

**CONTRACTUAL FREEDOM OR NATIONAL OBEISANCE:  
THE LEGAL DILEMMA OF A FOOTBALLER, CLUB, AND  
NATION IN THE 21<sup>st</sup> CENTURY**

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**Abstract**

*Football players are legally obliged to fulfil their contractual obligation to their football clubs but there is a dilemma of obeisance to their national teams during international tournaments. FIFA decided to resolve this dilemma by prohibiting football clubs and footballers from exempting national team call ups for players from their contracts. However, this paper posits that FIFA's attempt at resolving this issue is theoretical and not practical. This paper examined this prohibition in the absence of a clear and precise functioning sanction for the breach of the prohibition. This research also examined the effect of the principle of contractual freedom on club and players as regards the prohibition. Concepts such as talent ownership by clubs was examined vis-a-vis the international and municipal human rights provisions such as freedom from servitude, slavery and forced labour to determine whether football service or talent are owned during the term of a contract that will empower a club owner from refusing to release a player to his or her nation. The legal instrument of citizenship deprivation was also considered by this paper as a tool for Countries to mandate players to observe national obeisance for participation in international tournaments. This paper recommends to FIFA that every player that intends to sign a contract with a club must notify his nation's football association to observe the contract execution between football players and clubs and also that such contracts must include terms that support respect for national call-ups to play in international tournaments.*

*Keywords:* Sentencing, Retribution, Deterrence, Rehabilitation

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## **1. INTRODUCTION**

Football has metamorphosed from an informal to a formal and well-structured activity because of the amount of financial investment deposited in the game. These investments are pumped into the private ownership model platforms in the footballing world termed football clubs. These clubs employ footballers to manifest their talents or deploy their skills in tournaments that have monetary and economic rewards. The formal nature of these clubs motivates them to engage the services of these players with employment contracts that have contractual duties of consistent use of such services when medically fit and capable to play.

Nevertheless, there are interferences to these contractual responsibilities to football clubs by the call from national teams of those players to represent their nations at national tournaments as a sign of honour to their respective country. The interference between the contractual responsibility to clubs to players and the right to represent national teams at national tournaments is critically analyzed and discuss to reach a satisfying solution.

## **2. THEORETICAL DEBATE**

Scholars have posited that nationalism is fuelled by international sports competitions because of its ability through its sentimental capabilities to forcibly register national identities of persons especially those representing their nations in sporting competitions and antipathy towards other nations.<sup>2</sup> In other words, the participation gives athletes a chance to visibly identify with an entity bigger than them but connects them to their roots, social background which then multiplies the commitment or service to their individual nations to

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<sup>2</sup> Andrew Bertoli, "Nationalism and conflict; Lessons from International Sports" Updated April 4 2017  
[https://polisci.ucla.edu/sites/default/files/u245/andrew\\_bertoli\\_paper\\_05-01-17.pdf](https://polisci.ucla.edu/sites/default/files/u245/andrew_bertoli_paper_05-01-17.pdf) last accessed on 4/2/2021

represent them at international tournaments to help satisfy the urge to find a sense of identity that every human craves.

Nevertheless, it is posited that apart from the need for the quest for national recognisable identities for footballers, there is also a quest for economic identity typically predicted by the labour market, division of labour culture, poverty, or social exclusion activities particular to a jurisdiction.<sup>3</sup>

The economic behaviour of persons is a bi-product of their economic identity for instance persons with a history of self-destructive behaviour will most likely make self-destructive economic decision. Therefore, the economic decisions of individuals in a society are determined by a compendium of aspirations, ideologies, of each individual in the state.<sup>4</sup>

Therefore, all footballers apart from their quest to have national identities and participate in a course bigger than them and mentally and emotionally attach themselves to a geographical location, also have a need to create an economic path to economic independence for themselves that is identifiable and sustainable for them in reaching their economic goals and objectives which is largely dependent on the economic identity of the football players.

The quest for both national identity and economic identity for the footballers create a competing atmosphere or interest which overlap in the minds of footballers in the need to strictly adhere to their contractual obligations to their respective football clubs or obey a call to represent their countries which ideologically will represent a call to nationally identify yourself with your nation.

