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## ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN NIGERIA – A SLIPPERY SLOPE? \*

### Abstract

In both affluent and developing nations, massive violations of economic, social and cultural rights occur on a routine basis. In the light of this, it is imperative that such violations are addressed. Obtaining redress for violation of the economic, social and cultural rights are based on national, regional and international instruments. In Nigeria, there are a number of international and regional instruments as well as national legislations that exist for the enforcement of the economic, social and cultural rights. On the other hand, there are noted impediments to the enforcements of such rights. The authors have also identified some of the steps that need to be taken to ensure that the hope of attaining an egalitarian society through the enforcement of the various instrument for the enforcement of the economic, social and cultural rights do not remain a mirage. The thrust of this work is therefore to identify the economic, social and cultural rights; the various instruments that are in place for the securing of these rights in Nigeria; the impediments to the enforcements of these rights and finally what should be done to ensure that the enforcement of these rights is realised do not remain a mirage.

**Keywords: Economic, Social, Cultural, Rights, Redress, International Instruments, National**

### 1. Introduction

The Office of the United Nations High Commissioner for Human Rights (OHCHR) describes human rights as:

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.”<sup>1</sup>

The above assertion captures the entire gamut of the theoretical, idealistic and practical nature of human rights. Human rights are natural rights that nature has given to all human beings and are inseparable, undividable and inalienable from human beings. The need to protect these rights is one of the primary reasons individuals decided to congregate and form States, charging them with the responsibility to protect these rights<sup>2</sup>. Human rights are therefore necessary and indispensable to modern society, without which they would be unable to function, and cannot therefore develop. They comprise the full assemblage of inalienable rights which protect the human person's life and means of dignified living.<sup>3</sup>

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<sup>1</sup> Office of the High Commissioner for Human Rights “What are Human Rights?” (2015) <<http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>> (accessed 16-03-2022)

<sup>2</sup> T Honore. “Making Law Bind”. (Oxford University, USA, 1987) p 129.

<sup>3</sup> J Daci - “Justiciability of Economic, Social and Cultural Rights”, *Academicus - International Scientific Journal* available at [www.academicus.edu.al](http://www.academicus.edu.al) (last accessed 24th March, 2021)



Economic, social and cultural rights (ESCR) embody essential elements for a life of dignity and freedom, including work, health, education, food, water, housing, social security, healthy environment, and culture. People worldwide have long struggled for these basic rights, concern for the poor and the oppressed has been expressed in many religious and philosophical traditions, and more recently human rights have been articulated in international law. In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), establishing the vision and principles which recognize the interdependence and indivisibility of all human rights: a vision that guarantees people civil and political freedom as well as economic and social well-being. ESCR were embodied in international treaty law through the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as through other universal treaties and regional mechanisms.

Fundamental rights have been defined as "the rights one holds by virtue; solely; of being human person, that is to say, rights naturally inhering in the human being".<sup>4</sup> They are "rights attaching to man as man because of his humanity"<sup>5</sup> They have been described as standing above ordinary laws of the land and a primary condition for a civilized existence<sup>6</sup>. Thus, they occupy a kingly or an Olympian position in the residence of human beings. Some have argued that Economic, Social and Cultural rights are not fundamental rights though they are human rights. This argument flows from the understanding that fundamental rights are those rights captured and made enforceable while human rights include both fundamental rights and other rights not contained in the constitution<sup>7</sup>. This position received judicial support in the case of *Taraba State Government & Anor v. Hon. Justin Shaku & Ors.*<sup>8</sup>

However, as aptly opined by Professor Osita Eze, "to the extent that socio-economic rights are not guaranteed, then to that extent will civil and political rights remain palliatives for the masses".<sup>9</sup> This current trend of acceptance of economic, social and cultural rights as fundamental rights was further emphasised by Justice Bhagwati in the following words:

...to a large majority of people who are living in almost subhuman existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notions of individual freedom and liberty, though representing some of the cherished values of a free society would sound as empty words bandied about in the drawing rooms of the rich and well-to-do, and the only solution for making these rights meaningful to them [is] to remake the material conditions and usher in a new social order where socio-economic justice [will] inform all institutions of public life so that the preconditions of fundamental liberties for all may be secured.<sup>10</sup>

<sup>4</sup> B O Nwabueze, *Constitutional Democracy in Africa*, Vol. 3 (Ibadan: Spectrum Books Ltd., 2004) 1.

<sup>5</sup> *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt. 58) 53 at 589, per Oputa, JSC

<sup>6</sup> *Kuti v. A-G, Fed.* (1996) 41 LRCN 200; *Odogwu v. A-G, Fed.* (1996) 41 LRCN 200/(1995) 2 NWLR (Pt. 6) 211; *Badejor v. Minister of Education* (1996) 9-10 SCNJ 51

<sup>7</sup> See P Sepaha **Distinction between Fundamental Rights and Human Rights** 05-November-2020 available at <https://lawcolloquy.com/publications/blog/distinction-between-fundamental-rights-and-human-rights/149> accessed on 20 January 2023

<sup>8</sup> (2019) LPELR-48130(CA)

<sup>9</sup> Osita Eze, "Human Rights Issues and Violations: The African Experience", in George W Shepherd Jnr & Mark OC Anikpo, eds, *Emerging Human Rights: The African Political Economy Context* (Westport, Connecticut: Greenwood Press, 1990) 87 at 102

<sup>10</sup> *Minerva Mills v Union of India*, 1980 AIR 1789, 1981SCR (1) 206 at 1843



## 2. The International Covenant on Economic, Social and Cultural Rights, 1966.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the core and foundational treaty on this class of rights, being the very first codification of these rights by the agreement of signatory states. It is a multilateral treaty adopted and opened for signature, ratification and accession by United Nations General Assembly (UNGA) Resolution of 16<sup>th</sup> December, 1966,<sup>11</sup> and subsequently came into force a decade later on 3<sup>rd</sup> January, 1976. This treaty is one leg of the tripod on which the International Bill of Rights stand, the other two legs being the Universal Declaration of Human Rights 1944, and the International Covenant on Civil and Political Rights, including its additional protocols. As at January 2020, the ICESCR has 166 signatories, with a further 4 states (including the United States of America) which have signed but are yet to ratify the Covenant.<sup>12</sup>

This treaty commits its signatory parties to work towards the granting of Economic, Social and Cultural Rights to the non-self-governing and trust territories, and individuals, including labour rights and the rights to health, education and an adequate standard of living. It is monitored by the United Nations Committee on Economic, Social and Cultural Rights. Human rights activists had to immensely advocate the interdependence of the classes of human rights so that they are treated equally for the benefit of protecting and promoting all human rights. In doing this, treaties covering other classes of human rights, such as that of civil and political rights, had to contain certain provisions of direct relevance to economic, social and cultural rights. In promoting this idea of interdependence and indivisibility of different classes of human rights, courts in various jurisdictions have held, for instance, that the right to life must include other rights that are essential to the enjoyment of basic quality of life, such as education and healthcare.<sup>13</sup>

