christian N. "The use of international law in the domestic courts of Ghana and Nigeria." Ariz. J. Int'l & Comp. L. 32 (2015): 371.
[241] Egede, Edwin. "Bringing human rights home: An examination of the domestication of human rights treaties in Nigeria." Journal of African Law 51, no. 2 (2007): 249-284.
[242] National Human Rights Commission Act, (2004) Cap. 46 (Nigeria)
[243] Public Complaints Commission Act, (2004) Cap. 37 (Nigeria).
[244] Legal Aid Act, (2004) Cap. L9 (Nigeria)
[245]Onomrerhinor, Flora Alohan. "A re-examination of the requirement of domestication of treaties in Nigeria." Nnamdi Azikiwe University Journal of International Law and Jurisprudence 7 (2016): 17-25.
[246] Ibid.,
[247] Moskowitz, Moses. International concern with human rights. Brill Archive, 1974.

practical implication of this is that international efforts to advance, defend, and uphold human rights go beyond formal adherence to their principles, or, to put it more bluntly, mere domestication.[248]

The discrimination against the LGBT community is not limited to Nigeria and Uganda alone but the majority of African nations that are also signatories to ICCPR, UDHR, and the African Charter. High-profile human rights advocates have criticized the discrimination against homosexuals in Africa, including Ban Ki-moon, the United Nations Secretary-General, who advised an African Union summit to confront and address sexual orientation discrimination in January 2012. However, this has not stopped the development of anti-gay laws in several states. Thirty-six of the fifty-four African states still have laws against same-sex relationships, and they can result in fines, jail time, labor camp detention, or even death.[249]

Twelve states in Northern Nigeria have made Shariah law applicable in addition to the Criminal Code. Same-sex partnerships are forbidden by the Shariah Criminal Codes, such as section 130 of the Zamfara Shariah Penal Code Law, albeit the associated punishments differ. For instance, in Kano (section 129) and Zamfara (section 131), the marital status of the offender is taken into account when determining the severity of the punishment, with unmarried offenders subject to a hundred cane lashes and a year in prison and married offenders subject to the most severe penalty—stoning to death. However, Kebbi (section 132) does not make this distinction, as all offenders must be stoned to death. Although Bauchi (section 134) specifies the death penalty, it provides leeway for discretion by adding "or any other means determined by the state" soon after.

According to Equaldex on global statistics on LGBTQ, homosexual activities is legal in 160 countries and illegal in 63 countries.[250]Same-sex marriage is legal in 55 countries, and illegal in 73 countries while 101 countries currently sit on the fence.[251]

Although some other African states do not explicitly ban homosexual activities, South Africa is the only state on the continent to have legislation prohibiting discrimination based on sexual orientation regarding a broad range of civil rights (including marriage). Human rights advocates

[248] Ibid.,
[249] Ibid.,
[250] LGBTQ+ Rights by Country. Equaldex https://www.equaldex.com/ [Accessed April 7, 2023]
[251] Ibid.,

have labeled Africa as "the continent with the worst laws on the books when it comes to homosexuality and other sexual minorities" due to its legal environment.[252]

It might seem implausible that pan-African human rights for LGBT could be developed in a manner similar to recent developments in Council of Europe states under the European Convention on Human Rights (ECHR). The African Charter is the most important regional human rights instrument in Africa, nevertheless,[253] shares many similarities with the European Convention on Human Rights (ECHR), despite some differences in the substantive rights they guarantee and the mechanisms they create to enforce them.[254]

