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(NALT)**



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Theme:

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Prof. Isa Hayatu Chiroma, SAN

Dr. Yusufu Y. Dadem

LAW, JUSTICE AND SOCIETY

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OF THE

NIGERIAN ASSOCIATION OF LAW TEACHERS
(NALT)

1ST – 6TH JULY 2018
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Edited by

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ECONOMIC RIGHTS AND JUSTICE: OF WALLS AND BRIDGES, EXCLUSIONS AND INCLUSIONS

By

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Abstract

The paper discusses socio-economic rights and the extent to which it offers protection for the dignity, freedom and well being of citizens in their states. The paper further considers the raging debate on whether to include or exclude the application of these rights into national constitutions with a view to serving the essence of justice. The paper highlights legal implications of clear cut separation and the imperatives of fusion of the basic components of socio-economic entitlements to education, health care, housing, living wage, decent working conditions and social infrastructure for human development.

Introduction

The socio-economic rights provide protection for the dignity, freedom and well-being of individuals by guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions and other social goods⁴³⁰. Long before human rights were written down in international documents and national constitutions, people revealed their commitment to principles of propriety, justice, and caring through cultural practices and oral traditions. The golden rule of “Do unto others as you would have them do unto you”, revolved around family, tribe, religion, class, community, or state⁴³¹.

The earliest attempts of literate societies to write about rights and responsibilities date back more than 4,000 years to the Babylonian Code of Hammurabi. This Code, the Old and New Testaments of the Bible, Analects of Confucius, the Koran, and the Hindu Vedas are five of the oldest written sources, which address questions of people’s duties, rights and responsibilities.⁴³² Other pre-World War II documents, such as the English Bill of Rights, the US Constitution and Bill of Rights, and the French Declaration of the Rights of Man and the Citizen, focused on civil and political rights. However, on December 10, 1948, 48 members of the United Nations adopted the Universal Declaration of Human Rights (UDHR) unanimously with eight countries abstaining. The UDHR’s Article 25, in particular,

⁴³⁰ Dawood Ahmed and Elliot Bulmer, ‘Social and Economic Rights’, International IDEA Constitution-Building Primer 9, © 2017 International Institute for Democracy and Electoral Assistance (International IDEA) (sec. edition). First published in 2014 by international IDEA <<http://www.idea.int/sites/default/files/.../social-and-economic-rights-primer.pdf>> accessed June 23 2018.

⁴³¹ David A. Shiman, ‘Economic and Social Justice’, A Human Rights Perspective (Human Rights Education Topic Book 1). Human Rights Resource Center, University of Minnesota <<http://hrlibrary.umn.edu/edumat/pdf/TB1.pdf>> accessed June 23 2018.

⁴³² Ibid.

stipulates that everyone has a human right to 'a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services'.

These are among the social, economic, and cultural rights identified in Articles 16 and 22 – 29 of the UDHR to which everyone is entitled, regardless of who you are or where you live. Since they are rights, they have inevitably raised the question of social and economic justice.⁴³³ The idea of achieving justice in respect of these rights have led to the inclusion of socio-economic rights in the form of directive principles relatively common in countries whose constitutional tradition derives from English common law, including Nigeria, the Gambia, South Africa, India, Ghana, Malta, and Papua New Guinea. However, while these socio-economic rights can be incorporated into a constitution in the form of directive principles, that does not mean that, they are binding on the state in a legal-judicial sense but are binding on the state in a political and moral sense. Today much debate is centred on whether to include (inclusion) or exclude (exclusion), or whether to separate them (walls) or to connect them (bridges) into our national documents i.e. to either include them to the justiciable rights or for them to stand on their own ground as non-justiciable rights.⁴³⁴ However, in this day and age, the promotion of human rights is guided by what is referred to as the International Bill of Rights. It includes the UDHR and two treaties – the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These treaties elaborate on rights identified in the UDHR and, when adopted by individual states, have the force of law. Each treaty has an independent 'Treaty Monitoring Body' (TMB), which requires periodic reporting by governments to ensure compliance.

Definition and Evolution of Rights

'Human rights' is an expression that covers a wide range of aspects of human existence considered essential for dignity of life and security. Some of these relate to the freedom of the individual to act as she/he pleases as long as that action does not infringe on the rights and freedoms of others. These liberty-oriented rights are usually called 'first generation rights', negative, or civil and political rights. Other rights relate to conditions necessary to meet basic human needs, such as food, shelter, education, health care, and gainful employment. These rights are variously known as 'second-generation rights', 'socio-economic rights' or in the older literature, they were sometimes called 'positive rights' since they promoted a positive view of liberty as 'opportunities for flourishing or well-being; as contrasted against negative view of liberty simply as non-interference.

The magnitude of the evil perpetrated by the Nazis and the resultant atrocities of the Second World War however reinforced the need for such higher universal norm of international

⁴³³ Ibid.