Rights recognized in the ICESCR include the right to self-determination,<sup>14</sup> work and favourable conditions of work,<sup>15</sup> form and join trade unions,<sup>16</sup> social security,<sup>17</sup> protection of the family, mothers and children,<sup>18</sup> adequate standard of living, including adequate food, clothing and shelter,<sup>19</sup> the highest attainable level of health and healthcare,<sup>20</sup> education,<sup>21</sup> free and compulsory primary education,<sup>22</sup> and take part in cultural life, benefit from scientific progress; and benefit from the protection of scientific, literary or artistic production of which one is the author.<sup>23</sup> These rights are similar to those proclaimed in the principal UN document i.e. Universal Declaration of Human Rights and other international human rights instruments.

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<sup>11</sup> Known as UNGA Resolution 2200A (XXI)

<sup>12</sup> [https://en.m.wikipedia.org/wiki/International\\_Covenant\\_on\\_Economic\\_Social\\_and\\_Cultural\\_Rights](https://en.m.wikipedia.org/wiki/International_Covenant_on_Economic_Social_and_Cultural_Rights) last accessed 4/2/2022

<sup>13</sup> *Airey judgment (9<sup>th</sup> October, 1979) Series A, No. 32, p. 15. ; Feldbrugge V. The Netherlands (Eur. Ct. H.R. Series A, No. 99, 8 EHRR 425); Deumeland V. Germany (Eur. Ct. H.R. Series A, No. 100, 8 EHRR 448).*

<sup>14</sup> Article 1 International Covenant on Economic, Social and Cultural Rights.

<sup>15</sup> Article 6 & 7 International Covenant on Economic, Social and Cultural Rights

<sup>16</sup> Article 8 International Covenant on Economic, Social and Cultural Rights

<sup>17</sup> Article 9 International Covenant on Economic, Social and Cultural Rights

<sup>18</sup> Article 10 International Covenant on Economic, Social and Cultural Rights

<sup>19</sup> Article 11 International Covenant on Economic, Social and Cultural Rights

<sup>20</sup> Article 12 International Covenant on Economic, Social and Cultural Rights

<sup>21</sup> Article 13 International Covenant on Economic, Social and Cultural Rights

<sup>22</sup> Article 14 International Covenant on Economic, Social and Cultural Rights

<sup>23</sup> Article 15 International Covenant on Economic, Social and Cultural Rights



We now attempt to provide a summary below of the purport and import of each of the rights enumerated in the ICESCR.

## 2.1. The Right to Self-Determination and the Right to Development

Article 1 of the ICESCR states that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” This provision is identical to Article 1 of the International Covenant on Civil and Political Rights. The African Charter on Human and Peoples’ Rights also contains similar provisions.<sup>24</sup>

The right of self-determination has two components: external and internal. “External self-determination” can be thought of as international self-determination, because it refers to peoples’ right to determine their political status and their “place in the international community” based upon the principle of equal rights and freedom from colonialism, “alien subjugation, domination, and exploitation.”<sup>25</sup> “Internal self-determination” can be thought of as self-determination within the domestic sphere, because it refers to the right to freely pursue economic, social and cultural development free from outside interference.<sup>26</sup> Consequently, the right to development is integral to the right of internal self-determination.<sup>27</sup>

The United Nations has discussed the interconnectedness of self-determination and development, stating that the “human right to development also implies the full realization of the right of peoples to self-determination,” which includes “the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”<sup>28</sup> The ICESCR protects peoples’ right to “freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation,” and provides that in “no case may a people be deprived of its own means of subsistence.”<sup>29</sup>

## 2.2. The Right to Work

Article 6 of the ICESCR protects the right to work, which is the opportunity to gain a living by work that one freely chooses or accepts.<sup>30</sup> Article 23.1 of the Universal Declaration of Human Rights states: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. To fully realize the right to work, States are encouraged to develop technical and vocational guidance and training programs, along with

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<sup>24</sup> African Charter on Human and Peoples’ Rights, arts. 20, 22.

<sup>25</sup> *General Recommendation No. 21: Right to Self-Determination*, UN Doc. A/51/18, 23 August 1996, para. 4.

<sup>26</sup> *id*

<sup>27</sup> See *Katangese Peoples’ Congress v. Zaire - Comm. No. 75/92* (African Commission for Human and Peoples’ Rights 1995) in Eighth Annual Activity Report of the African Commission on Human and Peoples’ Rights (1994–1995), ACHPR/RPT/8th, Annex VI (1995)

<sup>28</sup> UN General Assembly, Resolution 41/128, *Declaration on the Right to Development*, UN Doc. A/RES/41/128, 4 December 1986, para. 1.

<sup>29</sup> See ICESCR, art. 1(2); Human Rights Committee, *General Comment No. 12, Article 1 (The Right to Self-Determination of Peoples)*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008, para. 4. The International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights also contain similar provisions, which relate to both self-determination and development. See ICCPR, art. 1; African Charter on Human and Peoples’ Rights, art. 21

<sup>30</sup> ICESCR, art. 6.



policies that facilitate access to employment.<sup>31</sup> The European Social Charter also provides for the right to vocational guidance and training.<sup>32</sup> The right to work does not require the State to employ individuals, but rather protect individuals' right to choose their work, and guarantee that they will not be unfairly deprived of employment.<sup>33</sup> Along those lines, States have the core obligation to ensure the right of access to employment, by avoiding measures that discriminate against marginalized groups and by implementing national plans of action to effectuate the right to work for the disadvantaged.<sup>34</sup>

In *Olga Tellis & Ors. v Bombay Municipal Corporation & Ors.*,<sup>35</sup> the Supreme Court of India observed that though no person can sue the State for not providing him with a job, however if any person is deprived of his right to livelihood except according to just and fair procedure established by law, he can challenge the deprivation. The Court further stated that the 'right to livelihood' as claimed by the petitioners includes the right to make a living because to make living life meaningful, there had to be a means of living, i.e. the means of livelihood. That, if the right to livelihood was not treated as a part of the right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of earning a living.