In addition, the African Charter on Human and Peoples' Rights declares in its preamble that freedom, equality, justice, and dignity are necessary goals for the realization of the African people's rightful aspirations.[255] These provisions imply that sexual minorities are entitled to the same enjoyment of fundamental rights and freedoms as other humans are due to their position as human beings. For minorities to enjoy these rights, the African Commission and African Court should use the same justifications used in the European and United Nations institutions, as doing so would allow for some protection of the rights of sexual minorities in Africa. The jurisprudence of international and regional systems should be taken into consideration while examining the protection of sexual minorities in Africa because, by analogy, the conditions and the legal requirements are the same. All regional and international human rights systems are interconnected and dependent on one another, which is the basis for this theoretical approach. Citizens of nations that have ratified the ICCPR and the Optional Protocol to the Covenant have more freedom to pursue their right against discrimination based on sexual orientation thanks to the HRC's rulings and interpretations.[256] In essence, same-sex partners might rely on these rulings to support their claims of privacy invasion or discrimination based on sexual orientation.[257]In view of this, the Toonen and Young[258] standard should be used by the African Court when interpreting the African Charter's provisions on equality.

[252] Bruce-Jones, E., and L. Itaborahy. State-sponsored Homophobia: A world survey of laws criminalising same-sex sexual acts between consenting adults: an ILGA report. ILGA, 2011.
[253] Supra 18 Johnson Paul
[254] Ibid
[255] African Charter on Human and Peoples' Rights preamble, para3-4
[256] Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights
[257] Heinze, Eric. Sexual Orientation: a human right. Nijhoff, 1995.
[258] Supra 44, Toonen and Young

There is proof that homosexuality was practiced by the native population in both pre-colonial and colonial Africa.[259] In fact, the colonialists wouldn't have needed to pass laws condemning homosexuality in the first place if there hadn't been any gays during that time. It follows that some people had relationships with people of the same sex but were not punished or harmed as a result.

A particular type of same-sex union known as woman-to-woman marriage was acknowledged and widely used among the Igbos of southern Nigeria.[260] It is important to note that even though these unions were legal and socially acceptable, they were not intended to result in sexual relations between the partners. Instead, a "female" husband marries a wife with the goal of having sex with the partner's husband or a close relative to have children who would be regarded as the "female's children."[261]

Men looking for homosexual services in northern Nigeria could hide by living among women in the strangers' quarters of the Hausa towns. When living outside of the *gidan mata*, (women's house) the *'yan daudu* (effeiminate men) used that cover to protect themselves from exposure.[262] A small number of men went over to feminine roles termed ashtime, these biological males dressed like women, performed female jobs, cared for their own homes, and reportedly had sexual encounters with men," according to research on the males of southern Ethiopia.[263]

It may be inferred from the examples above, which are just a few of many in sub-Saharan Africa, that gay behavior is very African, just as it is extremely Nigerian. The claim that decriminalizing same-sex relationships will erode African values is a fallacy that is unsupported by facts or evidence other than political and religious leaders' public pronouncements and perhaps even their own covert behavior.[264]

African countries criminalizing same-sex marriage should draw inspiration from South Africa by upholding human rights values. The clause in Section 12 of the 1999 Nigerian Constitution should be repealed by the Nigerian Federal Government through the Legislative branch. As an alternative, the constitution ought to give the National Assembly the authority to swiftly ratify, domesticate, and put into effect, as necessary, all human rights conventions to which Nigeria has already acceded

[259] Mabvurira, Vincent, Petronila Dadirai Motsi, Tawanda Masuka, and Etiya Chigondo. "The "politics" of sexual identities in Zimbabwe: A Social Work perspective?." (2012).
[260] Supra 238 Arimoro
[261] Ibid.,
[262] Murray, Stephen O. "Homosexuality in "traditional" sub-Saharan Africa and contemporary South Africa." Le seminaire Gai Internet sources (2005).
[263] Ibid.,
[264] Supra 218 Arimoro, Augustine Edobor

as well as any that it might do so in the future. In this way, the Nigerian government would send a clear message to its people and the rest of the world about the country's honest and genuine commitment to supporting the universal objective of improving the protection and promotion of people's rights and dignity. Ultimately, the action will have a good effect on Nigeria's history with respect to human rights and its public image.[265]

