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The Universality of Human Rights and Homosexuality: A Focus on Gender Issues in Africa

Gideon Uchechukwu Igwebueze[a],*; Opeyemi Adeola Ogundotun[a]

[a]Department of Political Science, Obafemi Awolowo University Ile-Ife, Osun State, Nigeria.
*Corresponding author.

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Abstract

Right from the evolutionary point of human rights, there have been doubts on its ontological existence; even when it is believed to conceptually exist, there have been doubt to its applicability across places and spaces within the contexts of their socio-cultural, political and economic realities. Hence, the universalism and relativism of human rights remain a controversial discourse both at the local and the international realms. In spite of the controversy obfuscating the universality of the generality of human rights, some can be said to be universal such as right to life, right to conscience, thought and religion; and right to non discrimination. Although these are not without problems at the level of interpretation and application to some realities in diverse places across the world. While others have discussed gender equalities as human rights phenomenon in the African context, it is scarcely or not discussed along homosexual rights. This paper considers the universalism of human rights within the context of African realities using homosexual rights and gender equality as case study. It focuses on the ubiquitous but predisposing factors responsible for the rejection of gender equality and homosexual rights in Africa, from the cultural, religious, legal and globalisation contexts.

Key words: Human rights; Universalism; Homosexual rights; Gender equality; Culture; Religion; Cultural imperialism

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INTRODUCTION

Gender equality, homosexual rights, and human rights in general have been issues of great debate across the world. However, in Africa, there exists a very high rate of homophobia, gender inequality and massive human rights violations (Human Rights Watch World Report, 2016). Thus, this paper focuses on assessing the universalism of human rights within the context of African realities using homosexual rights and gender equality as case study. In order to achieve this fit, the paper highlights factors such as religion, culture and cultural imperialism, which influences the universality of gender equality, homosexual rights and human rights in general, in African context.

This task becomes necessary for this paper to carry out because of the rate of human rights abuses practically witnessed, especially in the aspects of homophobia and gender inequalities, in Africa. Homophobic laws are practically in place in 38 African countries (Tamale, 2014), although some African states pay lip service to gender equality in practice, gender inequality is still an issue in Africa (Njogu & Orchardson-Mazrui, 2005).

Natural rights, which are the philosophical basis of human rights, will be used as the theoretical justification for the universality of gender equality, homosexual rights and human rights at large. The paper shows the relevance of natural rights to the human rights discourse.

The paper draws on interviews with academics and textual analysis of secondary data in analysing the universality of gender equality, homosexual rights and the Western cultural imposition through the rights culture. This paper aims at creating a better understanding of human rights as a universal concept and not a peculiarity of a culture so as to reduce the spate of human rights abuses recorded in Africa, especially gender inequality and homosexual rights abuses.

1. HUMAN RIGHTS, NATURAL RIGHTS AND UNIVERSALISM

Human right, which has its philosophical source from natural rights, is arguably a formidable discourse at the international and local scenes. Owing to the meanings appropriated to it either in the Universal Declaration of Human Rights of 1948 or by individual philosophers, scholars or groups means the cosmos implications of human rights have been defined in diverse ways. However, in most cases these definitions point to the universality of human rights just like its mother philosophical root-natural rights.

The Universal Declaration of Human Rights in 1948, sees human rights as "rights derived from the inherent dignity of the human person" (UDHR Charter, 1948). This implies that human rights are a natural endowment of any living species called human being. Hence its anthropocentrism. Donelly (2007) understands human rights to be the rights that one simply has because one is human. In the same vein Peter (2009, p.33), averse that:

> Human rights are rights that apply to all human beings. All human beings are holders of human rights, independent from what they do, where they come from, where they live and from their national citizenship, their community, etc..

Noteworthy, though hinged on universalism, individuals are the central focus of human rights. This implies that humans are members of the universal society, and possess rights that are universal, which no immediate society of any human should abuse but rather protection. This makes Durga (2007, p.56) define human rights as "those minimal rights, which every individual must have against the state, or other public authority by virtue of his being a 'member of the human family' irrespective of any consideration". Wai (1979) following same line of thought sustained the view that certain rights should be upheld against alleged necessities of states. In essence, human rights are natural, hence it cannot be given up to the artificial state and its institutions this shows the primacy of an individual human person over the society, state and public authorities that may sometimes be oppressive against an individual. Although, Donelly (2007), argued that human rights are not only the instrument for limiting the state or a government.