### 2.3. The Right to a Fair Wage and Safe Working Conditions

The ICESCR protects the right to just and favourable work conditions, including the right of all workers to receive "fair wages and equal remuneration for work of equal value."<sup>36</sup> The African Charter on Human and Peoples' Rights, Protocol of San Salvador, American Declaration, and the European Social Charter, among others, contain similar provisions.<sup>37</sup>

The ICESCR's emphasis on equality prohibits States from discriminating against women, and requires States to "ensure equal opportunities and treatment between men and women in relation to their right to work."<sup>38</sup> The ICESCR guarantees the right to safe and healthy working conditions, equal opportunity for promotion, and provides for "rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays".<sup>39</sup> In an advisory opinion interpreting the rights of undocumented migrants under *inter alia* the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Inter-American Court of Human Rights has advised that States are "obliged to respect and ensure the labor human rights of all workers, irrespective of their status as nationals or aliens," and "should not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards."<sup>40</sup> The Court added that "work should be a means of realization and an

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<sup>31</sup> CESCR, *General Comment No. 18, Article 6 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/18, 6 February 2006, paras. 27-28.

<sup>32</sup> European Social Charter, arts. 9, 10.

<sup>33</sup> CESCR, *General Comment No. 18*, para. 6.

<sup>34</sup> *id.* at para. 31

<sup>35</sup> AIR 1986 SC 18

<sup>36</sup> ICESCR, art. 7.

<sup>37</sup> African Charter on Human and Peoples' Rights, art. 15; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", art. 7; American Declaration on the Rights and Duties of Man, arts. XIV, XV; European Social Charter, arts. 2-4.

<sup>38</sup> CESCR, *General Comment No. 18*, para. 13.

<sup>39</sup> ICESCR, art. 7.

<sup>40</sup> I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, 17 September 2003, para. 148



opportunity for the worker to develop his aptitudes, capacities and potential, and to realize his ambitions, in order to develop fully as a human being.”<sup>41</sup>

## 2.4. The Right to Form and Join Trade Unions

International human rights law protects the right to form and join trade unions, and protects the unions’ right to function freely without restrictions other than prescribed rules, regulations and law, and limitations necessary to protect others’ rights.<sup>42</sup> The European Convention on Human Rights, Protocol of San Salvador, American Declaration, Revised European Social Charter, and the ICCPR, among others, contain provisions protecting trade union rights.<sup>43</sup> The decision to join a trade union should be the workers’ independent choice, exercised free from influences that constrain their freedom to make a decision.<sup>44</sup> The ICESCR protects workers’ right to go on strike, as long as the strike conforms to the legitimate requirements of the relevant State’s laws.<sup>45</sup> Limitations by a State on the right to strike must comply with the general limitations clause of Article 4 as customary, and States have a duty to immediately implement the right to go on strike.<sup>46</sup>

Similarly, the Revised European Social Charter provides that States may regulate the right to strike, provided that any restrictions are “necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.”<sup>47</sup> Where the government placed limitations on strike pickets, the European Committee of Social Rights found a violation of Article 6 (right to bargain collectively) of the European Social Charter.<sup>48</sup>

## 2.5. The Right to Social Security

Article 9 of the ICESCR protects “the right of everyone to social security, including social insurance.”<sup>49</sup> According to the CESCR, the right to social security includes the right to access and maintain benefits without discrimination to help secure protection from lack of work-related income, unaffordable access to healthcare, and insufficient family support (in the case of children and adult dependents).<sup>50</sup> States have an obligation to develop a national strategy for the full implementation of the right to social security.<sup>51</sup> The Inter-American Court of Human Rights for instance found that Peru

<sup>41</sup> *id.* at para. 158.

<sup>42</sup> ICESCR, art. 8(1).

<sup>43</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 8; American Declaration on the Rights and Duties of Man, art. XXII; Revised European Social Charter, art. 6; International Covenant on Civil and Political Rights, art. 22.

<sup>44</sup> *See, e.g.,* ESCR, *Confederation of Swedish Enterprise v. Sweden*, Complaint No. 12/2002, Merits, 15 May 2003, para. 29.

<sup>45</sup> ICESCR, art. 8(1)(d).

<sup>46</sup> CESCR, *General Comment No. 3, The Nature of States Parties Obligations*, UN Doc. E/1991/23(SUPP), 1 January 1991, para. 5.

<sup>47</sup> Revised European Social Charter, arts. 6, G.

<sup>48</sup> ECSR, *European Trade Union Confederation, et al. v. Belgium*, Complaint No. 59/2009, Merits, 13 September 2011.

<sup>49</sup> ICESCR, art. 9. The European Social Charter, American Declaration, and the San Salvador Protocol also contain similar provisions. *See* European Social Charter, art. 12; American Declaration on the Rights and Duties of Man, art. XVI; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 9.

<sup>50</sup> CESCR, *General Comment No. 19, The Right to Social Security (art. 9)*, UN Doc. E/C.12/GC/19, 4 February 2008, para. 2.

<sup>51</sup> *id.* at para. 41



violated the right to property and to judicial protection under the American Convention when the State's bank regulator arbitrarily reduced individuals' social security pensions<sup>52</sup>.

## 2.6. The Rights of the Family

International human rights law requires States to accord "the widest possible protection and assistance" to the family, especially when the family is "responsible for the care and education of dependent children."<sup>53</sup> For example, mothers should receive special protection for a reasonable time before and after childbirth, including maternity leave with pay or with adequate social security benefits.<sup>54</sup>

The ICCPR, European Convention on Human Rights, European Social Charter, American Declaration, American Convention on Human Rights, Protocol of San Salvador, and the African Charter on Human and Peoples' Rights, among others, include similar provisions protecting the rights of the family.<sup>55</sup> In *Amnesty International v. Zambia*, the African Commission found that the State violated its duty to protect and assist the family when the State deported political activists, because their deportation resulted in forcibly breaking up their family units.<sup>56</sup>

States should take "special measures of protection and assistance" to prevent the economic and social exploitation of children including setting age limits for employment,<sup>57</sup> in addition to prohibiting and punishing child labor.<sup>58</sup> In line with the obligation to protect children, in *Rochac et al.*, the Inter-American Commission found a violation of the right to family when the State's Armed Forces separated five children from their families by forcibly disappearing them.<sup>59</sup> The Commission stated that if a child is separated from his or her family, "the State should seek to preserve that link by intervening temporarily and directing its efforts toward the return of the child to their family" as long as that is in the best interests of the child.

The ICESCR prohibits social exploitations like forced marriages, stating that marriage "must be entered into with the free consent of the intending spouses."<sup>60</sup> The UN Human Rights Council has adopted a Resolution on Child, Early, and Forced Marriage, discussing how this practice adversely affects the right to education, right to health, and the right to development.<sup>61</sup>

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<sup>52</sup> I/A Court H.R., *Case of the "Five Pensioners" v. Perú*. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, para. 187.

<sup>53</sup> ICESCR, art. 10.

<sup>54</sup> ICESCR, art. 8(2).