⁴³⁴ Adapted from Human Right Education: The Fourth R, 9:1 (spring 1988), a publication of Amnesty International USA's Human Rights Educators' Network. Original work was written by Shulamith Koenig and the Staff of The People's Decade for Human Right Education (1998), 526 West 111th Street, Suite 4E, New York, NY USA 10025. Website: <http://www.pdhre.org>

morality, which must constitute the core values of every nation. The right to a nationality is recognized in a series of international legal instruments, including the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights amongst others. An explicit and general prohibition of arbitrary deprivation of nationality rights can be found in numerous international instruments. In particular, it is worth noting that Article 15 of the Universal Declaration of Human Rights explicitly provides that no one should be arbitrarily deprived of his or her nationality. The General Assembly, in resolution 50/152, also recognized the fundamental nature of the prohibition of arbitrary deprivation of nationality rights.⁴³⁵ The Universal Declaration of Human Rights opened the door to this development by providing, in Article 30, that, “nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”⁴³⁶ Conceptually linked to this, the preceding article stipulates that, “everyone has duties to the community in which alone the free and full development of his personality is possible.”⁴³⁷ All of the foregoing provide the legal and constitutional platforms for the full application of fundamental human rights which cannot be left for individual States to provide at their behest. It was found that national mechanism for the protection of fundamental human rights were inadequate, weak and in extreme cases non-existent.⁴³⁸

Economic Rights

The economic rights are human rights;⁴³⁹ they are rights belonging to all human beings by virtue of our humanity.⁴⁴⁰ That means that all humans have an inherent right to the resources necessary for a simple decent life. Economic rights⁴⁴¹ may mean more than that, but they surely mean at least that.⁴⁴² Economic rights are based on a three-pronged definition: the right to a decent standard of living, the right to work, and the right to basic income support for people who cannot work.⁴⁴³ Anyone anywhere who suffers from severe poverty not of their own choosing is having their economic rights violated. If we were to actually enforce economic rights, there would be no involuntary poverty anywhere in the world. Economic rights ultimately refer to the necessity of fulfilling human needs as necessary conditions for what it is to be uniquely human. It also refers to rights to unpolluted air and water, adequate food, clothing, shelter, and health care. Economic rights are to meet basic needs. Basic needs fulfillment is required for human capital formation, and human capital formation is required for the efficient operation of the economy.

⁴³⁵ Right to a Nationality and Statelessness; <http://www.ohchr.org> accessed online 1 April, 2017.

⁴³⁶ B. Simma, *The Charter of the United Nations: A Commentary*, Oxford University Press (2002) 33.

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid.*

⁴³⁹ Universal Declaration of Human Rights, 1948

⁴⁴⁰ International Covenant on Civil and Political Rights, 1966

⁴⁴¹ International Covenant on Economic, Social and Cultural Rights, 1966

⁴⁴² Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton University 1996); D Copp, The Right to an Adequate Standard of Living: Justice, Autonomy and the Basic Needs (1992) 9(1) *Social Philosophy and Policy* 231; and David Beetham, ‘What Future for Economic and Social Rights?’ (1995) 43(1) *Political Studies* 41-60.

⁴⁴³ Shareen Hartel, University of Connecticut, Department of Political Sciences and Human Rights Institute

Economic rights require that each and every person secure the resources necessary for a minimally decent life. Articles 23, 25, and 26 of the Universal Declaration of Human Rights (UDHR) enumerate three fundamental economic rights. First, the right to an adequate standard of living—or as explicitly spelled out in the first clause of the first paragraph of Article 25: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services . . .” But, since an adequate standard of living also requires a basic education, we include it as well, as specified in Article 26. Second, is the right to employment without any discrimination, and at “favourable remuneration in ensuring for himself and his family an existence worthy of human dignity,” as articulated in the third paragraph of Article 23. This right is protected in part by the right to join trade unions, as specified in paragraph four of Article 23. Third, right to Basic Income Guarantee (BIG), is referred to in the second clause of the first paragraph of Article 25: “. . . [everyone has] the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.” Article 11 of the ICESCR covers the right to an adequate standard of living, while Articles 12 and 13 cover rights to health and education, which are all bundled in our characterization of the most basic economic right above. Articles 6, 7, and 8, elaborate specific elements of employment rights (including protections for free choice of work; provisions for equal access to training, fair wages and promotion; and protection of trade union rights). Article 9 includes income protection in the form of social security and social insurance, which corresponds to BIG, the third economic right mentioned above. Michael Goodhart⁴⁴⁴ believes in focusing on human emancipation instead of an efficient economy. Goodhart shows that a commitment to an emancipatory version of democracy also implies a commitment to economic rights.

Social Rights

Social rights are rights of citizens to be provided by the state with social services and benefits such as, food, health care, education, housing and social security.⁴⁴⁵ These are among the bundles of human rights collectively referred to in the dichotomy of international human rights law as the second generation of human rights distinguished from the first and third generations of rights; namely the civil and political rights which chronologically came into prominence earlier than the former and the barely codified and the budding third generation rights.⁴⁴⁶ Some of these rights are enshrined in the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights, and also incorporated by several other municipal constitutions around the world. Art 25 of the UDHR provides for the right to standard of living that is adequate for health and family well-being which include rights to housing⁴⁴⁷. In a similar wording, article 11 of the International Covenant on Economic, Social and Cultural Rights also guarantees the right to adequate standard of living for himself and his family. The right

⁴⁴⁴ Philosopher and Professor of Political Science, University of Pittsburgh

⁴⁴⁵ See David Landu, *The Reality of Social Rights Enforcement* (2012) 53(1) *Harvard International Law Journal* 190.

⁴⁴⁶ Michael Krennerich, *Economic, Social and Cultural Rights-From Hesitant Recognition to Extraterritorial Applicability*, *Nürnberg Menschenrechtszentrum* 1.

⁴⁴⁷ Art 25, *Universal Declaration of Human Rights*,

to Social Security (art 9), education (art 13) and physical and mental health are guaranteed in articles 9, 13, and 12 of the ICESCR respectively. However, even though these social rights are provided for in the aforementioned Covenant which many countries have ratified, it is still minimal the number of states that have incorporated them in their constitutions. For example, the 1999 Nigerian Constitution under sections 13-24 provided for Fundamental Objective and Directive Principles of State Policy, while the Constitution of Gambia has only captured the right to family and education in Sections 27 and 30 respectively, but the countries such as South Africa and Ireland have incorporated some of these rights.