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<sup>3</sup> George A.Akerlof, Rachael Kranton, Economics and Identity” Quarterly Journal of Economics vol 115 no 3 (2000) Oxford University Press

<sup>4</sup> Ibid 717

Sports tournaments are also catalysts in the resolution of endogeneity problems that reside in any country because they are activities that are exclusive of political affiliations they term to help keep national problems in abeyance and weaken the fabric of division within a state because of the unifying factor of sports such as football.<sup>5</sup>

The feeling of the efficiency of games such as football in unifying nations divided amongst ethnic lines, religious and ideological divides helps to instil in football players the ideology that playing for your nation of origin is a call to help socially solve or weaken conflicts existing in their respective nations.

A clear demonstration of the conflict resolution effect of sports on a nation or its citizens is the deployment of Rugby by Nelson Mandela to help unite South Africa immediately after the Apartheid regime. Also Government leaders in Yemen also utilized the national soccer team to unify the various divisions between the north and southern regions in Yemen.<sup>6</sup>

Despite the fact that sports is perceived as a medium to ensure social cooperation or bonding within a state, the participation or representation of footballers helps fosters this objective. However, the participation of footballers or their representation of countries may be construed as a medium for an expression of inequality within a state.<sup>7</sup>

The foregoing may be a direct contradiction to the presumption that sports provide equality of access to participation based on premises such as equality of condition, equality of opportunity,

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<sup>5</sup> *ibid*

<sup>6</sup> *ibid*

<sup>7</sup> Grant Jarvie, "Sport, Social Division and social Inequality"  
<http://www.umdknes.com/knes287resources/Readings/07/Ro7.pdf> last accessed on 6/2/22

and equality of capability.<sup>8</sup> However, more recently, the equality of access has been clouded by factors such as already precedent exposure of the footballers based on their frequent coverage on international platforms preclude local talents from access to national team representations.

More so, societal hierarchies are the major culprits in accommodating social inequalities especially in sports. Hierarchies such as coaching staff and football federations are culturally predisposed to avoid the successive normative roles of scouting new players. Football hierarchies rather focus on already established footballers plying their trade in foreign jurisdiction brought to their consciousness based on exposure causing a strain on the requirement of equal opportunities and access to all footballers and potential footballers. This then makes footballers representing countries a symbol of the inequality or division in the society.

Therefore, the constant call of players that trade their services in visible nations in their attempt to obey the clarion call actually based on the deficient selection modes for the national teams normatively deprive other nationals with commensurate talent in such nation access to the national teams. This selection route for national team representation further creates a social and economic gap in society.

This school of thought posits that an activity is motivated to be done strictly based on access to a suitable person, location, event and possibly the lack of any negative consequences flowing or incidental to such actions.<sup>9</sup>

The theory of routine activities proposed by Collin and Felson is closely related to monotonic activities that accommodate the

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<sup>8</sup> Ibid

<sup>9</sup> Simply Psychology, "Routine Activities Theory" January, 11, 2022  
<https://www.simplypsychology.org/routine-activities-theory.html> last accessed on 10/2/22

divide between the obligation to perform contractual duties or obeying national calls for football representation.

This monotonic effect is extrapolated because of the nature of sporting competitions which are fixed in time or duration within a year or couple of years. Tournaments such as the world cup, Olympics are for instance every four years and the basis of participation is by your nationality and since these competitions are scheduled four years apart it could be argued that it diminishes the monotonic effect of the competition on players.

However, it is posited that because the incessant, frequent mode of football at club levels which requires players to play week in, week out, there is a sought of routine activity developed which may then positively culminate in loyalty to the club as opposed to his or her national team who he or she is to represent once in a while based on the duration between sports competitions.

The dilemma perceived by footballers in their representation of their clubs whom they are contractually obligated to render their services vis-a-vis the countries that have no contracts with these players but only appeal to their national sensibilities to represent their countries can be accommodated in the theories discussed above. However, it is necessary to examine the legal frame work that FIFA provides to ameliorate this problem.