There is also a need for education at the ground level regarding tolerance for other people's private life which needs to be respected as in the case of South Africa. The right to privacy is violated by laws that make sexual intercourse between two consenting adults illegal on moral grounds. The right of sexual minorities in Nigeria to be free from discrimination is also violated by prejudice against members of the LGBT community. This unfortunate situation in Nigeria shows that the nation lags behind its counterparts in terms of safeguarding minorities' basic rights. Although moral principles shape the law, it is crucial that there be a distinction between moral principles and legality. Any moral principle that contravenes the rights of society's constituents shouldn't be made into law.[266]

[265] Supra 183 Ifejika, Solomon I.
[266] Supra 238 Arimoro, Augustine Edobor 2018

Conclusion

The main purpose of this thesis is to evaluate the limitations regarding same-sex marriage in Nigeria. The research explored the discrimination meted on couples of the same gender in Nigeria. The legal frameworks of the African Charter relating to discrimination were carefully analyzed and discussed. The approach of South Africa was used as an alternative adoption model.

To interpret the discretion that ICCPR, UDHR, and African Charter give to the State, the paper analyzed Articles relating to discrimination, family life, and privacy. To answer the research question on discretion, the thesis looked into the case of *Young vs Australia* where the Committee ruled that the Australian government had violated Article 26 of the ICCPR by denying Mr. Young his pension because of his sexual orientation. The research also showed that Article 2 of the African Charter refers to the principle of non-discrimination however the wordings are unclear when compared to the ICCPR which the African Charter drew inspiration from. To answer the second question, the Nigerian Same-Sex Marriage Act violated Article 2 of the African Charter and other related international human rights laws. In the research, reference is made to articles, case laws, domestic laws, regional and international human rights instruments that guarantee equality for everyone.

Further in-depth analysis researched on Article 5 and Article 19 of the African Charter explicitly refers to the rights of individuals and all people respectively. Every person or group of people should feel hopeful and happy about the domestication of the African Charter in Nigeria because it is a convention on human rights that is meant to defend everyone's rights, regardless of sexual orientation. The idea of rights in pre-colonial times should include present and future constitutional rights, as well as international and foreign laws that defend each person's right to dignity in Nigerian society.

The African Charter is a genuinely useful reference in this regard. Even though it does not specifically include sexual orientation or gender identity, it does in fact safeguard everyone's rights, regardless of their sexual orientation or gender. This viewpoint is supported by African Commission Resolution 275, which exhorts African nations to denounce violence against sexual minorities, investigate cases of such violations, and foster an atmosphere that allows for the realization of everyone's rights, including those of sexual minorities. Everyone has been included

in the meaning and scope of fundamental human rights under the treaty thanks to the rights to equality, non-discrimination, and dignity of the human person.

To safeguard the rights of every individual, regardless of sexual orientation, international human rights legislation and foreign law complement those set forth in the Constitution. The African Charter and the Nigerian Constitution must be interpreted by the courts in Nigeria utilizing the treaty bodies' jurisprudence, which defines and clarifies these rights to include the rights of sexual minorities. If adopted, such a strategy offers hope and the realization of the promise of human rights for all people, including sexual minorities in Nigeria and other countries in Africa.

The fact that the individual rights of countless persons have been violated based on their sexual orientation indeed suffices to make them candidates for human rights protection. In view of this, the enforcement of non-discrimination enshrined in the African Charter is in fact a domestic issue. Regional implementation mainly consists of political, quasi-judicial, or judicial entities monitoring domestic measures, whether they protect rights or not. This argument is supported by the fact that under article 56(5) of the African Charter, individual communications must have exhausted all domestic remedies before being considered by the African Commission. Only then are people permitted to seek regional relief. The African Human Rights Court Protocol states that any issues arising from the Charter or other pertinent human rights instruments ratified by its member states shall be submitted to its jurisdiction. Until the African Court and the Commission uphold these provisions and further apply the provisions of these instruments to same-sex relationships, stricter domestic same-sex laws seem imminent.