Section 46 of the 1999 Nigerian Constitution accords locus standi to everyone whose constitutional rights are infringed. However, these rights are not often tested in the courts. This indifference towards enforcement is not unique to Nigeria. There is a consistent reluctance globally to the inclusion of these rights in constitutions. Some jurists object to the categorization of these rights as human rights⁴⁴⁸ and some others subscribe to the progressive enforcement of these rights. The idea of non-justiciability of these rights by the opponents are premised mainly on belief that these rights are vague and not adequately determinable and that the court cannot decide on the individual cases on issues of social rights.⁴⁴⁹ The enforceability of these rights has been heatedly debated just like their justiciability. Opponents believe that these rights should only be a social goal which is to be achieved progressively but cannot be enforced in court and that it lacks domestic legitimacy and institutional capacity⁴⁵⁰. However, the recent court cases in Europe, some states in South America and South Africa have shown a trend in justiciability and enforcement of the social rights. Finally, social rights as captured in ICESCR are human rights, which all signatories to the covenant are obliged to enforce in their jurisdictions and should endeavour to avail the citizens those rights.

The Concept of Justice

The early theory of justice was set out by the Ancient Greek philosopher Plato in his book *The Republic*, where it was advocated that justice is a command from God. Although justice is often used interchangeably with the word "fairness" but some school of thought sees justice as not fairness but impartiality in dealing with wrong and redress and grievances. The black law dictionary defines justice as 'protection of people, things and rights'⁴⁵¹. Generally, justice is fairness in protection of rights and punishment of wrongs, while all legal system aim to uphold the idea through fair and proper administration of the law of the land. Therefore through justice we would be able to protect people's rights and duties through the legal system so that people can live well and prosper. Without Justice only the strongest would be able to gather wealth, procreate and protect his or her properties. The rule of law

⁴⁴⁸ Art 9,12 & 13 International Covenant on Economic, Social and Cultural Rights

⁴⁴⁹ *Soooramony v Minister of Health (Kwa Zulu Natal)* ZACC 17, 1998 (1) SA 765 (CC), 1997 12 BCLR 1696 (27 November 1997).

⁴⁵⁰ Michael Krennerich, *Economic, Social and Cultural Rights-From Hesitant Recognition to Extraterritorial Applicability*, Numberger Menschenrechtszentrum 1; Martin Keane, *Social Rights: A Literature Review*, unpublished working paper for Combat Poverty Agency working for the prevention and elimination of poverty (2000) 63 accessed from <https://books.google.com.ng/books?> on 1 October 2018.

⁴⁵¹ *The Black Law Dictionary*, 7th Edition

can only function properly when courts act in an independent, fearless, public and transparent manner.

Justice is depicted as blindfolded and holding scales to weigh each side of an argument, because we have this desire for equality and fairness, the assurance of justice is usually a prerequisite for a good society. When any crime or abuse is committed, we want justice, both for the offender and for the victim. For the offender, justice means that crimes do not go unpunished, but also that punishment fits the crime. Any society, whether the family, the community, a nation, or the world, benefit from having justice as prevailing virtue. Such a society is dedicated to the notion that all of its members should benefit. No one person or group should have a greater benefit or right than other. Conversely, no person or group should be denied similar benefits to enjoy⁴⁵².

Access to Court

Access to Justice is an essential ingredient of rule of law, people need to be able to access the court and legal processes or the law cannot enforce peoples' right and responsibilities. This is right and the extent that justice is what we as a society regards as right based on moral concept of ethics, rationality, law, religion equality and fairness. The context of justice defers in every country while it aims at fairness, protection of rights and punishment of wrong, and upholding the administration of the law of the land, it is very possible that the law, that seek to protect the administration of the law of the land would be unjust and unfair to some people or harsh.

The Constitution of the Federal Republic of Nigeria, 1999 empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedure of a High Court for the purpose of enforcing human rights.⁴⁵³ Pursuant to this constitutional provision, the Fundamental Rights (Enforcement Procedure) Rules, 2009 was made by Hon. Justice Idris Legbo Kutigi, the then Chief Justice of Nigeria on the 11th day of November, 2009. In the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 (hereinafter referred to as the Rules), it is provided as follows:

1. The Court shall constantly and conscientiously seek to give effect to the overriding objectives of these Rules at every stage of human rights action, especially whenever it exercises any power given it by these Rules or any other law and whenever it applies or interprets any rule.
2. Parties and their legal representatives shall help the Court to further the overriding objectives of these Rules.
3. The overriding objectives of these Rules are as follows:

- (a) The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposefully interpreted and

⁴⁵² Justice is fairness and protection of rights. Justice means punishing actions or words that are wrong and upholding things that are good. This helps ensure that wrongs will be ended and rights will be upheld thereby leading to a safer society for everyone. For Justice to uphold there should be a machinery to implement it, for example Court.

⁴⁵³ Section 46(3).

applied, with a view to advancing and realising the rights and freedoms contained in them and affording the protection intended by them.

- (b) For the purpose of advancing but never for the purpose of restricting the Applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include;
 - (i) The African Charter on Human and Peoples' Rights and other instruments (including Protocols) in the African regional human rights system,
 - (ii) The Universal Declaration of Human Rights and other instruments including Protocols) in the United Nations human rights system,
- (c) For the purpose of advancing but never for the purpose of restricting the Applicant's rights and freedoms, the Court may make consequential orders as may be just and expedient.