### **3. LEGAL FRAMEWORK ON THE CONTENTION OF NATIONAL OR CLUB REPRESENTATION**

FIFA as the governing and regulatory body for football has theoretically resolved the dilemma between contractual duties to football clubs and national teams for football players. The theoretical solution is provided in the regulations of FIFA where it provided thus:

Clubs are obliged to release their registered players to the representative teams of the

country for which the player is eligible to play on the basis of nationality if they are called up by the association concerned. Any agreement between the player and a club to the contrary is prohibited.<sup>10</sup>

The regulation further provides in the regulation that:

The release of football players under the foregoing provision is mandatory for all international windows listed in the international calendar as well as for the final competitions of the FIFA world cup, the FIFA confederations cup and the championships for representatives of confederations subject to relevant association being a member of the organizing federation.<sup>11</sup>

The stated provisions by a combined interpretation makes it compulsory for football clubs to release players to their national teams when the national teams have requested for the players to prosecute a FIFA licensed competition and makes a contract between players and clubs that excludes national team participation is an illegal contract.

#### **4. CONTRACTUAL FREEDOM, ILLEGALITY AND VOIDABILITY OF CONTRACTS**

The regulation provided above expressly prohibits contracts that exclude national team representations by players they signed. This is a breach of the freedom to contract. This provision frustrates the liberty of stakeholders in the sporting world to freely engage their faculties, specific use of their time, emotions or senses in the deliberation, negotiations in situations or contractual matters between employers and

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<sup>10</sup> Annex 1(1) of the FIFA Status and regulation of Players 2021

<sup>11</sup> Annex 1(2) of the FIFA Status and regulation of players 2022

employee when both parties clearly and evidently have the capacity to execute a contract.<sup>12</sup>

Scholars also posit that laws or regulations that expressly impair the right to freely choose terms of their contract by consequence impair the person's right to property. Macgruder J in the Ritchie case emphasized that:

The privilege of contracting is both a liberty and property right and when an owner is deprived of one of the attributes of property, like the right to make contracts, he is deprived of the right to property within the context of the constitution.”

Furthermore, it has been posited that the provision excluding the right of club owners and players to exclude national representation is to either protect the players from exploitation since they may be short of options in football club participation or even the nations who are incessantly conditioned to call up footballers plying their trade and visible clubs and developed nations.

Nevertheless, this ideology has been addressed in the case of *People v Grout* where the court indicated that:

It fears that many outrages of labour organization or some of their members, have not only excited just indignation but at times have frightened courts into plain legal inconsistencies, and into enunciation of doctrines, which if asserted in litigations arising under any other subject than labour legislation would meet scant courtesy or consideration”<sup>13</sup>

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<sup>12</sup> Ritchie V People (1895) 165

<sup>13</sup> (1904) 72 N.E Rep 464,467



The regulation of FIFA excluding terms that prevent national representation is an impairment on the freedom of contract and as typified above it is also a breach of a parties' right to property which in this case is the football club and the Player.

Furthermore, it may be argued that a player may intend to play for his nation but due to economic consideration he opts to execute a contract preventing him or her from doing same. This motivated FIFA to impair the ability for parties to exclude national representation but the protection for such athlete has been evaluated in the People v Grout case where pressures from nations represented under FIFA have successfully made FIFA oust the freedom of parties or footballers to freely choose whether to represent their countries or not but if such prohibitive principle on freedom or liberty are applied in other areas of law they become comatose.

Therefore it is posited that it is indeed unsustainable to insist that parties to contract such as football contracts with respect to club football should be precluded from exclusion clauses that exclude national representations because the ousting of the liberty or freedom of contract may be draconian or unsustainable which further fuels the debate as to whether players can represent their countries at the disapproval of their clubs.

The power of FIFA to exclude the freedom of players and clubs to freely choose the terms of their contract including the power of players to elect whether to represent their countries or not is a confirmation as to the damaging effect of reaching a decision as to how the dilemma between club and country representation should be addressed or considered. Although in theory it addresses and resolves this dilemma for football players.

## **5. ILLEGALITY OR VOIDABILITY**

Another feature of the FIFA regulation that excludes footballers and football clubs from excluding national representation is the non-sanctioning nature of the provision. It only states that the exclusion of national representation in football contracts are prohibited without providing for sanctions or consequences for such violations.