The thesis also disagreed with the notion that homosexuality did not exist during the pre-colonial era. Notable examples were highlighted in different tribes which corroborated the fact that colonial masters wouldn’t have passed sodomy laws if there were no same-sex relationships during that period. A comparison was drawn between LGBT rights in Nigeria and South Africa. The diagrams illustrated the freedom same-sex couple enjoyed in South Africa and the restrictions imposed in Nigeria. In view of this, we can conclude that Nigeria needs to emulate South Africa’s approach in terms of human rights values. Although, such measures would require a long-term integration plan. The thesis already suggested possible ways forward in ensuring that Nigeria addresses the challenges surrounding equality on sexual preferences.

Finally, the thesis evaluated the possible ways in which petitions are filed according to the Charter. Most member states are yet to make a declaration for NGOs and individuals to directly file a case

with the Commission. The Commission's unwillingness to grant observer accreditation to any NGO that focuses on gay and lesbian rights exacerbates this restriction of access with regard to matters relating to homosexuality.

Summary

ÕIGUSLIK HINNANG SAMASOOLISTE ABIELU PIIRANGUTE KOHTA NIGEERIAS KOKKUVÕTE

Lesbi-, gei-, bi- ja transseksuaalide (LGBT) olukord Aafrikas on pälvinud rahvusvahelist tähelepanu hiljutiste seadusandlike arengute tõttu kogu mandril. Nigeerias jõustus 2014. aasta jaanuaris samasooliste abielu keelu seadus. Hoolimata LGBT-kogukonna ja rahvusvaheliste organisatsioonide hukkamõistust ja üleskutsetest, edenes seaduse allkirjastamine, kuna inimõiguste rikkumise hoiatusi eirati. Oma kultuurilise tausta tõttu identifitseerivad nigeerlased LGBT-d kui kõrvalekaldujaid. Kuigi mõnes riigis on muutunud trendiks võtta veelgi karmimaid meetmeid, nt kriminaliseerida LGBT-kogukonna liikmeks tunnistamine, nagu me oleme näinud Ugandas, on mõned Aafrika riigid, kus sellised väärtused näivad puuduvat ja kus samasooliste seksuaalset käitumist ei ole drakooniliste ja diskrimineerivate õigusaktidega kunagi ebaseaduslikuks muudetud. Teisest küljest on võimalik näide Lõuna-Aafrika, kus kohalikul tasandil toetatud homofoobia näib olevat olematu ja diskrimineerivad rünnakud on haruldased. Praegu on see ainus riik Aafrikas, kus samasooliste abielu on seadusega tunnustatud ja samasoolistel paaridel on lubatud ka lapsendada.

Inim- ja põhiõiguste Aafrika harta (edaspidi "Aafrika harta") võeti vastu 1982. aastal ja see jõustus 1986. aastal. See on piirkondlik inimõiguste dokument, mis loodi Aafrika arengu, ajaloo ja ideaalide esindamiseks. Harta edendab mitte ainult rahvusvaheliselt tunnustatud individuaalseid õigusi, vaid ka kollektiivseid õigusi ja individuaalset vastutust, ühendades Aafrika väärtused rahvusvaheliste eeskirjadega ja luues Aafrika mandril ühise inimõiguste kaitse süsteemi: ikka-riikide lõikes on LGBT inimeste kohtlemine erinev. Kuigi Nigeeria on Aafrika harta liige alates 1983. aastast, jõustus Nigeerias 7. jaanuaril 2014 samasooliste abielu keelustava seaduse jõustumine. Nigeeria endine president Goodluck Jonathan allkirjastas selle seaduse vaatamata LGBT-kogukonna kaebusele, milles viidati inimõiguste rikkumisele. Seevastu Lõuna-Aafrika Vabariigi 1996. aasta põhiseadus keelas artiklis 9 ebaõiglase diskrimineerimise seksuaalse sättumuse alusel. Selle tulemusena tagab see homoseksuaalseid ja lesbilisi isikuid võrdse kohtlemise. Need kaks riiki kuuluvad Aafrika kõige võimsamate riikide hulka, kuid näib, et nende riiklikud seadused seksuaalvähemuste võrdse kohtlemise kohta on vastandlikud.