Nweze submits that the above provision invests the Rules with an interpretative philosophy which guides the Court in giving effect to the enforcement of human rights enshrined in the 1999 Nigerian Constitution and the African Charter on Human and People's Rights in the tradition of post – Woolf's Reform Rules of Court. According to him:

The beauty of this philosophical statement of the objectives is that it is not just an emotive or bland declaration. The spirit of this objective, like a thread, runs through the entire gamut of the rules. It thus serves as a statutory reminder of the cogency of a perennial or continual audit of the other provisions for the purpose of achieving the objectives...The objective of the rules may, thus, be characterised as the lifeblood that runs in [their] statutory veins: animating them and rendering them into supple tools of a target-compliant legislation. As it were, every Judge and all advocates are expected to wear this objective as a badge...⁴⁵⁴

In paragraph 3(e) of the Rules, it is provided that:

- (b) The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any

⁴⁵⁴ C. C. Nweze, *Redefining Advocacy in Contemporary Legal Practice: A Judicial Perspective*, Nigerian Institute of Advanced Legal Studies, Lagos (2009) 10.

potential applicant. In human rights litigation, the Applicant may include any of the following:

- (i) Anyone acting in his own interest;
- (ii) Anyone acting on behalf of another person;
- (iii) Anyone acting as a member of, or in the interest of a group or class of persons;
- (iv) Anyone acting in the interest of its members or other individuals or groups.

Paragraph 3(e) is tailored after section 38 of the South African Constitution, which permits wide access to Court to a broad spectrum of persons or interested associations.⁴⁵⁵ Nweze opines that this paragraph is “an undoubted coup de grace on the restrictive applications of the principle of locus standi”⁴⁵⁶ and that “the application of the paragraph under consideration would seldom pose any problems”⁴⁵⁷ since “long before the promulgation of the 2009 Rules, some NGOs have successfully acted on behalf of less privileged persons in the protection of their fundamental rights in Courts.”⁴⁵⁸ It is also noteworthy that since Paragraph 3 (e) recognises anyone acting as a member of class of persons, class action for the enforcement of economic, social and cultural rights is recognised. It is inconceivable that a person who is a member of a class is recognised to act while that class in a collective action will not be recognised. In addition, with the use of the word “anyone”, NGOs are included and their roles in the enforcement of human rights have not only been acknowledged, but have also been recognised and emphasised.

Meanwhile, Section 254C(1)(d) of the 1999 Nigerian Constitution as amended by Third Alteration Act 2010 empowers the National Industrial Court to exercise jurisdiction to the exclusion of any other court in civil causes and matters relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of the Constitution as it relates to employment, labour, industrial relations, trade unionism, employer’s association or any other matter which the Court has jurisdiction to hear and determine. It is arguable that, to the extent that labour matters constitute part of economic, social and cultural rights, the National Industrial Court can exercise jurisdiction in the actualisation of economic, social and cultural rights and by so doing economic, social and

⁴⁵⁵ Section 38 of the South African Constitution provides as follows:

‘38. Anyone listed in this section has the right to approach a competent Court, alleging that a right in the Bill of Rights has been infringed or threatened, and the Court may grant appropriate relief, including a declaration of rights. The persons who may approach a Court are-

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.’

⁴⁵⁶ C. C. Nweze, *Redefining Advocacy in Contemporary Legal Practice: A Judicial Perspective*, Nigerian Institute of Advanced Legal Studies, Lagos (2009) 15. See also J.E. Aloba, *Exposition & Notable Principles on Fundamental Rights (Enforcement Procedure) Rules 2009*, Chief J. Aloba & Co., Abuja (2010) 12-13.

⁴⁵⁷ C. C. Nweze, *Ibid.*

⁴⁵⁸ *Ibid.*

cultural rights are justiciable. It can also be argued that the Fundamental Rights (Enforcement Procedure) Rules, 2009 applies to the National Industrial Court in ventilating any grievance relating to the violation of any of the provisions of Chapter IV of the 1999 Nigerian Constitution on human rights in so far as such violation occurs in the context of labour as a subject matter.

The Jurisdictional Powers of the Court

Section 46(2) of the 1999 Nigerian Constitution provides that "...a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled..." Similarly, the Fundamental Rights (Enforcement Procedure) Rules, 2009 provides that "At the hearing of any application, under these Rules, the court may make such orders, issue such writs, and give such directions as it may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act to which the Applicant may be entitled."⁴⁵⁹

It is thus clear that the Nigerian courts have wide remedial powers. These wide powers are similar to those given to South African courts by virtue of Section 38 and 172 (1) of the South African Constitution.⁴⁶⁰ Within the context of right to development, it implies that the courts have wide remedial powers in ensuring that people's right to the process of development is guaranteed. The most notable in the Court's exercise of its remedial powers are the grant of a declaratory order and the exercise of the supervisory jurisdiction. Where a declaratory order is not sufficient, the Court often follows it with the exercise of a supervisory jurisdiction.

In the grant of a declaratory order, the most dramatic expression is in Budget analysis Procedure. The budget analysis procedure has been adopted in ensuring the fulfilment of socio-economic obligations and there is nothing to preclude it from being adopted in ensuring people's right to the process of development. Budget analysis procedure is "a novel and practical tool devised for assessing national budget to determine whether the State had complied with, or violated, its socio-economic obligations, within a specified period of time."⁴⁶¹ The budget analysis "may cover a period of five to ten years before the Courts' jurisdiction is invoked to make declarations as to whether or not a State has complied with its constitutional obligations."⁴⁶² Thus, "with this approach it is possible to measure progressive realisation in respect of fulfillment obligations. Since mere laying down of

⁴⁵⁹ Order XI.

⁴⁶⁰ M Pieterse, 'Coming to Terms with Judicial Enforcement of Socio-Economic Rights', (2004) 20 *SAJHR* 383, 411.