Although the foregoing position of the non- sanctioning of the provision can be contradicted due to the presence of a sanctioning provision in the FIFA regulation but it is not specifically for exclusion of national representation in contracts, it provides thus:

Violations of any of these provisions set forth in this annexe shall result in the imposition of disciplinary measures to be decided by the FIFA disciplinary committee based on the FIFA disciplinary code.<sup>14</sup>

The foregoing sanctioning provision is not specific to the violation of the exclusion of footballers from national representation but a general sanction for a violation of any of the provisions dealing with release of players to football teams whereas in the case of national teams the regulation was specific as to a sanctioning mechanism when they violate the dates of resumption of players to their respective clubs by stating that, “Should nay association breach these provisions the FIFA Players status committee may impose appropriate sanctions including but not limited to; (a) fines; (b) a reduction of the period of release; and, (c) a ban.”

It is observed that the regulation on releasing players to the national team is not accompanied with a specific sanction but only mentions that such acts are prohibited which raises the

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<sup>14</sup> Annex 1 article 6 of the Status and regulation of Players 2021

legal question as to whether the violation of that provision amounts to an illegality of the contract excluding national representation for football players.

## 6. SANCTION DEFICIENCY

The sanction prescribed by the status and regulation of players is quite defective because of the absence of a punishment. It is important to note that a mere prescription of an act as an illegality does not make it necessarily a sanction. This is evident in Nigerian case laws where the courts held that: “On the contrary, a contract declared void by statute may not be an illegal contract unless in relation thereto, there is also a penalty imposed by law. The penalty makes it illegal.”<sup>15</sup>

The court further held that law generally as a discipline distinguishes between a contract made void by statute and an illegal contract in which parties have decided to carry out activities which the law prohibits.

Furthermore, in the case of *First Bank v. Pan Bisbilder*<sup>16</sup> where the courts also held that:

Where a statute merely prohibits a certain class of contract by stipulating a penalty for the prohibition without expressly providing whether or not the contract is void it does not follow that the contract is void or illegal.

The foregoing seeks to accommodate the possibilities on the proper references on what contracts are considered illegal and for such reasons void and emphasizes that the litmus test for a football contract to be illegal. Therefore for a contract to be declared void, it must be prohibited by a law, regulation and after the prohibition there is a sanction ascribed either in terms

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<sup>15</sup> Thirwell Voyewunmi (1990) 4 NWLR PT (144) 384

<sup>16</sup> (1990) 2 NWLR (PT 134) P647

of a fine, duration of imprisonment or any other socially recognizable punishments legally and culturally acceptable in that jurisdiction.

The foregoing is important because the regulation on the status of players as regards the prohibition of exclusion of national obedience to national call ups only fulfils the criteria of prohibition but is silent on actual sanction which makes any contract made in contravention of the regulation not illegal.

### **7. ECONOMIC RIGHTS**

There are indications from scholars that the insistence by FIFA to exclude the freedom of clubs and players to exclude the right to play football for their national teams is complete breach of the economic rights of both clubs and individual player.

Economic rights have been described by scholars as a basic right i.e rights that are necessary for the enjoyment of other human rights. In fact, these rights encompass rights to physical security, economic security and sustainability and the freedom for all persons of right mind and age to participate in the political and economic life of a mediate and immediate community as a minimum.<sup>17</sup>

However, it is posited that rights to economic sustainability or independence should be reduced from the realm of rights because of its cost implication on developing nations. These scholars posit that the access to food, jobs, or housing may be a need but not necessarily a right that has the capacity of being violated.<sup>18</sup>

The gleaning of the above arguments suggest that the position of reducing economic necessities to lesser than rights is an

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<sup>17</sup>D.A Downs International "Civil Liberties and Human Rights" Encyclopedia for Social and Behavioural Sciences '2001

<sup>18</sup> Elizabeth Reichert, "Human Rights and Social Work" international encyclopaedia for social and behavioural sciences second edition 2015

economic argument and not necessarily because they are not considered basic rights but because most governments cannot afford to provide these rights in a sustainable manner to their citizens usually due to failure of proper economic planning and population control they protest that they should not be rights.