Nigeeria inimõigustealaste kohustuste arutamisel on oluline ka ÜRO ülemaailmne inimõiguste kaitse süsteem. Mõned teadlased väidavad, et rahvusvaheline inimõiguste õigus loob universaalse õiguse abielule, mis hõlmab ka homo- ja lesbilisi paare, mistõttu näib, et samasooliste paaride õiguskaitse keelamine rikuks seda nõuet. Nii inimõiguste ülddeklaratsioonis (UDHR) kui ka kodaniku- ja poliitiliste õiguste rahvusvahelises paktis (ICCPR) on sätestatud, et igaühel on õigus abielluda ja luua perekond, kuid kumbki dokument ei maini otseselt samasooliste paaride abielu võrdsust. Nigeeria on ICCPRi osaline alates 1993. aastast, samal ajal lubavad ICCPR ja UDHR riikidel valida oma konkreetsed abielureeglid ja -eeskirjad. Neis on sätestatud, et abielu käsitlevad eeskirjad ja määrused ei tohi diskrimineerida rassi, nahavärvuse, soo, keele, usutunnistuse, poliitiliste vaadete, rahvusliku või sotsiaalse päritolu, varalise seisundi, sünni või mis tahes muu seisundi alusel. See tähendab, et riigid peavad tagama, et nende abielu käsitlevad eeskirjad ja määrused oleksid kaasavad ja kohtleksid kõiki õiglaselt. Samasoolistele paaridele abielu sõlmimise õiguse andmisest keeldumine rikub mittediskrimineerimise põhimõtet ja üksikisiku õigust eraelu puutumatusele, abielule, ühinemisele ja väärikusele.

Praeguses uuringus küsitakse, kas Nigeeria õigusaktid on kooskõlas Aafrika põhiõiguste hartas sätestatud mittediskrimineerimise põhimõttega ning kohaldatavate ülemaailmsete inimõigustealaste lepingutega. Selleks arutatakse kõigepealt, kuidas need dokumendid kaitsevad mittediskrimineerimist ja abielu võrdõiguslikkust ning millist kaalutlusõigust annavad kodaniku- ja poliitiliste õiguste konventsioon, inimõiguste ja põhivabaduste kaitse konventsioon ja Aafrika harta riigile. Selles küsimuses käsitletakse ka Aafrika harta ja ülemaailmsete inimõiguste dokumentide vahelist seost ning küsitakse, kuidas peaks riik tõlgendama mõlemast süsteemist tulenevat võrdõiguslikkuse põhimõtet ning kas Aafrika harta mittediskrimineerimise säte laieneb perekonnaelu ja eraelu puutumatuse õigusele või kas harta artiklis 2 tuleb kohe lahti kirjutada, milliseid õigusi diskrimineerimisvabadus selgesõnaliselt hõlmab.

Teiseks analüüsitakse, kas Nigeeria samasooliste abielu seadus on kooskõlas Aafrika harta artiklis 2 sätestatud võrdse kohtlemise nõudega ja sellega seotud rahvusvaheliste inimõigustealaste kohustustega.

Seega uuritakse Nigeerias samasooliste abielu puudutava diskrimineerimise küsimust ja võetakse Lõuna-Aafrika näide alternatiivse lähenemisviisi kohta, keskendudes Aafrika inimõiguste ja rahvaste õiguste hartale. Mõlemad riigid on ratifitseerinud Aafrika harta, mis keelab diskrimineerimise soo ja seksuaalse sättumuse alusel, kuid nende seadused ja suhtumine

samasooliste abielu suhtes on erinev. Nigeeria föderaalseadus kriminaliseerib samasooliste suhted, samas kui Lõuna-Aafrika oli esimene Aafrika riik, mis seadustas 2006. aastal samasooliste abielu. Käesoleva uuringu eesmärk on võrrelda ja vastandada, kuidas Nigeeria ja Lõuna-Aafrika on rakendanud Aafrika mittediskrimineerimise harta sätteid, ning uurida nende seaduste mõju samasooliste paaride elule ja õigustele mõlemas riigis.