<sup>55</sup> International Covenant on Civil and Political Rights, arts. 17, 23; European Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 8, 12; European Social Charter, art. 16; American Declaration on the Rights and Duties of Man, arts. V, VI; American Convention on Human Rights, arts. 11, 17; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", art. 15; African Charter on Human and Peoples' Rights, art. 18.

<sup>56</sup> ACommHPR, *Amnesty International v. Zambia*, Communication No. 212/98, 25<sup>th</sup> Ordinary Session, 5 May 1999, para. 59.

<sup>57</sup> ICESCR, art. 10

<sup>58</sup> ICESCR, art. 8(3).

<sup>59</sup> IACHR, Report No. 75/12, Case 12.577, *Rochac et al.* (El Salvador), 7 November 2012, paras. 205-208.

<sup>60</sup> ICESCR, art. 8(1).

<sup>61</sup> UN Human Rights Council, Resolution 24/L.34, *Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage: Challenges, Achievements, Best Practices and Implementation Gaps*, A/HRC/24/L.34, 23 September 2013.



## 2.7. The Right to an Adequate Standard of Living

The right to an adequate standard of living entails the rights to adequate food, clothing, housing, and to the continuous improvement of living conditions. States are required to “take appropriate steps to ensure the realization of this right”,<sup>62</sup> and take actions that guarantee individuals’ access to the minimum conditions necessary for a life of dignity, rather than conditions that merely ensure survival.

## 2.8. The Right to Food

International human rights law recognizes the fundamental right to be free from hunger.<sup>63</sup> Everyone has the right to food. The right to food is essential for a dignified life and is vital for the realisation of many other rights, such as the rights to health and life. The right to food will be realized when “every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”<sup>64</sup> The core content of the right requires food to be available in a quantity and quality that is sufficient to satisfy dietary needs, safe and culturally appropriate, and accessible without interfering with other human rights.<sup>65</sup> Violations of the right to food occurs when States directly interfere with enjoyment of the right and when States insufficiently regulate other actors that interfere with enjoyment of the right<sup>66</sup>. For example, the African Commission held that the Nigerian government violated its three minimum core obligations of the right to food, which are that States should not destroy or contaminate food sources, should not allow private parties to do so, and should not prevent people from feeding themselves.<sup>67</sup>

## 2.9. The Right to Water

Although the right to water is not explicitly provided for in the ICESCR, it has been interpreted to arise through the rights to an adequate standard of living and to health.<sup>68</sup> The right to water entitles individuals to safe, affordable, clean, and physically accessible water for personal and domestic uses. *See id.* at para. 2. States should prioritize the allocation of water for personal and domestic uses, for the prevention of starvation and disease, and to ensuring that water is available to meet the core obligations of other ESCR, including the right to food or the right to health.<sup>69</sup>

The CESCR notes that during armed conflicts and emergency situations, States have the duty to protect drinking water sources and to ensure that civilians, internees, and prisoners have access to adequate water.<sup>70</sup> For example, in the context of the armed conflict in Darfur, the African

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<sup>62</sup> *See* ICESCR, art. 11

<sup>63</sup> ICESCR, art. 11(2). The American Declaration and the Protocol of San Salvador, among others, include provisions recognizing the right to food. *See* American Declaration on the Rights and Duties of Man, art. XI; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 12.

<sup>64</sup> CESCR, *General Comment No. 12, The Right to Adequate Food*, UN Doc. E/C.12/1999/5, 12 May 1999, para. 6.

<sup>65</sup> *id.* at para. 8.

<sup>66</sup> *See, e.g., id.* at para. 19.

<sup>67</sup> ACommHPR, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, 30<sup>th</sup> Ordinary Session, 27 October 2001, para. 65.

<sup>68</sup> *e.g.*, CESCR, *General Comment No. 15, The Right to Water*, para. 3.

<sup>69</sup> *id.* at para. 6.

<sup>70</sup> *id.* at para. 22.



Commission found that the State violated the right to health under the African Charter when its armed forces, *inter alia*, poisoned water wells and denied access to water sources.<sup>71</sup>

## 2.10. The Right to Housing

Individuals have the right to housing, which goes beyond the right to have a roof over one's head, and includes the right to live in peace and dignity, with security from outside threats.<sup>72</sup> The following factors are taken into account when determining if housing is considered "adequate": protection from forced eviction and harassment; access to facilities essential for health, security, comfort, and nutrition; affordability to the extent that other basic needs are not compromised; habitability; accessibility; in a location allowing access to social services; and individuals' ability to express their cultural identity.<sup>73</sup>

In its General Comment 4,<sup>74</sup> the UN Committee on Economic, Social and Cultural Rights (CESCR) provided detailed guidance to States regarding their obligations to respect, protect and fulfil the right to adequate housing. The Committee also noted that the right includes the following seven interrelated and essential features, to wit: Legal security of tenure; Availability of services, materials, facilities and infrastructure; Affordability; Habitability; Accessibility; Location; Cultural adequacy, and prohibition of forced evictions.<sup>75</sup>

## 2.11. The Right to Property

International human rights law protects the right to property. Although the right is not enumerated in the ICESCR, it is implicitly protected as part of the right to housing, the right to food, and the right to an adequate standard of living. Regional human rights treaties have explicitly guaranteed the right to property.<sup>76</sup> On this issue, the Inter-American Court found that the State had violated the right to property when it forced indigenous communities to leave their ancestral land,<sup>77</sup> stating that these rights are deserving of equal protection.<sup>78</sup>

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<sup>71</sup> ACommHPR, *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communications Nos. 179/03-296/2005, 45<sup>th</sup> Ordinary Session, 27 May 2009, para. 212.

<sup>72</sup> ICESCR, art. 11; CESCR, *General Comment No. 4, The Right to Adequate Housing*, UN Doc. E/1992/23, 1 January 1992, para. 7. The American Declaration and the Revised European Social Charter also recognize the right to housing. See American Declaration on the Rights and Duties of Man, art. XI; Revised European Social Charter, art. 31.

<sup>73</sup> *id.* at para. 8.

<sup>74</sup> <http://www.refworld.org/docid/47a7079a1.html>

<sup>75</sup> CESCR, *General Comment No. 7, The Right to Adequate Housing: Forced Evictions*, UN. Doc E/1998/22, Annex IV, 20 May 1997, para. 5.

<sup>76</sup> See, e.g., *African Charter on Human and Peoples' Rights*, art. 14; Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1; American Convention on Human Rights, art. 21

<sup>77</sup> I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 144.

<sup>78</sup> *id.* at para. 120.