This has made jurisdictions such as Nigeria to despite the inclusion of economic rights as a right in its constitution make economic rights not justiciable in the courts of law in that jurisdiction. In the case of *Okogie v. Lagos State*, the courts held that no court has the jurisdiction to pronounce any decision as to whether any organ of government has acted in conformity with the fundamental objectives and the directive principles on state policy which encompasses the economic rights of all Nigerians.

Nevertheless, it is important to note that the economic rights of individuals are not only local but international. More importantly, the international version of the economic right is more empowering particularly to individuals in their respective jurisdictions. The International Covenant on Economic, Social and cultural rights provides that: "All peoples have the right to self-determination and by virtue of its right freely determine their political status and freely pursue their economic, social and cultural development."<sup>19</sup> This provision empowers people to pursue their economic goals or objective freely with the aim of achieving their sustainable and sustained economic independence and development. Therefore, it is argued that the regulation of FIFA preventing players from suspending their rights to a national call up may be a hindrance or obstacle to the economic right or freedom of football players in their pursuit of contracts with respective football clubs.

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<sup>19</sup> Article 1 of the International covenant of n the International covenant on economic, Social and cultural rights 1976

Nevertheless, there are arguments that the word “Peoples” being referred to in the international economic and social and cultural rights is capable of two interpretations which are individuals and the generality of the people represented by their government. This implies that the same provision could be interpreted to mean the ability of a country to determine its cultural and social goals which includes inviting players from their football clubs to play for their national teams to promote the cultural and social well-being. This may be the national right FIFA is trying to comply with by providing the provision that excludes the freedom to contractually prevent a national call-up for football players.

The dilemma of the economic rights of the individual vis-a-vis that of a nation can be interpreted or gleaned from this provision but more importantly, the accommodation for both provisions brings to the fore the ownership of talent/service syndrome to effectively determine who gets priority for the service of footballer either the nation or the football club who has an agreement for the performance of service.

#### **8. TALENT OWNERSHIP**

This paradigm is also closely related to economic rights and is gleaned from the provisions of international convention on the rights to the economic, social and cultural rights which provides that:

All peoples may for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligation arising out of international economic cooperation based on the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence.’<sup>20</sup>

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<sup>20</sup> Article 1(2) of the International Covenant On Economic, Social And Cultural Rights 1976

The interpretation attributed to the foregoing provision is that state parties should not be deprived either through international law or cooperation the right to use its resource to actively increase its economic development by managing and disposing its resource without any foreign interference.<sup>21</sup>

More so, another inference from the provision is that the resource being owned and disposed of by nations are usually ascribed to natural resource or endowments of nations. In fact, this right originated basically to help under developed countries to maximise the use of their natural endowment via the UN General Assembly resolution 523 (iv) of 12 January 1952.<sup>22</sup>

International law has always being narrow in its definition of natural wealth by referencing it to be natural resources and indicating that nations with such resources have permanent sovereignty over such natural resources as a necessity for the basic right of such nation to self-determination.<sup>23</sup>

However, international law has omitted to include human resource or consider human resource as a resource capable of being owned by a nation or a country in its objective of achieving self-determination which creates a gap as to ownership of talents especially in football with respect to national call ups or playing for their respective clubs.

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<sup>21</sup> Manisuli Ssenyonjo, "The Influence of the International covenant on Economic, Social and cultural rights in Africa" 2017 *Netherlands international law review* 25 July 2017 <https://link.springer.com/article/10.1007/s40802-017-0091-4> last accessed on 3/3/22

<sup>22</sup> Daniella Dam-de Jong, "International law and Governance of Natural Resources in conflict and Post conflict situations Cambridge University Press July 5, 2015

<sup>23</sup> Stephen M. Scwebel "The story of the UN's Declaration on Permanent Sovereignty over Natural Resources" *American Bar Association Journal* vol 49 no 5 (MAY 1963)

This discourse is relevant in an attempt to determine whether if the ownership of a talent in football is considered and discovered. It may be helpful in minimizing the dilemma of football players in their attempt at electing whether to play for their national football teams or football clubs.