Nendele küsimustele vastamiseks kasutatakse doktoritöös õigusdogmaatilisi ja analüütilisi meetodeid, et läbida olemasolevat kohtupraktikat ja teemakohast kirjandust ning leida olemasolevad ja kohaldatavad rahvusvahelised ja õiguslikud võrdõiguslikkuse standardid. Teiseks analüüsitakse nende standardite riiklikku rakendamist ja nende vastavust neile. Uuringus kasutatakse ka võrdlevat meetodit, mille eesmärk on leida piirkondlikud parimad tavad. Selle tulemusena kasutatakse erinevatest allikatest kogutud analüüsi, et võrrelda uurimisalasid ja anda ka soovitusi Aafrika hartas sätestatud võrdõiguslikkuse põhimõtte paremaks rakendamiseks. Uurimus tugineb akadeemilistele töödele, Nigeeriaga seotud rahvusvahelistele lepingutele ja nende järelevalvepraktikale ning Nigeeria ja Lõuna-Aafrika kõrgeimate kohtute siseriiklikele õigusaktidele ja kohtupraktikale.

Käesoleva lõputöö peamine eesmärk on hinnata piiranguid seoses samasooliste abieluga Nigeerias. Uuringus uuriti Nigeerias samasooliste paaride diskrimineerimist. Põhjalikult analüüsiti ja arutati Aafrika harta diskrimineerimisega seotud õigusraamistikke. Alternatiivse vastuvõtmise mudelina kasutati Lõuna-Aafrika lähenemist.

Tõlgendamaks kaalutlusõigust, mida ICCPR, UDHR ja Aafrika harta annavad riigile, analüüsiti töös diskrimineerimist, perekonnaelu ja eraelu puutumatust käsitlevaid artikleid. Uurimisküsimusele kaalutlusõiguse kohta vastamiseks uuriti töös juhtumit Young vs. Austraalia, kus komitee otsustas, et Austraalia valitsus oli rikkunud kodaniku- ja poliitiliste õiguste konventsiooni artiklit 26, keeldudes härra Youngile tema seksuaalse sättumuse tõttu pensioni maksmisest. Uurimus näitas ka, et Aafrika harta artikkel 2 viitab mittediskrimineerimise põhimõttele, kuid sõnastus on ebaselge, kui seda võrrelda ICCPRiga, millest Aafrika harta sai inspiratsiooni. Teisele küsimusele vastates võib öelda, et Nigeeria samasooliste abielu seadus rikkus Aafrika harta artiklit 2 ja teisi sellega seotud rahvusvahelisi inimõigusi käsitlevaid õigusakte. Uuringus viidatakse artiklitele, kohtupraktikale, siseriiklikele seadustele, piirkondlikele ja rahvusvahelistele inimõigusi käsitlevatele dokumentidele, mis tagavad kõigile võrdsuse.

Edasine põhjalikum analüüs, mis käsitleb Aafrika harta artiklit 5 ja artiklit 19, viitab selgesõnaliselt vastavalt üksikisikute ja kõigi inimeste õigustele. Iga inimene või inimrühm peaks tundma lootust ja rõõmu Aafrika harta kodifitseerimise üle Nigeerias, sest see on inimõiguste konventsioon, mis on mõeldud kõigi inimeste õiguste kaitsmiseks, sõltumata seksuaalsest sättumusest. Koloniaalajastu eelsete õiguste idee peaks hõlmama praeguseid ja tulevasi põhiseaduslikke õigusi, samuti rahvusvahelisi ja välismaiseid seadusi, mis kaitsevad iga inimese õigust väärikusele Nigeeria ühiskonnas.

Aafrika harta on selles osas tõeliselt kasulik viide. Kuigi see ei hõlma konkreetselt seksuaalset orientatsiooni või soolist identiteeti, kaitseb see tegelikult igaühe õigusi, sõltumata tema seksuaalsest orientatsioonist või soost. Seda seisukohta toetab Aafrika Komisjoni resolutsioon 275, milles kutsutakse Aafrika riike üles mõistma hukka seksuaalvähemuste vastu suunatud vägivalda, uurima selliste rikkumiste juhtumeid ja edendama õhkkonda, mis võimaldab igaühe, sealhulgas seksuaalvähemuste õiguste realiseerimist. Igaüks on tänu õigustele võrdsusele, mittediskrimineerimisele ja inimväärikusele lisatud lepingu alusel põhiliste inimõiguste tähenduse ja ulatuse alla.