⁴⁶¹ M. Uwais, 'Fundamental Objectives and Directive Principles of State Policy: Possibilities and Prospects' in C.C. Nweze (Ed.) *Justice in the Judicial Process: Essays in Honour of Honourable Justice Eugene C. Ubaezonu JCA*, Fourth Dimension Publishing Co. Ltd., Enugu, (2002), p. 188-189.

⁴⁶² *Ibid.*

policies has been found to be inadequate in securing economic and social justice for the people, this procedure has emanated as a means to ensure that government adheres to its constitutional duties.⁴⁶³

Therefore, it is possible for the Court to declare a budget contrary to people's right to the process of development when sufficient parameters are placed before the court. For example, where expenditure on military keeps rising over years without any justifiable threat to security while expenditure on food and other basic needs keeps declining, this may warrant the court's declaration of such budget contrary to peoples' right to development. Similarly, where budget shows that income will be derived from certain mineral resources and the same budget is silent on sustainable development of the place where the income is to be derived, nothing precludes the court from declaring such a budget contrary to peoples' right to the process of development. It is however arguable that where the part that is contrary to the right to development in the budget can be severed without affecting the fundamental structure of the budget, only that part may be declared invalid. The implication of this for Nigeria in the light of the Niger-Delta crisis is self-evident.

The Walls between Economic Rights and Justice

The walls between economic rights and justice could be termed as barriers between economic rights and justice. The question is what the barriers between economic rights and justice are. The following are identified as possible barriers to economic rights and justice:

- (a) Statutory provisions of a state
- (b) State reservation to the provisions in international instruments
- (c) Statutory reservation in international instruments

(a) Statutory provisions of a state

The walls (barriers) between economic rights and justice are reflected in various statutory provisions which are ostensibly geared towards fulfilling an international obligation incurred in a treaty or protocol. For example, article 13 of the protocol to African Charter on Human and Peoples' Rights on the Right of Women in Africa 2003/2005 stipulates that state parties shall adopt legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. The article further enumerates clearly the economic rights along with social rights to be guaranteed by state parties. However most member states in theory embraced the spirit of the provision of the constitution but abhors its enforcement or justiciability on inexplicable grounds. Chapter II of the 1999 Nigerian Constitution on the Directive principles of State Policy form part of public policy for the establishment of a just, free and democratic state. These principles, however, do not confer legal rights neither are they enforceable in any court.

(b) State reservations to the provisions in international instruments

Article 29(2) of the instruments of the African Union provides that for each state party that accedes to the protocol after its coming into force, the protocol shall come into force, on

⁴⁶³ Ibid.

the date of deposit of instrument of accession. However some state parties do not accede or consent to the protocol based on their domestic laws and some provisions of the international instruments that give the state's rights to such reservations.

(c) Statutory reservation in international instruments

The statutory reservations in the international instruments of state parties has created wall between economic rights and justice. Article 4 of the International Covenant on Economic, Social and Cultural rights allows restrictions or limitations on the rights it guarantees by providing that state parties to the covenant recognize that in the enjoyment of those rights provided by the state in conformity with the covenant, the state may subject those rights only to limitations by law. In view of the above, it is indicatively clear that there are walls between economic rights and justice, which in clear terms has hindered and embargoed the intended provision of the human and people's rights.

Are there bridges adjoining Economic Rights and Justice?

Economic freedom is fully attained when individuals and the private sector rather than the government control or has greater influence on the economy.⁴⁶⁴ As stated above economic rights include the right to work, right to adequate wages, right to property, right to rest and leisure, right to economic and social security, and right to fixed hours of work,⁴⁶⁵ while justice is viewed from a distributive or cumulative sense. The entire world recognizes that human beings deserve to live in freedom, justice, dignity and economic security. The International Bill of Rights grew out of these traditions, and calls for all governments to make sure their citizens have human rights, be it civil, political, social, cultural or economic rights. Referring to economic issues as "rights", the Bill uses the legal framework developed under international law, and gives individuals legitimate claims against state and non-state actors for protection and guarantees⁴⁶⁶. These economic rights which have been stated as fundamental to human life cannot stand on its own but require government and other powerful actors to ensure that people have access to basic needs, and that people have a voice in decisions affecting their well-being which will bring about justice and fairness. This is because without justice evident in government decisions, economic rights would be a stagnant law without implementation and as such these adjoining bridges are provided for in the under listed conventions and declarations which are of international nature. At the domestic level, there are legal remedies for many economic violations, although these remedies are still far from comprehension, especially in Africa. The most important human rights law is in the International Bill of Human Rights, which includes the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political

⁴⁶⁴ George W. Bush Presidential Center, 'The Freedom Collection: What are Economic rights?' accessed from <http://www.freedomcollection.org/> on 1 October 2018.

⁴⁶⁵ K.K. Ghai, 'Rights of Citizens: Civil Rights, Political Rights and Economic Rights', accessed from <http://www.yourarticlelibrary.com/essay/law-essay/rights-of-citizens-civil-rights-political-rights-and-economic-rights/40375> on 1 October 2018.

⁴⁶⁶ Center for Economic and Social Rights, 'Center for Economic and Social Rights: Twenty Five Years Fighting for Social Justice through Human Rights', accessed from <http://www.centre-for-economic-and-social-rights.org/> on 1 October 2018.