## 2.12. The Right to Health and Healthy Environment

Article 12 of the ICESCR protects “the enjoyment of the highest attainable standard of physical and mental health.”<sup>79</sup> The European Social Charter, Protocol of San Salvador, American Declaration, and the African Charter on Human and Peoples’ Rights, among others, contain similar provisions.<sup>80</sup>

The ICESCR identifies the following four steps States should take to fully realize this right: provide for the reduction of the stillbirth-rate and infant mortality and for the healthy development of children; improve all aspects of environmental and industrial hygiene; prevent, treat, and control disease; and create conditions that would provide all with medical attention in the event of sickness.<sup>81</sup> States must realise the right to health through, among other steps, the improvement of all aspects of environmental hygiene and elimination or reduction of the harmful effects of environmental pollution by taking appropriate regulatory or monitoring measures so that its citizens may fully enjoy their right to health.<sup>82</sup>

## 2.13. The Right to Education

By Article 13 of the ICESCR, the state parties to the covenant recognize the right of everyone to education. The objectives of education include the full development and dignity of each person, the ability to participate effectively in society, and the strengthening of respect for human rights. Education is important in itself and is often also called a ‘multiplier’ human right, as the degree of access to education impacts the level of enjoyment of other human rights. The right to education involves specific requirements at different levels of education. Primary education must be compulsory and free of charge for all, which will involve considerations of both direct and indirect costs relating to education. The compulsory nature of primary education guards against violations of this right by parents or governments, eliminates income-based discrimination and removes incentives for non-attendance. States should develop a national framework that will progressively expand and improve the educational system and successively introduce free education at all other levels, namely secondary, higher, and fundamental education. The right to education is protected in the ICESCR as well as in multiple regional agreements.<sup>83</sup> The ICESCR requires States to make primary education compulsory, free, and available to all.<sup>84</sup> The dictates of the ICESCR require that the right is immediately implemented, and is justiciable.<sup>85</sup> In its General Comment 13,<sup>86</sup> the UN Committee on Economic, Social, and Cultural Rights (CESCR) provided detailed guidance to States regarding their obligations to respect, protect and fulfil the right to education, including interrelated

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<sup>79</sup> ICESCR, art. 12(1).

<sup>80</sup> European Social Charter, art. 11; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 10; American Declaration on the Rights and Duties of Man, art. XI; African Charter on Human and Peoples’ Rights, art. 16.

<sup>81</sup> ICESCR, art. 12(2).

<sup>82</sup> See, e.g., ECtHR, *Lopez Ostra v. Spain*, no. 16798/90, Judgment of 9 December 1994, para. 51.

<sup>83</sup> See, e.g., African Charter on Human and Peoples’ Rights, art. 17; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 13; American Declaration on the Rights and Duties of Man, art. XII; Revised European Social Charter, art. 17.

<sup>84</sup> ICESCR, art. 13(2)(a).

<sup>85</sup> CESCR, *General Comment No. 3, The Nature of States Parties Obligations*, para. 5.

<sup>86</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en)



and essential features of availability, accessibility, acceptability, adaptability, and non-discrimination.<sup>87</sup>

#### 2.14. The Right to Take Part in Cultural Life

Individuals have a right to freely determine their cultural identity.<sup>88</sup> States are prohibited from interfering with the “exercise of cultural practices and with access to cultural goods,” and must ensure “preconditions for participation, facilitation and promotion of cultural life” and access to cultural goods.<sup>89</sup> The African Charter on Human and Peoples’ Rights, Protocol of San Salvador, American Declaration, Revised European Social Charter, and the International Covenant on Civil and Political Rights, among others, contain similar protections.<sup>90</sup> The State may limit the right to take part in cultural life to prevent individuals from infringing upon other human rights,<sup>91</sup> which limitations must pursue a legitimate aim, be compatible with the nature of the right to take part in cultural life, and be strictly necessary to promote the general welfare.

In its General Comment 21<sup>92</sup>, the UN Committee on Economic, Social and Cultural Rights (CESCR) provided detailed guidance to States regarding their obligations to respect, protect and fulfil the right to participate in cultural life. The Committee also noted that the right includes five interrelated and essential features, to wit: availability of cultural goods, accessibility, acceptability, adaptability and appropriateness.

#### 2.15. The Right to Enjoy the Benefits of Scientific Progress

The ICESCR protects the right to enjoy the benefits of scientific progress, which also protects individuals from the negative effects of scientific progress.<sup>93</sup> The American Declaration and American Convention on Human Rights also contain similar provisions.<sup>94</sup> The right to access the benefits of scientific progress must be non-discriminatory, and protects access to: scientific knowledge, opportunities to contribute to scientific endeavours, participation in decision-making regarding the right to information, and the conservation, development and diffusion of science and technology.<sup>95</sup> The Inter-American Court discussed how the right to enjoy the benefits of scientific progress is related to reproductive freedom, because individuals seeking to create a family through in vitro fertilization would need access to medical technology.<sup>96</sup>

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<sup>87</sup> I/A Court H.R., *The Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 3.

<sup>88</sup> ICESCR, art. 15.

<sup>89</sup> CESCR, *General Comment No. 21, Right of Everyone to Take Part in Cultural Life*, UN Doc. E/C.12/GC/21, 21 December 2009, para. 6.

<sup>90</sup> See African Charter on Human and Peoples’ Rights, art. 17; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 14; American Declaration on the Rights and Duties of Man, art. XIII; Revised European Social Charter, art. 30; International Covenant on Civil and Political Rights, art. 27.

<sup>91</sup> *id.* at para. 19.

<sup>92</sup> E/C.12/GC/21 -

<sup>93</sup> ICESCR, art. 15(1)(b); UNESCO, *The Right to Enjoy the Benefits of Scientific Progress and its Applications* (2009), 5.

<sup>94</sup> American Declaration on the Rights and Duties of Man, art. XIII; American Convention on Human Rights, art. 14.

<sup>95</sup> UN Human Rights Council, *Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed on the Right to Enjoy the Benefits of Scientific Progress and its Applications*, UN Doc. A/HRC/20/26, 14 May 2012, para. 25

<sup>96</sup> I/A Court H.R., *Case of Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2012. Series C No. 257, para. 150.