Samasooliste suhete laiendatud kriminaliseerimine levis viimase kolme aastakümne jooksul koheselt kogu Aafrikas. Laiendatud kriminaliseerimine viitab lihtsalt tavale lisada või ümber tõlgendada olemasolevaid seadusi, et muuta samasooliste käitumine ebaseaduslikumaks. 2005. aastal kirjutas Uganda alla põhiseaduse muudatusele, mis keelas ühemõtteliselt samasooliste abielu. See muutus teretulnud arenguks Nigeerias, Ruandas, Kongo DV-s ja mitmes teises Aafrika riigis. Nigeeria ja Uganda võtsid 2014. aastal vastu drakoonilise seaduse.

Doktoritöös arutati ka seda, kuidas Nigeeria saab järgida Lõuna-Aafrikas näidatud suurt sallivust. Lõuna-Aafrikas ei ole mitte ainult samasooliste abielu toetav seadus, vaid seal on ka seadused, mis on karmilt vastu igasugusele diskrimineerimisele, mida tehakse seksuaalvähemuste inimeste suhtes. Praegu on Aafrika riike, kes istuvad samasooliste suhete suhtes aia peal, kuid Nigeeria, kes võtab omaks ja järgib ülemaailmsetes õigusaktides sätestatud inimõigusi käsitlevaid seadusi, saadaks teistele Aafrika riikidele positiivse sõnumi.

Selline juurdepääsupiirang on homoseksuaalsusega seotud küsimuste puhul veelgi hullem, kuna komisjon keeldub akrediteerimast vaatlejaid kõikidele valitsusvälistele organisatsioonidele, kes keskenduvad geide ja lesbide õigustele.

Aafrika inimõiguste harta peaks käsitlema konkreetselt eraelu küsimust ja rõhutama vajadust austada inimeste pere- ja eraelu, mida on piisavalt mainitud ka teistes rahvusvahelistes inimõigusi käsitlevates dokumentides. Vaatleja staatuse andmine valitsusvälistele organisatsioonidele ja diskrimineerimisega seotud petitsioonide vastuvõtmine aitaks samuti palju kaasa inimõiguste väärtuste säilitamisele ja tagamisele

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Appendices

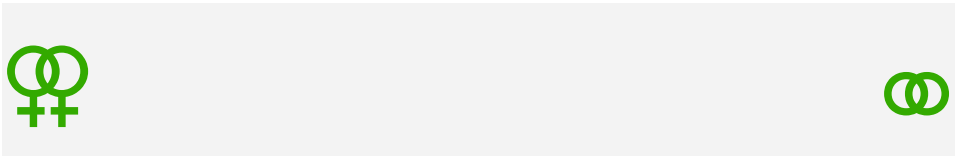
Appendix 1

Table 1. LGBT Rights in Nigeria

Homosexuality		Gay Marriage	
			
Censorship	✕ Imprisonment as punishment	Employment Discrimination	✕No protections
Discrimination	✕No protections	Donating Blood	Ambiguous
Adoption	✕ Single only	Housing Discrimination	✕No protections
Military	✕Illegal	Public Display of Affection	✕Illegal
Age of Consent	N/A	Co-habiting	✕Illegal

Appendix 2

Table 2. LGBT Right in South Africa

Homosexuality		Gay Marriage	
			
Censorship	✓ No censorship	Employment Discrimination	✓Sexual orientation and gender identity
Discrimination	✓ Illegal	Donating blood	✓ Legal
Adoption	✓ Legal	Public Display of affection	✓ Legal
Military	✓Legal	Co-habiting	✓ Legal
Age of Consent	✓Equal		