There are debates as to whether football clubs own talents by virtue of the contracts executed between the players and club i.e. having exclusive ownership of the football service of the player during the duration of the agreement or whether by virtue of the nationality or citizenship of a player entitles a country to the ownership of that talent to demand that a player always obeys the clarion call to play for his national team.

In addressing this debate, football contracts between players and football clubs are categorised as personal service contracts which involves the exclusive use of talent and time for that particular club except for national teams which is exempted by FIFA statutes. Nevertheless, it is posited that football clubs despite the existence of contracts cannot claim to the ownership of football talents during the duration of an agreement to warrant clubs to have the right to exclude national call ups because that will amount to servitude or forced labour.<sup>24</sup>

A contract despite how comprehensively couched it is done cannot force a football player to play for the club especially through legal actions such as specific performance to mandate performance because despite the existence personal service contract, a football player cannot be forced to perform a service. Although the football club may obtain damages for breach of contract.<sup>25</sup>

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<sup>24</sup> Lumley V Wagner (1852) 42 Eng Rep 687

<sup>25</sup> *ibid*



The foregoing proves that football clubs despite their contracts with footballers do not own the footballers talent during the duration of the agreement and cannot even legally force a footballer to play for the club even after executing a contract because this will breach constitutional requirements of the absence of servitude or forced labour.<sup>26</sup>

The foregoing debate on talent ownership between football clubs and their national teams by virtue of this discourse takes a constitutional dimension. The constitutional issues have usually the same strings cutting across so many jurisdictions with similar traits for instance in the case of football talents, the claim to own their talents either temporarily or permanently has a horizontal breach of the human rights of those players either the claim for the ownership is made by a club or country.<sup>27</sup>

The breach of fundamental right is termed horizontal because the breach is not necessarily coming from a higher authority which is usually described as government or agencies but between private persons.<sup>28</sup>The reference to horizontal breach of a right against forced labour of footballers for instance by their clubs is in my view still a vertical violation of the prevention from forced labour since the clubs usually have the financial and legal muscle to ensure servitude of players especially based on the unequal bargaining power between most players and clubs while negotiating those agreements.

The reality of talent ownership in football as regards mandating a footballer to bequeath all his talent ownership rights to a club possibly vis-a-vis playing for his national team is observed in the above court of Cassation case where based on issues such as unequal bargaining power an agreement between a footballer and the chairman of a club had no determined duration and the

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<sup>26</sup> Section 13 of the South African constitution 1996

<sup>27</sup> (2010) 1 Pasicirisie 1048 (Court de cassation), Judgment of 29<sup>th</sup> March 2010

<sup>28</sup> *ibid*

players' services shall be an exclusive property of the Chairman and that the player would have to pay considerable damages to play for another club.<sup>29</sup>

The talent ownership has specified under this agreement was brought under the legal lens of the Belgian Constitution which guarantees the freedom of every Belgian citizen.<sup>30</sup> The Belgian constitution also guarantees the right to free choice of labour.<sup>31</sup> Although it may be argued that the free choice of labour can also be interpreted to mean the choice to enslave your labour to a particular person by a contract in the absence of fraud, duress and misrepresentation.<sup>32</sup>

Nevertheless, agreements with the objective of total surrendering of personal service in an exclusive or servitudinal manner is usually due to the unequal bargaining power between clubs and footballers which necessitated international laws to legislatively to curb this contemporary servitudinal activities for instance. International law provides that: "No one shall be held in slavery or servitude"<sup>33</sup> and "no one shall be required to perform forced or compulsory labour."<sup>34</sup>

It is instructive to note that despite the fact that it is believed that an agreement that insists on exclusive use and ownership of football talents is a violation of the rights to be from servitude or forced or compulsory by club owners. However, it is also posited that contracts executed by football players bequeathing the ownership of their talents to club owners may

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<sup>29</sup> *ibid*

<sup>30</sup> Section 12 of the Belgian constitution.