Hence, in other to ensure the universality of human rights both connotative and denotative meanings given to it elude the capacity of a single state to define for itself and its citizenry. From the start point of "functionality", human rights observance will facilitate world peace, it will engender justice, fairness, and humanity needs [being met] for individuals (Donnelly, 2007).

One of the resisting factors against the universality of human rights is self-determination by free people and the sovereignty of human rights, is cultural relativity or differences (Tierney, 2004). The cultural relativity argument precipitates the western cultural Imperialism argument. The latent but virile factors responsible for the resistance against the universal acceptance of human rights are religious and state law (Henkin, 1989).

A free people should be able to determine for themselves what is acceptable as human right or standard for judging values. The self-determine argument—In the discourse of the human rights—came up as a result of belief in cultural imposition of human rights promotion by the cultural relativists. Human rights have been seen as product of western culture and its acceptance as universal is cultural imperialism.

Cultural imperialism presupposes that the universality of human right robs a people of their cultural values into accepting values from the west as standards for moral judgment. Cultural relativity sets in with the primus objective of demanding respect for cultural differences. Cultural relativity is a normative doctrine that portends that what a culture defines to be right is right. This is based on the argument that cultures differ on their conceptions of human wellbeing. Hence, what is right in community A may not be right for an individual to practice in community B. This puts culture at the position of absolutism and ethical or moral infallibility.

The argument of cultural relativists runs the risk of precluding moral learning across cultures and, it leaves the people in a culture with no other standard to judge their own culture since;

> standards and value are relative to the culture from which they derive so that any attempt to formulate that grow out of the beliefs or moral codes of one culture must to that extent detract the applicability of any Declaration of Human Rights to mankind as a whole. (American Anthropological Association, 1947, p.45)

The argument for the non-applicability of a practice of a place in another rule out the fact of adaptation; the absolute tendency of a culture as offered by cultural relativists runs the risk of taking everything our culture says is right to be right. For instance, the killing of twins in a culture will be right to the extent that the culture dictates it to be so. A culture that professes supremacy over every other is right to the extent that it is the peculiarity of the culture. This kind of argument will surely result into a world chaos and total crack down on inherent human dignity.

Also, religions and their values cum their standards for moral judgment, for instance, do not allow for gender equality and expression of homosexual rights. Hence, considering the enormous effect of religion on peoples around the globe; and how they contribute to social norms, social thoughts and way of life, the barrier religions place on the university of human rights is significantly considerable. However, owing to the disagreements on what constitutes the right value among religions (or comprehensive doctrines), effective standards for moral judgments can best be found in universal acceptance of

human rights. This makes functional arguments of human rights valid, because world peace, justice and fairness can best be attained through universal respect and practical respect to human rights.

2. THEORETICAL FRAMEWORK

This section examines the characteristic features of the natural rights theory in order to be able to state how these defining features of the theory serve as philosophical justification for human rights. Natural rights, as a theory explains the fundamentals of human rights such as: Universalism of human rights, individualism in human rights discourse, and the functionality of human rights. Natural rights theory is widely believed by scholars to be the theoretical or philosophical basis of human rights (Tierney, 2004; Henkin, 1989).

A Natural rights theory has its history of emergence to be typically western; although its origination and time of origination are subject to controversy. While Villey (cited in Tierney, 2004) traces it to William of Ockham as the originator of natural rights, Strauss (2004) traces it to Hobbes. However, Tierney (2004) uniquely traces its origin to the writings of the canonists of the twelfth century (though he concedes that their scattered works could not have formed a coherent theory but they serve as origin or set the tone). Grotus and Gerson have been said to be the originators of natural rights too (Tierney, 2004). Accruing the origination of natural rights to different people, who lived at different times, also brings to mind contention on its time of origination.