## 2.16. Right to Benefit from the Protection of Moral and Material Interests Resulting from Scientific, Literary and Artistic Productions

Individuals have the right to “benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author.”<sup>97</sup> The Protocol of San Salvador and the American Declaration also contain similar provisions.<sup>98</sup> The State is required to reasonably prevent other actors from infringing upon authors’ ownership rights to their work and the material interests associated with their work. This cultural right involves economic and social rights as well, because it implicates the right to engage in work which one freely chooses and the right to an adequate standard of living. This right to benefit from the protection of moral and material interests is interdependent upon the Right to Freedom Indispensable for Scientific Research and Creative Activity, which ensures “that the scientific enterprise remains free of political and other interference, while guaranteeing the highest standards of ethical safeguards by scientific professions.”<sup>99</sup> The case of *Sorguç v. Turkey* heard by the European Court of Human Rights is instructive.<sup>100</sup> The Court noted that the right to academic freedom protects “academics’ freedom to express freely their opinion about the institution or system in which they work and freedom to distribute knowledge and truth without restriction.”<sup>101</sup>

## 3. Impediments Encountered in the Course of Protection and Enforcement of Socio-Economic Rights

As observed, economic, social and cultural rights have not enjoyed much popularity and governmental support like the civil and political rights. Individuals in whose favour these rights inure still live with dissatisfaction and disillusionment. Several factors have been identified as the reasons why some states including Nigeria, pay less attention to ESCRs. These factors include:

### 3.1. Outright Constitutional Bar on The Justiciability of Economic, Social and Cultural Rights

Although Chapter II of the Constitution of Nigeria contains ESCR provisions, from the outset, it was obvious that the laudable provisions of Chapter II rights are not justiciable. The Court of Appeal had held in the case of *Obu v. SPDC*<sup>102</sup> that, “a right is justiciable when it is capable of being legally enforced when it is derived from the existence of reciprocal rights, duties and obligations between the created by statute.” The non-justiciability of the economic, social and cultural rights provisions in the constitution flows from the literal reading of Section 6(6)(c) of the constitution. Section 6 (6)(c) of the Constitution of the Federal Republic of Nigeria, 1999<sup>103</sup> provides thus:

The judicial powers vested in accordance with the foregoing provisions of this section ...

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<sup>97</sup> ICESCR, art. 15(1)(c).

<sup>98</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 14; American Declaration on the Rights and Duties of Man, art. XIII.

<sup>99</sup> ICESCR, art. 15(3); *see, e.g.*, UN Human Rights Council, *Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed on the Right to Enjoy the Benefits of Scientific Progress and its Applications*, para. 39. The Protocol of San Salvador contains a similar provision. *See* Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 14.

<sup>100</sup> ECtHR, *Sorguç v. Turkey*, no. 17089/03, ECHR 2009, Judgment of 23 June 2009, para. 40.

<sup>101</sup> *id.* at para. 35.

<sup>102</sup> 2013 LPELR 2124 Per Fasanmi J.C.A (P. 15, paras. A-B)

<sup>103</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended.



(c) shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

Quite clearly, the above provision has made Chapter II of the Constitution non-justiciable. The word Justiciable has been defined as “the ability of a court to ‘purposively’ apply legislation or a principle of law to a defined situation; and secondly, the right of a person, whether natural or artificial, to request that the court make such a determination. It is the existence of the capacity to benefit from the provision and enforcement of remedies.<sup>104</sup> Justiciability implies access to mechanisms that guarantee recognized rights.<sup>105</sup>

Framers of the Constitution saw and treated these rights as goals and objectives which the government will strive to attain; thus, the grouping “Fundamental Objectives and Directive Principles of State Policy” as provided in Chapter II of the said Constitution, rather than as enforceable rights. This denial of enforceability of these rights poses a major problem to human rights activism in the country especially given the supremacy clause of the constitution is to the effect that all its provisions are supreme, and any law which is inconsistent with any provision of the Constitution shall be null and void to the extent of its consistency.<sup>106</sup>

In giving judicial interpretation to the non-justiciability of Chapter II of the Constitution, the Court of Appeal, in case of *Archbishop Anthony Okogie v Attorney General of Lagos State*,<sup>107</sup> held thus –  
The legislature and the electorate are the custodians of Chapter II; if the electorate are not happy with the level of compliance by the government, then the government should be voted out in the next election. They are progressive rights that cannot be enforced in court of law.

The provision of Chapter II and Chapter 6(6)(c) of the Constitution is one of the major impediments to the realization and enjoyments of socio-economic rights in Nigeria. It stifles the development of socio-economic jurisprudence at the National level, and forecloses individuals and groups from seeking redress to any violation of their socio-economic rights in a court of law;<sup>108</sup> thereby making the existence of social, economic and cultural rights in Nigeria akin to the presence of a toothless bulldog – unwanted visitors are assured that bark as they may, they cannot bite. Yigen K<sup>109</sup> suggests that the failure of courts to enforce and rule on socio-economic rights does not mean that socio-economic rights are not judicially enforceable. They are indeed very capable of being decided by courts. The application of some rights can be made justiciable immediately, while others can become applied over time.

<sup>104</sup> Circle rights, economic, social and cultural rights activism: A training resource strategies for enforcing ESC rights through domestic legal system, module 22, section 7 para 4 available at [http://www.unm.edu/humanarts/edumat/HRIP/circle/module 222 Html](http://www.unm.edu/humanarts/edumat/HRIP/circle/module%2022.html) (last accessed on 24<sup>th</sup> April, 2022)

<sup>105</sup> International Commission for jurist (ICJ) (2008) courts and the legal enforcement of economic, social and cultural rights; Switzerland available at [Http:// www. Icj.org](http://www.icj.org) (last accessed 24<sup>th</sup> April, 2018)

<sup>106</sup> O D Godson "Economic, Social And Cultural Rights Under The 1999 Constitution Of The Federal Republic Of Nigeria And Enforceability Problem available at <https://www.google.co.uk/amp/s/africlaw.com/2016/07/08/economic-social-and-cultural-rights-under-the-1999-constitution-of-the-federal-republic-of-nigeria-and-the-enforceability-problem/amp>” (last accessed 24<sup>th</sup> April, 2022)

<sup>107</sup> (1981) 1 NCLR 2181

<sup>108</sup> A Odusote, "Addressing the Impediments to the Realization and Enjoyment of Socio-Economic Rights under the ICESCR” *Acta Universitatis Danubius. Relationes Internationales*, vol 7, No 2 (2014)

<sup>109</sup> K Yigen- *The International Journal of Human Rights* (4), 2000, p.13 -29.