<sup>31</sup> Section 23 of the Belgian constitution

<sup>32</sup> *Lestarnge V Graucob*

<sup>33</sup> Article 4(1) of the convention of the prohibition of slavery or forced labour (European Courts of human rights) Guide on Article 4, updated on 31, December, 2021

<sup>34</sup> Article 4(2) of the convention of the prohibition of slavery or forced labour (European Courts of human rights) Guide on Article 4, updated on 31, December, 2021

not be considered forced or compulsory since the signature of the footballer was not secured under duress, fraud or misrepresentation.

This position is further justified by the European Court of human rights case of *Zoletic & ors V Azerbaijan*<sup>35</sup> which described the term forced or compulsory labour as seeking to protect persons from serious labour exploitations such as human trafficking. It therefore seems that it is better suggested that instead of qualifying exclusive ownership of talent in football as forced or compulsory labour rather a more apt term may be induced labour rather than forced since those agreements are usually reached based on unequal bargaining power.

Interestingly, other scholars have posited that talent ownership in football in contracts should not prohibit paid professional labour or activity such as sports and that such labour can only be restricted by a legislation and that any contract that seeks to prevent the freedom, movement or transfer of labour is void and that such actions apart from violating basic rights of individuals also violate public order and morality.<sup>36</sup>

There seems to be a large concentration of views that it is quite impossible either through municipal and international laws for club owners to own football talents or their service as a medium to prevent them from participating in national team football since that will result in forced labour as players cannot be forced to play for their clubs if they choose to obey the clarion call of their national teams.

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<sup>35</sup> Ibid

<sup>36</sup> Luca Selliquini- Cinelli, Andrew Hutchinson, ``The Constitutional dimension of contract law; A Comparative Perspective'' Springer Publishing 2017

## **9. CITIZENRY STATUS RETRIBUTION**

FIFA is in compliance with international law and norms is bale to restrict clubs from insisting on excluding talents from terms that restrict them from national call-ups from their national teams since those clubs irrespective of the contractual consideration do not own the talents.

In view of this fact, it is also important to examine whether national teams can based on an ownership strategy mandate the call up of a citizen who refuses to play for his or her national team and opt only for football club participation and if the call is refused invalidate the citizenship of such athlete.

Scholars have argued that the legal route through which this is possible may be through the citizenship of that country. There are arguments that the international covenant on economic and social cultural rights crates room for countries to own their citizens. Although this may be a stretch but a wide interpretation of law provides that all peoples may freely dispose of their natural wealth and resources without any prejudice to intentional law or a mutual obligation may suggest that the natural wealth can also include human resource wealth originating from the nation or country.<sup>37</sup>

More so, international law also provides that everyone has the right to a citizenship and that no one should be arbitrarily deprived of the right to nationhood. Nevertheless, it is observed that even though international law prevents government from precluding persons from citizenship, citizenship can be withdrawn legally i.e citizenship or nationality belongs to the state.<sup>38</sup>It could be a right to be a citizens but citizenship is dependent on fulfilling some certain conditions.

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<sup>37</sup> Article 1(2) of International covenant on Economic, Social and cultural rights 1976 ,Article 1(2) of the International covenant on civil and political rights 1976

<sup>38</sup> Article 15 of the United nations declaration on human rights

The ownership of the citizenship or nationalistic status by a state is further emphasized by the rights of stateless persons in international law which mandates states to grant citizenship to persons born on their soil who would in fact be stateless if not granted citizenship.<sup>39</sup>

These instances of citizenship acquisition prove that there are loopholes in depriving a citizen of his or her citizenship or persons who ordinarily could have obtained citizenship primarily by being on their soil or even by birth.