Tieney (2004) however, claims that the jurists (Church lawyers) of the twelfth century are responsible for the innovation of Natural rights (as understood in the modern sense) by reshaping the ancient concept of natural law (*ius naturale*) from an objective to subjective meaning. According to him after the jurists and William of Ockham natural rights discourse became moribund, until the discovery of America. The Unstinting debates between Las Casas and Sepulveda (both Spanish scholars) on the rights of American Indians give impetus to shape natural rights into proper theory, which in turn sets the tone of human rights.

In the process of developing natural rights as a contemporary concept or theory, it will be revealing to point out how natural law (*ius naturale*) changed from its objective meaning to a subjective one, which transforms natural law to natural rights**.** While Villey (cited in Tierney, 2004) and Tierney (2004) subscribe to this logic of change in meaning, their dispositions to the change in meaning of natural law differ. Villey (cited in Tierney, 2004) has disdain for the subjective meaning of natural law that spurned the Modern rights, however, Tierney (2004) believes even with the birth of subjective meaning of Natural law the original content of natural law is not jeopardized.

The objective meaning of Natural law is restraint on power, which contrasts with the subjective natural rights—"A power of the individual". The subjective natural rights are the liberty or freedom individual has to act, however, objective natural right or law is how the dictates of nature which are deciphered through reason, restrain individuals' absolute freedom. Hence this engenders natural justice. However, Tierney (2004) argues that subjective natural law (rights) only includes individual rights power, and does not jeopardize the natural justice, which the ancient natural law presupposes.

Noteworthy is the religion underpin of natural law. Either Grotus, Hobbes, William of Ockham, the twelfth Century jurist or John Locke agrees to the belief that natural laws come from God. Budziszewski (1997, p.2) puts this belief in a proper perspective when he defines natural law as "the moral law written by God into the heart of man and discerned by reason reflecting on human nature and the ultimate purpose toward which it tends, and the types of actions that fulfil real human goods". Mukherjee and Ramasvarmy (2007) capture a quote from both Grotius and Hobbes as saying natural laws are "delivered in the word of God". This position makes natural law or natural rights dismissible with a little effort in a world of science and logical questioning of God's ontological existence. Hence, this paper maintains that nature instead of God as the source of natural law or right; and reason reflecting on human nature as the conveyor; and it will be weighed either to be good or bad on the basis of its ultimate purpose as well as how it fulfils real human goods.

The following show how the natural rights (laws) theory underpin human rights as a concept:

(a) Universalism

Tierney (2004) in his adventure of backtracking the origin of the subjective natural law (natural right) to the twelfth century tells us about Pope Innocent IV. He claims Pope Innocent IV extends the rights to our property and to create a legitimate governments to the infidels. He quotes the Pope saying "Ownership, passion and jurisdiction can belong to infidels licitly for these things were made not only for the faithful but for every rational creature" (Tierney, 2004, p.56). This is an indicator to the universality of natural rights, which set the pace for the universal tone of human rights. The bureau of International Information Programs, US Department of State (2006) avers that 'the concept of "natural law" [is] based on a universal order'.

(b) Individualism

The subjectivity of the ancient *ius natural* (as developed by the canonists of twelfth century) rids it off of nothing other than adding individual right to the natural justice it presupposes. In the works of Hobbes and Locke individualism becomes conspicuously identical with natural rights: Hence it underpins the contemporary human rights culture.

(c) Functionality

This term is culled from Donnely's functional universalism argument. "The functional universality of human rights depends on human rights providing dignity". History has shown that "systemic threat" to break down on human rights could result in cataclysmic reaction. This calls to heart the English civil wars, the 30 year European war, the Great Revolution, the American Revolution and the French Revolution-they all flow form one source-fight for the respect of natural rights. Hence natural rights are not only functional to the extent that it can quell systemic threat, but that respect for natural rights is next to systemic stability and development.

(d) The Law

The positive or proper or legal or "human" law is different from natural law obviously from the stand point of their literal meanings-one is made by men while the other is the product of nature. Rights precede the positive law, hence Hobbes, Locke and others have argued that positive or legal laws exist to protect natural rights of individuals. This argument is perhaps lucid in Gratian's writing that any human law contrary to natural law is vain and void. Arguably, one is made by men while the other is the product of nature.