### 3.2. The Issue of Locus Standi

The challenge of *locus standi*, or right to sue, is ever present within the context of the justiciability of economic, social and cultural rights; as the right to approach the court as individuals or a collective unit for the purpose of seeking judicial interpretation or a resolution of problems arising from or attributable to violations of economic, social and cultural rights comes into question.<sup>110</sup> *Locus standi* literally means a place of standing. It is thus used to denote a right or capacity to bring an action or to appear in a court<sup>111</sup> of justice or before a legislative body on a given question. Standing to sue is not dependent on the success or merits of a case. It is a condition precedent to the institution of the proceeding before its determination on the merits.<sup>112</sup> At common law, the position is that in the realm of public rights, for a person to invoke judicial power to determine the constitutionality of legislative or executive action, he must show that either his interest will immediately be or has been adversely affected by the action, or he has sustained or is in immediate danger of sustaining injury to himself, and which interest or injury to himself is over and above that of the general public. The question of whether there is such a justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case.<sup>113</sup> Proving the existence of this level of personal injury over and above those of the public is problematic, and therefore an impediment to enforcement of ESC rights.<sup>114</sup>

### 3.3. The Seeming Lethargy of the International Community with Regards to Economic, Social and Cultural Rights

Upon the adoption of the UDHR, the international community displayed very great enthusiasm for, and reception of the CPRs. Governments swung into action to begin creating needed institutional mechanisms for its protection, and more CPR advocacy groups sprang up. A myriad of scholarly articles and commentaries on the ICCPR are in circulation. Little wonder CPR jurisprudence seems to be more developed than its ESCR counterpart. International mechanisms for the enforcement of civil and political rights are very strong and well organized, and the violation of CPRs is taken very seriously. Unfortunately, the opposite is the case with economic, social and cultural rights. There are few national and international NGOs that focus on ESCR advocacy; and there are even fewer lawyers who have the knowledge or experience to defend economic, social and cultural rights at the national or international level. With this state of affairs, economic, social and cultural rights are less likely to receive as much protection in the national constitution of States as the civil and political rights counterpart.<sup>115</sup> This researcher has identified this seeming lethargy and lack of enthusiasm for ESCRs on the part of States, the academia and NGOs as one of the challenges facing ESCRs. If the international community can react to complaints of discrimination, unemployment and hunger (ESCR concerns) with the same political will and decisiveness as it musters in reaction to complaints of alleged breach of right to freedom and political participation, the ICESCR will be more aggressively enforced, and ESCRs better protected.

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<sup>110</sup> S Ibe, "Implementing Economic, Social and Cultural Rights in Nigeria: Challenges And Opportunities" (2007) 7 *African Human Rights Law Journal* 225-228

<sup>111</sup> [www.dictionary.com](http://www.dictionary.com). Last accessed on 11<sup>th</sup> October, 2022

<sup>112</sup> *A-G Kaduna State v Hassan* (1985) LPELR- 617 (SC)

<sup>113</sup> *Senator Adesanya v President of the Federal Republic of Nigeria & Anor* (1981) 12 NSCC, 146; (1981) ANLR 1; (1981) 5 SC 112

<sup>114</sup> Achieving Economic and Social Rights: The Challenges Of Assessing Compliance available at <https://www.odi.org/resources/docs/2340.pdf> (last accessed 24th April, 2022)

<sup>115</sup> Economic, social and cultural rights available at [https://en.m.wikipedia.org/wiki/economic-social-and-cultural\\_rights](https://en.m.wikipedia.org/wiki/economic-social-and-cultural_rights) (last accessed on 24th April, 2022)



### 3.4 The Imprecision in the Language used in Economic, Social and Cultural Rights Legislation

Economic, Social and Cultural Rights are reflected as the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of the Nigerian Constitution.<sup>116</sup> The justiciability of this provision and similar constitutional provisions has traditionally been questioned for several reasons including the imprecise nature of the language used therein.

The economic, social and cultural rights have been seen by some to be “vaguely worded”<sup>117</sup> to allow judges to justify decisions on whether the violation of those rights has occurred. Adjudicating such rights may raise questions of what constitutes, for example, hunger, adequate housing or a fair wage.<sup>118</sup> These are not just legal challenges, they are empirical. Governments are however charged to consider the maximum available resources at their disposal and plan to progressively towards the realization of these rights.

### 3.5. The Doctrine of Separation of Powers as a Challenge to the Enforcement of ESCRs

An aspect of socio-economic right enforceability is believed to be possibly blurring the doctrine of separation of power. When Courts enforcing socio-economic rights essentially step into the shoes of what ordinarily is considered to be a function of the Legislature (i.e. through judgments which have effects of deciding how state money should be spent), it is argued that Courts may have overstepped their allocated powers as implementation of most of social, economic rights depends on the national policy of social, economic services which should be implemented by the executives. This perception is inimical to the enforcement of ESCRs, and makes judges shy away from giving full effect to ESCRs.

### 3.6. Dishonest Conduct by those in Power Leading to Abject Poverty

*Poverty* is not only deprivation of economic or material resources but a violation of *human* dignity too'.<sup>119</sup> The dishonest dealing of those in power hinders the implementation of social, economic and cultural rights. For example, the fundamental obligations of the government enshrined in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that the primary purpose of the Nigerian Government should be the security and the welfare of the people. However, in reality, this does not seem to be the case. The entire security network of the nation is in severe chaos and the essential necessities of the populace including human rights which the government ought to provide and guarantee are neither provided nor guaranteed. State bodies are also actors in human rights violation. The failures of the elected officials to keep to their promises to the electorates has negatively affected the ESCR regime in Nigeria.

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<sup>116</sup> Constitution of the Federal Republic of Nigeria (CFRN), 1999 as amended.

<sup>117</sup> <https://www.google.com.ng/url?sa=t&source=web&rct=j&url=http://edepositireland.ie/btstream/handle/>. Last accessed on 12<sup>th</sup> March, 2022.

<sup>118</sup> Key concepts on ESCR - Can Economic, Social and cultural rights be litigated at courts? available at [www.ohchr.org/EN/Issues/pages/can\\_ESCR\\_be\\_litigated\\_at\\_courts.aspx](http://www.ohchr.org/EN/Issues/pages/can_ESCR_be_litigated_at_courts.aspx) (last accessed 12<sup>th</sup> March, 2022).

<sup>119</sup> Human Rights Dimension of Poverty available at <https://www.ohchr.org/en/issues/poverty/dimensionofpoverty/pages/index.aspx> (last accessed 12<sup>th</sup> March, 2022)



### 3.7. Unwillingness of Judges to Address Economic, Social and Cultural Rights-Related Claims

Most Nigerian courts are reluctant to address the issue of economic and cultural rights because of the express provision of the Constitution, and to avoid an allegation of abrogation of the theory of separation of powers. Owasanoye<sup>120</sup> observes that the judicial response to the enforcement of economic and social rights has been one of timidity or avoidance. In this regard, he writes that:

...judicial timidity to non-enforcement of socio-economic rights is not hinged on absence of legislation alone. Some authors argue on behalf of the judiciary that since socio-economic rights are linked to collective rather than individual claims, the Courts are not well suited to treat collective claims because of the multiplicity of interests that attend them....<sup>121</sup>

Even in situations where citizens have ‘cited a separate legislation as the basis for justiciability of economic and social rights, the Courts have still referred to Okogie’s case as the basis for non-justiciability generally’<sup>122</sup>. In *AG. Ondo State v. A.G Federation*<sup>123</sup> the Supreme Court while acknowledging the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy in Chapter II observed that:

While they remain mere declarations, they cannot be enforced by legal process but would be seen as a failure of duty and responsibility of State organs if they acted in clear disregard of them, the nature of the consequences of which having to depend on the aspect of the infringement and in some cases the political will of those in power to redress the situation. But the Directive Principles (or some of them) can be made justiciable by legislation<sup>124</sup>

The argument that shifts responsibility for the enforcement of those rights to the Legislature and Executive is based on the assumption that the occupants of office in those arms of government will have the best interests of the citizenry at heart. Experience however has shown that many political office holders in Nigeria are self-serving. It is for this reason that the Courts are expected to rise to the occasion by courageously and purposively interpreting the Constitution in a manner that would accommodate the enforcement of Chapter II rights, notwithstanding their seeming non-justiciability.