The above citizenship discourse is important because national call-ups from clubs are primarily based on citizenship. In fact, the eligibility rules for participation in a national football game is that the person is a person who holds a permanent nationality of a country and he or she is not dependent on residence to get the citizenship of that country can represent that country at a FIFA organised or supervised competition.<sup>40</sup>

#### **10. CITIZENSHIP DEPRIVATION IN NIGERIA**

The citizenship debate is to help clarify whether a nation as a retributive legal mechanism decides to strip a footballer of his or her citizenship if such player refuses to obey the national call up. This retributive legal mechanism is important because of legal concepts such as citizenship deprivations.<sup>41</sup>

The Nigerian constitution for instance empowers the president of the country to deprive a naturalised citizen if the person bags an imprisonment of about three years within seven years of being naturalised or when a registered or naturalised citizen

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<sup>39</sup> Article 1(2) of the 1961 convention on the reduction of stateless persons

<sup>40</sup> Article 15 of the FIFA Eligibility rules

<sup>41</sup> Olanrewaju Olamide, "Nigerian Citizenship" djetlawyer  
<https://djetlawyer.com/nigerian-citizenship/#:~:text=The%20Nigerian%20President%20can%20deprive,years%20after%20he%20was%20naturalised.> Last accessed on 17/3/22

does acts that are considered to be disloyal to the country of Nigeria.<sup>42</sup>

The foregoing proves that in most jurisdictions all over it is largely impossible to deprive a citizen by birth of his or her citizenship.<sup>43</sup> However, citizens that are naturalised or registered within a certain duration or circumstance can have their citizenship withdrawn most especially as seen above when actions done by such person is perceived as being an act of disloyalty to the country in this case Nigeria.

It is posited that the act of a naturalised or registered footballers in rejecting to play for the Nigerian nation when summoned may be interpreted as an act of disloyalty especially when such player is really gifted which may then give a nation like Nigeria an opportunity to strip such player of their nationality which may a retributive option for a nation such as Nigeria.

The reason why the act of refusal to play for a nation may be considered an act of disloyalty is because it may be termed an act of economic and socio-cultural sabotage being that football is an socio-economic window to implicitly advertise nations at the world stage and every special talent will be required to pursue a socio-economic and socio-cultural agenda for that specific nation.

Therefore, it can be gleaned from the above is that players who are citizens by birth do not run the risk of citizenship deprivation as a tool for national retribution but players that are naturalised or registered by marriage can be legally deprived of their citizenship if the nation concerned interprets

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<sup>42</sup> Section 30(2) a of the 1999 constitution as ammended

<sup>43</sup> CAGE, ``Citizenship deprivations'' uploaded 8/12/21

<https://www.cage.ngo/citizenship-deprivations-what-you-need-to-know>  
last accessed on 9/3/22

the action of not honouring the national call up as an act of disloyalty.

#### **11. LEGAL COLLUSION**

Despite the strict provision in the status of Fifa player regulation on the insistence that clubs and players cannot exclude call ups by national teams, this provision is difficult to enforce because of the inability for FIFA to police all call ups with respect to every player leaving room for the disregard of this regulation.

More importantly, there are silent instances where medical teams of football clubs in order to secure a force majeure effect on the call up by the national team collude with the player to indicate a false report or exaggerate an injury that will prohibit such footballer from participating in the international call –up with no room for authentication from the national side if it suspects a collusion between players and their medical teams.<sup>44</sup>This then makes the enforcement of the regulation at the discretion of clubs and at the mercy of voluntary enforcement.

#### **12. CONCLUSION**

The dilemma for football players is readily inexhaustible especially as regards the dual representation of club and country. The dilemma is more pronounced because of the economic scale of privilege tilting towards the side of the club participation. Nevertheless, FIFA needs to be specific as to create a structured format that is fair and equitable and will accommodate the needs and aspirations of players, nations and club owners and reduce the conflict as regards national call ups.

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<sup>44</sup>Ryan Kelly, ``Can football clubs prevent players from playing in international matches'' uploaded October 6,2019  
<https://www.goal.com/en/news/can-football-clubs-prevent-players-from-playing/eksoltaiss19ihjygdwoch6u8> last accessed on 9/3/22

**13. RECOMMENDATIONS**

- a) National teams should be provided opportunity legally to verify the medical team reports on players at clubs during international tournaments to prevent collusion between players and clubs
- b) If collusion is proved as regards the health status of a player in order to prevent a call up then the club and country should be penalised by law or regulation of FIFA
- c) Countries may be able to employ the tactics of citizenship deprivation if it interprets the refusal of a player to play for her as an act of disloyalty
- d) The regulation prohibiting clubs and players from excluding national call-ups must include a definite sanction of imprisonment or fine.