However, it can be argued that natural rights theory is not a justifiable ground for human rights doctrine. Donnelly (1982) points out Beitz's argument in his contribution to human Rights and US foreign policy, that it is misleading to view human rights on the model of natural rights'. However, a more subtle and open natural rights theory provides secure grounding for contemporary international human rights standards.

3. CULTURE, RELIGION AND GENDER ISSUES IN AFRICA

Culture, as a formidable factor against the universal realization of human rights, especially rights to non-discrimination of one's sex and sexual orientation, deserves conceptual clarification. Culture is, with no laborious effort, the total way of life of a people. This includes diverse practices among a people that have formed values, standards for morals, even ways of understanding or viewing actions, events and the likes. Njogu and Orchardson-Mazrui (2005) points out the two definitions of culture identified by Said. First, it refers to the many practices like the arts, communication and representation which have relative autonomy from the economic, social and political domains. And the second is that culture includes a community's reservoir of what defines them as a people who in most cases represent the best that has been known and thought. To the second point Njogu and Orchardson-Mazrui (2005) concludes that it inherently makes culture absolute. This presupposes that a culture will answer to no other standard or value than itself. The absolutism of culture has been figured and countered by Donnelly (2007). He argues that when a culture sees itself as superior to others, since it is the peculiarity of the culture, despite the fact that such view could be insidiously inciting, and then such cultural view will be absolutely correct to those in the culture; which he argues is wrong.

Absolutism of culture is specious as earlier pointed out; however it is observed that the argument of cultural relativists ascribes absolutism to culture. To set forth an argument against the ultimate reliability on culture, Gertz (1973, pp.44-45) sees culture as "a set of control Mechanism —plans, recipes, rules, instruments for governing of behaviour". This presupposes that culture has control mechanism embedded in it. This makes cultural relativists believe their distinct culture should dictate its standards and be answerable to none. This argument is not only misleading but also inimical. Gender inequality and the stifling of a particular sexual orientation- homosexuality—can be easily perpetrated by a culture and gloss over, since it is answerable to none. Although, distinct culture should be respected but not at the expense of human rights abuse. For instance, the killing of twins in Calabar, Nigeria sometime ago is culturally acceptable, because of some prejudice held against them. Such an act will continue if a culture cannot be affected by the other, or if human rights are to be rejected on the basis of cultural differences. What about culture that has the norm of killing witches at stake, without fair trial or evidence? That could be glossed over on the primordial basis of cultural differences, though it is a crime against humanity. The argument of cultural relativists runs the risk of precluding moral learning across cultures.

African cultural relativists, for instance, have argued that the promotion of gender equality and homosexual rights are *un-African*, hence western cultural imperialism (Schalkwyk, 2000; Nord, 2010). It is a widespread belief in Africa that females cannot be regarded as equal to males and that homosexuality is *un-African*, because of the practice of our biological ancestors.

Sanday (1981) posits that male dominance is significantly associated with environmental and historical conditions. Hence, the discrimination against females pervades both oral tradition and documented history of Africa. These prejudice and subordination inform today's gender inequality in Africa. To this effect Njogu and Orchardson-Mazrui (2005) avers that traditionally a man in Bostwana was seen as a "Mosadi ke ngwana wa monna", meaning that a woman is the child of a man. In Nigeria, among the Yoruba people, there is a traditional saying that depicts subordination of a sex in the family: "Oko ni olori aya"—the husband is the head of the wife. This is quintessential of patriarchy-Man is the lord or ruler or head.

Although without significant historical evidence both in literature and oral tradition of Africa, many claim today that homosexuality is *un-African*. Perhaps this prejudice is historically true to the extent that, homosexuality was not a popular practice or it was a clandestine practice among African people (Okanlawon, 2013). In lieu of this claim of *un-Africanness* ignoring actual history, non-normative sexual orientations and gender identities are dismissed on the basis that they are western imports and *un-African* (Nord et al., 2010). African leaders such as Museveni of Uganda, Mugabe of Zimbabwe have stressed culture in their argument against homosexuality (Sylvia, 2015). African scholars such as Ikpang (2012), Okoli and Abdullahi (2014) and many more have either justified homophobic law or homophobia on the basis of "African culture".