It is to be noted further that some of the reasons for this ‘low energy’ approach to enforcing socioeconomic rights are not hard to find. Generally, courts are wary of making orders that are incapable of enforcement. Because they want to be respected and taken seriously, the last thing a court wants to do is to make a mockery of itself by making an order that cannot, or will not, be obeyed. Thus, Chief Justice Archer of Ghana for instance, ‘held the view that [the Supreme Court] like equity must not act in vain. In other words, it should not make orders that could be lawfully and legitimately circumvented so as to make the court a laughing stock.’<sup>125</sup> If courts face this level of self-inhibition even in cases of negative rights where they mostly have to order governments to refrain from doing certain acts, then one can imagine what occurs when they have to make orders directing governments to take specific positive measures to realise socio-economic rights. It is in this

<sup>120</sup> B. Owasanoye, ‘Nonjusticiability: Judicial Avoidance or Judicial Timidity’ in Azinge and Owasanoye (eds) op. cit., 47

<sup>121</sup> B. Owasanoye, op. cit.

<sup>122</sup> Ibid.

<sup>123</sup> (2002) 9 NWLR (Pt. 772) 222 (SC).

<sup>124</sup> See p. 382 para-A – B.

<sup>125</sup> [1993-94] 2 GLR 35 66.



light that the decisions in cases like the *National Lotto Operators Association v National Lotto Authority (the Lottery case)*,<sup>126</sup>, the *Progressive Peoples' Party v Attorney General (the fCUBE case)*,<sup>127</sup> or *Grootboom's* case come as little surprise.

#### 4. Conclusion

So far, it has been established that economic, social and cultural rights are fundamental rights which are worthy of enforcement like the civil and political rights. It has also been established with reference to other jurisdictions that if impediments standing in their ways are removed, the life and living of Nigerians shall be improve through the application and enforcement of the Covenant on Economic, Social and Cultural Rights provisions in the relevant laws. In view of the importance of economic, social and cultural rights, the challenges to their enforcement as well as the progress made in other jurisdictions, this research aims to finally identify what should be done for Nigerians to realise the benefits of economic, social and cultural rights.

#### 5. Recommendations

Economic, social and cultural rights are essential to ensuring the basic and general needs of people are met. The challenges to their enforcement in Nigeria have been outlined and it is our view that the following should be done so that realization of those rights will not continue to remain a mirage i.e.:

- i. Judges should be more activist. Judges in Nigeria are further encouraged to courageously give effect to Chapter II of the Constitution by tying Chapter II provisions to corresponding Chapter IV provisions in order to give full effect to the Constitution just like it is done by Judges in India.
- ii. It is further recommended that the expansive and purposive interpretation of the right to life by the Indian Supreme Court is very relevant to Nigeria and other countries in a similar position. As shown above, it matters little whether a constitution does or does not have directive principles of state polices. It is therefore within the courts' discretion to adopt a

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<sup>126</sup> [2007-2008] 2 SCGLR 1088 (The summary of the case is that in the year 2006, the Ghana National Lotto Act (Act 722) set up the National Lotto Authority (NLA), and made it the sole agency in the country to initiate and operate any form of lottery or game of chance. Private lottery was thus abolished and made an offence punishable by a fine, a three-year term of imprisonment or both. Angered by this, the private lotto operators who had been thrown out of business by the National Lotto Act filed a writ in the High Court. Among others, they prayed the court to declare that the monopolisation of lottery in the NLA infringed the constitutional duty of the government to ensure a pronounced role of the private sector in the economy and the right of private lotto operators to free economic activity. Because these issues bordered on the interpretation of the Constitution, particularly, the socio-economic rights in chapter six, the High Court referred them to the Supreme Court for determination. The Supreme Court of Ghana, in its decision, rightly held that 'the starting point of analysis should be that all the provisions in the Constitution [including the directive principles] are justiciable, unless there are strong indications to the contrary in the text or context of the Constitution'. However, the Court held against the plaintiffs in the final analysis. It stated '*that the plaintiffs [were] crying wolf!*' In its opinion, the plaintiffs did not have an absolute right to engage in the 'gambling business' as their claim amounted to seeking 'an untrammelled right to operate their private lotto business')

<sup>127</sup> Suit No J1/8/2014 (Judgment: 28 July 2015). (In that case, the plaintiff political party sought a declaration that the government had failed to implement articles 25(1)(a) and 38(2) of the Constitution which enjoin the government to provide 'free compulsory universal basic education' (fCUBE) within 10 years of the coming into force of the Constitution. The plaintiffs contended that the failure of the government to implement the fCUBE policy had resulted in thousands of children of school going age being drawn to child labour and other hazardous activities instead of the classroom. While not disputing the facts, the Court held that the action did not involve its exclusive jurisdiction to interpret or enforce the Constitution because, among others, the provision in question had already interpreted in another case)



purposive and expansive interpretation of the right to life entrenched in their constitutions to include a variety of socio-economic rights.

- iii. It is recommended that the legislative arm of government in line with its oversight functions, develop and implement effective monitoring strategies, ensuring that people enjoy the fruits of the national budget.
- iv. It is necessary for States, Lawyers, Non- Governmental Organizations and other actors to desist from strengthening the perceived dichotomy between the justiciability of economic, social and cultural rights and that of civil and political rights. Policy work should be based on the assertion that Government policies developed in the areas of economic, social and cultural affairs are not matters of State generosity but rather are obligations of the State to set agendas and programs for fulfilling and protection of human rights.
- v. Anti-corruption agencies should be strengthened and their enabling legislations amended to guarantee their financial and operational independence.
- vi. Civil society groups must play a role in enlightening, mobilising and organising the poor and deprived populations. Collaboration and cooperation is expedient to pose a formidable force to be regarded by the Government in issues of implementation of all rights as interdependent and inalienable.
- vii. It is recommended that the National Human Rights Commission's Act be amended to make it financially and operationally independent with a view to guaranteeing efficiency and effectiveness.