Rights, the International Covenant on Economic, Social and Cultural Rights. Economic and social rights are also included in numerous other human rights legal instruments. Among the most important are:

Convention on the Rights of the Child (CRC);⁴⁶⁷

Convention on the Elimination of Discrimination Against Women (CEDAW);⁴⁶⁸

Convention on the Elimination of All Forms of Racial Discrimination (CERD);⁴⁶⁹

Vienna World Conference on Human Rights Declaration and Plan of Action;⁴⁷⁰ and

Conventions of the International Labour Organization.⁴⁷¹

States are bound to ensure minimum human rights regardless of their resource constraints. For economic rights, minimum core requirements include available foodstuffs for the population, essential primary health care, basic shelter and housing, and the most basic forms of education. The Committee on Economic, Social, and Cultural Rights elaborated on state obligations.⁴⁷² How do states fulfill their minimum requirements? Every government in the world has certain responsibilities regarding its citizens⁴⁷³.

Exclusivity of Economic Rights from the Ambit of Court Intervention

Economic exclusion can be broadly understood as non-participation in or blocked access to the labour market, public services, finance, housing, educational and health sector, among other possibilities. Economic exclusion can be further analysed through looking at the two basic ingredients of economic activity in general: consumption and production. The exclusion of economic rights and justice basically therefore means the considerations for excluding economic rights and the justiciability of economic rights. Economic rights are an emerging global and international reform. International recognition of economic rights dates from the early-20th century, when the International Labour Organization, then an agency of the League of Nations, adopted a series of conventions intended to improve labour standards around the world. After World War II, international treaties and conventions increasingly began to incorporate economic rights, including, most importantly, the Universal Declaration of Human Rights (UDHR, 1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).

⁴⁶⁷ Article 26 on Social security, Article 27 on Standard of living, Article 32 on Child labour

⁴⁶⁸ Article 10 education, article 11 employment, article 13 economic advantages

⁴⁶⁹ Article 5 CERD, article 7 CERD

⁴⁷⁰ Solemnly adopts the Vienna Declaration and Programme of Action: 2. All 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.

⁴⁷¹ In 1998, the 86th International Labour Conference adopted the *Declaration on Fundamental Principles and Rights at Work*. This declaration contains: The right of workers to associate freely and collectively, The end of forced and compulsory labour, The end of child labour, The end of unfair discrimination among workers.

⁴⁷² Article 5 and Article 7 of the General Comment 3: The Nature of States Parties Obligations.

⁴⁷³ The human rights legal framework spells out those responsibilities with the following three obligations: Respect - the obligation to respect requires governments to refrain from interfering directly or indirectly with the enjoyment of economic, social and cultural rights; Protect - the obligation to protect requires governments to prevent third parties, such as corporations, from interfering in any way with the enjoyment of economic, social and cultural rights; Fulfill - the obligation to fulfill requires governments to adopt the necessary measures to achieve the full realization of economic, social and cultural rights.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965) and the Convention on the Rights of the Child (1989) also contain provisions relating to economic rights. Regional human rights instruments have also codified economic rights. For example, the African Charter on Human and Peoples' Rights (African Union 2007) protects, among other things, the right to work. These international instruments are highly important within the human rights discourse generally and also exert significant influence on national constitutions. Due to their normative influence, constitution-makers may be bound by the content of these international treaties, which set a minimum baseline of general global acceptability.

Today, a majority of constitutions include a wide range of economic rights, either as directly enforceable provisions or as aspirational statements or directive principles. A relatively small number of constitutions—mostly those that have survived before the 20th century—do not directly mention any economic rights. Several arguments have been presented for the exclusion of economic rights ranging from costs; state capacity and excessive expectations, ideological objections, flexibility and democratic responsiveness, excessive reliance on the judiciary and incorporation do not guarantee a positive outcome⁴⁷⁴.

Costs, state capacity and excessive expectations

In some countries, the financial cost of achieving socio-economic rights will be a major issue. Delivering economic rights requires public resources (in terms of available funds) and state capacity (in terms of technical knowledge and effective administrative structures). If the state cannot muster these, then the rights will exist only as unfulfilled promises. It is widely argued that this may have a harmful effect on other rights and on the constitutional system as a whole, since it could lead to a political culture where promised rights exist only on paper, and are not treated as credible or binding by the public or the government⁴⁷⁵. In such circumstances, the response would be that a constitution should be realistic. It may commit the state first to the achievement of a certain minimum core of socio-economic rights for everyone. As resources allow, it may also commit the state to implementing additional measures in accordance with the principle of progressive realization, as contained in the ICESCR. Even if undelivered, the incorporation of such realistic promises can nevertheless create a legitimate expectation of enforcement that groups and parties seeking social and economic justice can use to strengthen their case. If nothing else, the gap between constitutional promise and reality may embarrass the authorities and force them into action. Certain rights might also be framed or interpreted in ways that recognize the limits imposed by competing demands on public resources. For example, a right to housing might not entitle every person to a home, but might at least protect people from being evicted from

⁴⁷⁴ Dawood Ahmed and Elliot Bulmer, 'Social and Economic Rights', International IDEA Constitution-Building Primer 9, Institute for Democracy and Electoral Assistance (IDEA), 2nd Edition, 2017 accessed from <<http://www.idea.int/sites/default/files/2017/02/social-and-economic-rights-primer.pdf>> on 1 October 2018.

⁴⁷⁵ It is desirable that for people to coexist peacefully, economic and social justice must be a culture and a traditional way of life, in the activities marking recurrent life decisions. While corporate socioeconomic infractions may be difficult or legally impossible to litigate individuals can by themselves or among themselves seek adequate remedies were necessary.

their home if no alternative housing is available, or compel the government to develop a housing strategy that works to eliminate homelessness in accordance with available resources⁴⁷⁶. Besides, the fact that economic rights cost money is, of course, true of civil and political rights as well. Thus, while private property cannot exist without some system that upholds rights and punishes violators, the right to a fair trial or the right to vote may also require the state to spend significant amounts of money.