However, Sandfort et al. (2014) observe that the second African same-sex sexualities and Gender Diversity conference, 2014, homosexuals (and women) cannot be treated homogenously across Africa. There are parts of Africa that traditionally have no discrimination against women and/or homosexuals. To this effect Njogu and Orchardson-Mazrui (2005) points out some African settings such as Luba people of Democratic Republic of Congo, Lunda people of Congo, Banyankole people of Uganda where matrilineal system existed against the claim that Africa is traditionally patriarchal. In these African traditional societies women are not denied their political rights as it was possible for women to wield political power or be political leaders, and they also perform some pivotal political, economic and social roles in these societies. Sylvia (2014) argues vehemently to demystify the *un-African* myth of homosexuality by pointing out certain places in Africa with history of homosexuality. Among his surfeit of examples of places and persons in Africa, where and who respectively practiced homosexuality, are Langi of Northern Uganda, Kabaka Mwanga II of the Buganda Kingdom of the present day Uganda, Basotho women in present day Lesotho, Wolof people of Senegal, Ndebele and Shone in Zimbabwe. Azande in Sudan and Congo, Tutsi in Rwanda and Burundi; the Nupe people in the Northern region of Nigeria. There are African paintings and artworks that depict the existence of homosexuality for age long in Africa (Ekundayo, 2016).

The cultural relativists commit argumentum ad ignorantium (fallacy of ignorance) when they assume human rights culture is identical with Western culture. Though there is no history of the modern rights culture without the mention of the West, it is not true that there is no resistance against it. Individualism which is the philosophical domain of human rights has been vehemently attacked by communitarians in the West. It is the same western culture, until recently that denied women certain capacities in the society (politically, economically, etc.), encouraged slavery, burning witches at stake, isolating, discriminating and killing without fair trial homosexuals to mention but a few human rights abuses in the Western culture. To further substantiate the aforementioned there are some human rights in the west still grapple with homosexual rights for instance (Okanlawon, 2013), and some others especially in the practical sense even after legalizing them. The US still has scores to settle even after the legalization of homosexuality. The case of Kimdaviesin in August 2015, who defied court order to issue marriage license to the gay couple in her county; the religious freedom law and the law that forbids trans-genders from using certain gender toilets in some states in the US (*New York Times*, 2015) indicate that struggle still continues, although fairer than a place where it is criminalized or not legislated on.

In same west philosophical argument has been offered against human rights, especially against its ontological reality. Bentham said: "Natural rights are simple nonsense: natural and imprescriptibly rights, rhetorical nonsense—nonsense upon stilts. This presupposes that utilitarians are not in support of human rights, because it is a particularistic concept, which favours individual importance over the society—this of course is against the greatest numbers realizing the greatest happiness (Henkin, 1989).

Religion is difficult to define because; it is hard to find a comprehensive definition. Harrison (2006) identifies three approaches of defining religion: Intellectual, affective and functional approaches. The tree approaches define religion in terms of object of worship, feeling and function respectively. For the sake of this paper the first approach will be suitable since we are dealing with the Abrahamic religions in the context of Africa. The Abrahamic religions have their object of worship to be God. Gertz (1973) defines religion as a system of symbols which acts to establish powerful, pervasive, and long-lasting moods and motivations in men by formulating conceptions of a general order of existence, and clothing these conception with such aura and mutuality that the moods and motivations seem uniquely realistic. Gertz (1973) also suggests that religion has control mechanism like culture, which religion is a subset of.

Islam and Christianity pervade Africa so strongly since their establishment, many centuries back (Ogundotun, 2016). Other than the long shared behaviours and practices of African animism that form the African culture, consequently its history, the Abrahamic religions contribute immensely to African culture. Arguably Islam and Christianity inform laws and norms in Africa, despite the claim of secularity by some African states. Nigeria, for instance, is a secular state by the reason of constitution, but the dictates of the constitution are not bereft of the vestiges of religion. Provision for Sharia and Islamic law are inherent flaws of such a constitution, The Criminalization of homosexuality is highly informed by religion (Ogundotun, 2016).