Ideological objections

The inclusion of economic rights in the constitution recognizes, at the level of fundamental law, an active role for the state in the achievement of common goods, in the promotion of the material well-being of the people and in the redistribution of wealth. Some people are ideologically opposed to this view. They may have an individualistic and market-oriented concept of freedom, and prefer the state to be restricted to a minimal role in protecting life, contracts and property⁴⁷⁷. According to the most extreme proponents of this view, economic rights are not rights at all. They are entitlements created only by infringements of the property rights of others. However, there are also many philosophical responses to this view that aim to show that the state cannot be justifiably restricted to this minimal role.

Flexibility and democratic responsiveness

Others may accept that the state can legitimately have an active and redistributive role in socio-economic matters but argue that the nature and extent of the state's role should not be prescribed in the constitution; rather, it should be determined by ordinary laws, by day-to-day politics and by various political parties offering competing manifestos at election time. Keeping economic rights out of the constitution, it has been argued, enables those who do not support such rights to pursue their preferred policies by ordinary legislation, without having to make (difficult and time-consuming) constitutional amendments. It also allows greater political flexibility in the delivery of economic rights, according to need and to public demand. However, the strength of this argument is largely dependent on the effectiveness of political institutions at channeling public demands. If people do not trust politicians to deliver, it is unlikely to be acceptable.

Excessive reliance on the judiciary

It has been argued that the constitutional recognition of economic rights can politicise the judiciary and judicialise politics. In other words, the constitutionalism of economic rights may give judges the power to determine economic policy. This could be perceived as undemocratic. It could undermine the capacity of citizens to choose, through elected representatives, socio-economic policies that they wish to pursue, fatally undermining popular sovereignty. Further, this could implicate courts in making decisions that could have budgetary/cost implications, which judges are poorly equipped, by virtue of their training and working practices, to resolve. Such interference could also bring the courts into conflict

⁴⁷⁶ See Christine Chinkin, 'The Protection of Economic, Social and Cultural Rights Post-Conflict', accessed from https://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf on 1 October 2018.

⁴⁷⁷ Tim Dertwinkel, Economic Exclusion of Ethnic Minorities: On the Importance of Concept Specification, European Center for Minority Issues, Issue Brief #19 November 2008.

with the elected branches of government, which would be a particular problem in states where the judiciary is struggling to establish its independence.

Incorporation does not guarantee a positive outcome

Constitutionalized socio-economic rights are neither necessary nor sufficient as many of the arguments for the inclusion of socio-economic rights rest on the assumption that inclusion has a significant positive impact on the people. There is, however, no necessary correlation between the inclusion of socio-economic rights in a given country and the level of socio-economic rights enjoyed, in practice, by its citizens. It is often noted, for example, that many national constitutions have made generous—but empty—promises, with little or no attempt to fulfil them⁴⁷⁸. This, however, is more a problem of constitutional implementation than design. The fact that some countries have ignored their constitutions is not an argument against the inclusion of socio-economic rights in the constitutions of countries that intend to sincerely honour their commitments. Other constitutions make no mention, or only minimal mention, of socioeconomic rights and yet support robust social welfare policies through ordinary legislation. Australia, Denmark, Finland and Sweden being notable examples. The problem with the argument against recognizing socio-economic rights is that in the absence of constitutional recognition, rights that may currently be enjoyed depend entirely upon the vagaries of majoritarian politics. Often, there may be minorities or politically marginalized groups (especially the poor) whose rights are not well protected through the political system and who have no remedy. This is not to suggest that the constitutional entrenchment of socio-economic rights is without any effect but simply to emphasize that constitutional incorporation is only one tool for achieving socio-economic progress. The fact that the constitutional recognition of socio-economic rights is neither a necessary nor a sufficient condition for beneficial outcomes is not, in itself, an argument against their inclusion. Constitutional recognition may be a partial help, without claiming to be a panacea⁴⁷⁹. Beneficiaries may not be the very poorest. There is some evidence to suggest that the beneficiaries of certain rights (e.g. the right to higher education) may be middle- and upper-class groups rather than the poor. The Latin American experience in places where social rights have been actively enforced (Brazil and Colombia) suggests that people and groups who are more in the middle-class than the poverty class often seek these rights. This could be cited as an argument against including socio-economic rights, especially if one regards the purpose of socio-economic rights simply as a means of ensuring a minimum baseline for the poorest⁴⁸⁰. However, this is not the only purpose of socio-economic rights. The inclusion of

⁴⁷⁸ Several traditional entitlements to life, have taken the same tone and cadre with known privileges to the extent that the privilege to be born now looks like a right to be born, with the activities of 'profilers'. The criminal code has criminalised the failure to provide for family including women and children, by extension the same law provides for compensation for victims of criminal infractions, it becomes a moot point that civil litigation can be undertaken for remedies under this head.

⁴⁷⁹ The social contract of marriage comes interestingly close irrespective of the religion of the parties. The right to basic education, the right to the enjoyment of social amenities, the right to partake in civil social functions and governance, though in most cases are qualified with conditions, are all currently included in the paradigm shift, of what now encompasses economic and social rights, as it affects access to justice.