What do Christianity and Islam say about women and homosexuality causing set-back for the promotion of gender equality and homosexual rights in Africa? Both Christianity and Islam hold some prejudices against women and homosexuals according to their holy creeds. Although, some of the faithful of these two religions claim otherwise, especially for discrimination against women.

"Unto the woman he said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee" (Gen 3:16, KJV). The *New Testament* lends credence to the subordination of women as found in the *Old Testament*. When it states that:

> Wives, submit yourselves unto your husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church is subject to Christ, so let the wives be to their own husbands in everything. (Ephesians, 5:22-24, KJV)

In fact to cap it, the bible orders women to be silent in the Church. Such prejudices as these are embodies in the Quran too. The Quran avers, "The male shall have the equal of the portion of two females" (Quran, 4:11). This verse implies mathematical discrimination against women in terms of sharing inheritance between males and females. Explicitly the Quran asserts in Quran (2:228), "and the men are a degree above them (women)". From the foregoing, it is evident that in Islam it is quite impossible for a woman to play a leading role either in the place of prayer or society, and the same prejudice holds among the Christians too. In detests for homosexuality the Quran states:

> Do ye commit lewdness such as no people in creation (ever) committed before you? "For ye practice your lusts on men in preference to women: Ye are indeed a people transgressing beyond bounds" (Quran, 7, 80-81)

The Quran further states that:

> Of all the creatures in the world will ye approach males. And leave those whom Allah has created for you to be your mates? Nay ye are people transgressing (Quran, 26, 165-166).

The Bible also contains such homophobic message when it asserts that:

> For this cause God gave them unto vile affections: for even their women did change the natural use into that which is against nature: And likewise also the Men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet (Romans, 1:26-27).

Evidently from the foregoing, both the Quran and the Bible talked about Sodom and Gomorrah that was destroyed by the Supreme non-spatial being (God) for the sin homosexuality.

It has been earlier established how these two religions prevail in Africa. And how consequently they influence standards, values, morals, norms and even the laws in Africa. Owing to these religions, their dictates; and because religion is deeply rooted in Africans daily lives, incontrovertibly, Africa is a centre for homosexuality and women discriminations.

Although as a result of modernism in religions there is change in tone of gender equality and homosexual rights. South Africa remains the only African nation that has legalized homosexuality, however, South Africa has sizeable number of Muslims and Christians whom some of them support the legalization of homosexuality. Thirty eight (38) countries in Africa have criminalized homosexuality on the basis of cultural (and religious) arguments. The speed, with which these bills are passed into law, shows unison on the basis of culture and religion among the law makers in Africa, Uganda and Nigeria are two good examples (Tamale, 2014).

Religion though could be argued to support certain human rights; it is unarguably true that it negates the full attainment of respect for human rights. Other than gender equality and homosexuality right which Christianity and Islam hold prejudices against, these religions also promote slavery (1Peter 2:18; Quran 2:178) violence and genocide against perceived enemies of God (Quran 9:5; Matthew, 24:37-39) capital punishment (Quran 6:151) and some other human rights. Henkin (1989) summed it up he argued that;

At various times almost every religion-including Protestantism, whose stress on the individual contributed to the idea-has not received the idea of human rights warmly. Religions have not tended to favour ideas that could be seen as essentially anthropocentric. Autonomy and liberty have not been religious values and have been seen as anarchic (Henkin, 1989, p.44)

As a result of these inherent flaws in religions, the natural rights theory, which serves as the theoretical justification for the rights of females and homosexuals, cannot be dictated of God but of nature. The fact that we find certain human rights abuses which disrespect the dignity of human person and human nature emasculates religions from being the basis for human rights discourse and inclusion in the constitution.

Another argument against religions informing the law is that most constitutional states that have criminalized homosexuality in Africa have human rights entrenched in their constitutions. Hence, the rights to religion, conscience and thought are betrayed when the laws are made on the basis of religion with little or no attention paid to reason and human nature. The fact that not everyone practices religion, the fact that some of these African states are by constitutional secular make such criminalization of homosexuality inherently contradictory.

Another thing to set right in this piece is the cultural imperialism argument. It has been argued that gender equality, homosexuality rights and some other human rights are Western creation and their promotion surmises the imposition of the Western culture on Africa, thereby robbing Africa off her culture.

In today's West, despite their strong voice in human rights promotion, prejudices against women, people of colour and the likes still exist. Homophobia, capital punishment and torture are still issues (Okanlawon, 2013).

Human rights are no peculiarity of any culture. It is open to reason and it is a respect for human nature with the soul aim of achieving common good for all humanity.

A woman should be judged by her ability and not by her sex. A woman could be more intelligent and brilliant at doing certain things than a man, then such a woman is superior to the relatively less intelligent man. It is nature that made her woman but nature has not designed her to be subordinated because of her sex. By nature abilities are deposited, the better she can tap into them and use them better than man, then she is better.

Homosexuality is yet to be proven either to be natural behaviour or a behaviour socially learnt; but the same is true for heterosexuality. Shagor (2006) agrees with Charles Darwin's argument that we do not in the least know the final cause of sexuality. Hence neither the homosexual nor heterosexual has exclusive claim to nature as its cause. But because of the prevalence of heterosexuality it is almost natural for anyone to think it is natural without scientific proof to back such claim. Discrimination against homosexuals is an abuse of the right of an individual, who wants to enjoy her/his natural sexual urge in a non-conforming way.

Respect for women and homosexuals are respect for humanity, because they belong to the human race, and they have done nothing to hurt it-for common good. The recognition of these facts born some conferences and discourses on the United Nations platform, which lead to some international human rights laws. The most important of all is the Universal Declaration of Human Rights (1948), both the rights of females and homosexuals are contained in there, which explains their universality. While women's rights are clearly spelt out in the Universal Declaration of Human Rights, homosexual rights are not explicitly mentioned. However, Pillay (2012) argues that it includes homosexual rights. Beijing conference of 1995 is a milestone in the international struggle for gender equality. Human Rights Council's 2011 resolution on LGBT of homosexuals. This fit shows that criminalization of homosexuality or state promotion of gender inequality is inconsistent with the international human rights laws.

The place of local or state law in promoting and protecting human rights is highly valuable. However, with cultural relativism, religion and cultural imperialism arguments against human rights in view to achieve the practical universality of homosexual rights, gender equality and human rights in general persuasion and engagement of states remain the best tools.

While the law of the state is not the origin of human rights, while the spectrum of human rights is eclectic beyond a single culture to determine. The state law remains the best way through which homosexual rights, gender equality and human rights can be promoted and protected. The United Nations Human rights and all its commissions, Amnesty international and international organizations that promote human rights, as well as individual human rights activists must rise to the challenge of persuading and engaging states in Africa to include in their constitutions homosexual rights and gender equality. They should condemn those that have criminalized either or hold prejudice against either through their constitutions.

Proper education of Africans for homosexual rights and gender equality by these organizations can help quell ignorance and change disposition. Research in Nigeria shows that many only view homosexuality (and gender equality) with the prejudice of culture and religion without proper scientific knowledge (Ogundotun, 2016).

CONCLUSION

Having proved conceptually in this paper that homosexual rights, gender equality and human rights in general are universal, and not the peculiarities of certain culture, having emasculated the bulwarks against practical universal realization of human rights, having pointed at the potency of arguments of cultural relativists, religion and Western cultural imperialism within the frameworks of sovereignty and self-determination, this paper prods international organizations that has human rights issues in focus to continue to engage and persuade states for the constitutional inclusion of homosexual rights in Africa who do not have it spelt out in their constitution. The prodding and engagement should also come with proper education of the citizenry of African states on gender equality and homosexual rights.

The notion of women expressing their rights to participate in politics, economic and social spheres just like their male counterparts are not absolutely strange in African traditional settings, neither will it be correct to say homosexuality is *un-African.* What is new, though, in Africa is the fight for gender equality and homosexuality rights through the activities of institutions and individuals. However, to put history in the right perspective, the struggle for gender equality started in the US (Altman, 2013).

In fair assessment, with no pinch of salt, the right for gender equality has fared better than struggle for the recognition of rights of homosexuals in Africa. There are 38 African states that have criminalized homosexuality, while others remain silent. South Africa remains the only country in Africa that has legalized homosexuality (Tamale, 2014). Virtually all states in Africa either constitutionally or orally commit themselves to gender equality, however, the practical commitment still stands miles apart from reality (Njogu, 2015).

In conclusion the universality of gender equality, homosexual rights and human rights in general remains valid in concept, as arguments offered against them as pointed out in this paper do not suffice. However, the practical universal realization of these rights i.e. in getting them included in state laws remains an issue especially in Africa. Consequently, institutions, organization and individuals with human rights in focus are prodded to continue to engage and persuade states to this effect.

REFERENCES

Altman, D. (2013). *The end of the homosexual*. Queensland: University of Queensland Press.

American Anthropological Association. (1947). *Statement on human rights.* Retrieved 2016, September 12 from Https://www.humanrights.americananthro.org/

Budziszewski, J. (1997). *Written on the heart: The case for natural law*. Westmont: Inter Varsity press.

Burea of International Information Programs, US Department of State. (2006). *Human rights in brief*. Retrieved 2016, September 13 from Http://www.america.gov/

Donnelly, J. (1982). Human rights as natural rights. *Human quarterly, 4*(3), 391-405.

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

Ekundayo, D. (2016, March 10). *Interview with a senior lecturer, department of psychology, Obafemi Awolowo university*. (O. A. Ogundotun, interviewer). Ife, Nigeria.

Gertz, C. (1973). *The interpretation of culture: Selected essays*. New York: Basic Books.

Harrison, V. (2006). The pragmatics of defining religion in a multi-cultural world. *The International Journal for Philosophy of Religion, 5*(9), 133-152.

Ikpang. A. (2012). The anathema of gay marriage in Nigeria. *African Journal of Social Sciences, 2*(4), 31-43.

Jenkin, I. (1989). The universality of the concept of human animals. *The American Academy of Political and Social Science, 5*(6), 10-16.

Mukherjee, S., & Ramaswarmy, S. (2007). *A history of political thoughts. Plato to Marx*. New Delhi: Hall of India Private Limited.

Ngumi, N., Sandfort, T., Simenel, F., Mwachiro, K., & Reddy (2014). *African same-sex sexuality and gender diversity: An introduction*. Hague: Hivos People Unlimited.

Njogu, K., & Orchardson-Mazrui, E. (2005). *Gender inequality and women's rights in the great lakes: Can culture contribute to women's empowerment?* UNESCO.

Ogundotun, A. (2016) *An evaluation of the anti-gay law and fundamental human rights in Nigeria.* Being a Research Project Submitted to the Department of Political Science, Obafemi Awolowo Univeristy, Ile-Ife, Nigeria.

Okoli, C., & Abdullahi, S. (2014). Betwixt civil liberty and national sensibility: Implication of Nigeria's anti-gay law. *International Affairs and Global Strategy, 9*(1), 17-24.

Pilay, N. (2012). *Born free and equal: Sexual orientation and gender identity in international human rights law*. United Nations: New York and Geneva.

Raday, F. (2003). Culture, religion, and gender. *International Journal of Constitutional Law, 1*(4), 663-715.

Sanday, P. (1981). *Female power and male dominance: The origin of sexual inequality.* Cambridge: Cambridge University Press.

Schalkwy, J. (2000). *Culture, gender equality and development cooperation*. Retrieved 2016, August 26 from http://www.oecd.org/social/genderequalityanddevelopment/1896320.pdf

Shagor, H. (2006). *Homosexuality: A brief study*. Retrieved 2015, October 24 from http://www.mukto.mona.com/Articles/himel.shagor/

Srauss, L. (1971). *Natural rights and history*. Chicago: University of Chicago Press.

Tierney B. (2004). The idea of natural rights: Origins and persistence. *Northwestern Journal of International Human Rights, 2*(1), 2.

United Nations. (1948). *Universal declaration of human rights*. Retrieved 2016, August 11 from http://www.un.org/en/universal-declaration-human-rights/

Villey, M. (1963). Cours d'histoire de la philosophie du droit. *Revue Internationale de droit Comparé, 16*(1), 274-275.

Wai, D. (1979). Human rights in Sub-Saharan Africa. In A. Pollis & P. Schwab (Eds.), *Human rights: Cultural and ideological perspective*. Westport: Praeger Publishing.