⁴⁸⁰ Sukhadeo Thorat, *Economic Exclusion and Poverty: Indian Experience of Remedies against Exclusion* accessed from http://conferences.ifpri.org/2020chinaconference/pdf/manila_Thorat.pdf on 1 October 2018.

socio-economic rights in the constitution can also reflect a desire to promote the well being of everyone in society through a system of universal provision that everyone pays into according to their ability and everyone receives support from according to their need. If this is the case, then the middle class and the poor, are entitled to social services such as education and health care. Thus, socioeconomic rights, while not necessarily targeting the very poorest, can help to promote a more inclusive and economically egalitarian society as a whole. Nevertheless, to ensure that those most in need are prioritized, constitutional provisions could require the state to focus on delivering at least a minimum core to the poorest before additional services are provided to others.

Are economic, social and cultural rights justiciable?

In their attempt at the definition of the word or subject 'economics', the authors, Adam Smith and Alfred Marshall, tried to include, all human activities, as economic activities, as every aspect of human life, was posited to have an effect on the economy. In their time activities were limited but not so now, as human activities have blossomed into complex interstices of related events. As the law has cause to reach all aspects of human endeavour, it becomes imperative that adversely affected individuals will seek remedies in line with the subsisting law on any matter of circumstance that affects their well being. The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 provides the legal framework for economic, social and cultural rights. This Covenant and the International Covenant on Civil and Political Rights (ICCPR) are international human rights instruments jointly referred to as the International Bill of Rights. The Rights enshrined in the former are positive rights in that they enhance the power of government to do something for the person to enable the individual in some way. They are generally considered as programmatic clauses, requiring governments to pursue social policies. The ICESCR does not create individual legal claims against the state. They require an affirmative action of government for the implementation. It was not until 1997, that Karel Vasak propounded the concept of generations into the corpus of human rights law. The discourse drew the contours of the subject. Vasak sketched the developments of human rights and established that, rights are of three generations. The first he referred to as *liberte* (Liberty), i.e. Civil and Political Rights; the second he called *egalite* (equality), which is Economic, Social and Cultural Rights; and the third he termed *fraternite* (solidarity), relating to those rights that are held by groups or people collectively. Each generation has its caustic feature but it is enough to know that the second-generation rights are demands of social equality entailing economic, social and cultural privileges.

Predominantly, on the domestic fronts, economic, social and cultural rights are not justiciable but can serve as vital points of reference for judges as they interpret the constitution and other legislation. Likewise, even where human rights treaties have not been ratified or incorporated into domestic law, they provide important guidance to law makers, public officials and the courts. The courts favour consideration of domestic law, which accords with the states obligation under a covenant, treaty or international convention to which it is a party. This is so in cases where the "legislation is enacted after, or in contemplation of, entry into force, or ratification of, the relevant international instrument.

The debate on justiciability of economic, social and cultural rights anchors on the textual differences of the two Covenants. This is most pronounced from the meaning and implications of Article 2(1) of the ICESCR. It provides that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The wider theoretical discourse of the subject is familiar to most students of international human rights. In view of Article 2(1), can it be said that the ICESCR enunciates real rights, or does it merely articulate programmatic objectives? Is it "soft law"? How can rights that depend on the availability of scarce resources in fact be rights in any material sense? How do we estimate the "maximum extent of available resources," and what does "progressive realization" mean? Can economic, social, and cultural rights ever be fully achieved? How can they best be "enforced"? The campaign for an individual-complaints mechanism for economic, social, and cultural rights has seemingly not yet contributed to the resolution of this problem. The situation as it stands typically focuses on the abstract "nature, status, and characteristics" of economic, social, and cultural rights. These rights present genuinely different and difficult challenges than the civil and political rights.

Notwithstanding the observations above, the question on the justiciability of economic, social and cultural rights at national levels has now been settled with the recent adoption of an optional protocol to the ICESCR. The Protocol was adopted by the UN General Assembly by consensus on December 10, 2008 and was opened for ratification on September 24, 2009. Forty-two countries have signed the Protocol, demonstrating their willingness to ratify it. Ratification is essential to make the Protocol legally binding on the signatory States. Argentina, Bolivia, Bosnia & Herzegovina, Ecuador, El Salvador, Mongolia, Portugal, Slovakia, Spain and Uruguay have ratified the Optional Protocol. The 32 other countries who have signed the Optional Protocol but did not ratify it are Armenia, Azerbaijan, Belgium, Burkina Faso, Cape Verde, Chile, Congo, Costa Rica, Democratic Republic of the Congo, Finland, France, Gabon, Ghana, Guatemala, Guinea-Bissau, Ireland, Italy, Kazakhstan, Luxembourg, Madagascar, Maldives, Mali, Montenegro, Netherlands, Paraguay, Senegal, Slovenia, Solomon Islands, Timor-Leste, Togo, Ukraine and Venezuela.

About 160 States around the world are Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR provides the main legal framework for the protection and promotion of economic, social and cultural rights. These rights include the rights to work, health, education, food, water, sanitation, adequate housing, social security, and the right to take part in cultural life, amongst others. All States that are parties to the ICESCR are obliged under international law to respect protect and fulfill these rights for all, without discrimination. The courts should consider treaties, which have been signed and not yet ratified on the same level as "soft law." That is, they should be considered as interpretive aids or as possessing persuasive influence. The provisions for fundamental

human rights were first made in the 1960 Constitution in response to the report of the Henry Willink Minorities Commission. It was thought that such constitutional guarantees would help allay the fears of ethnic minority nationalities. The second-generation rights are also incorporated as Fundamental Objectives and Directive Principles of State Policy in Chapter II of the 1979 and 1999 Constitutions of the Federal Republic of Nigeria. The chapter comprises of sections 13-21 and 13-24 respectively. For many years the judicial attitude regarding the justiciability of Fundamental Objectives and Directive Principles of State Policy is to rule that they are non-justiciable. In *Arch Bishop Anthony Olubunmi Okogie & Ors v The Attorney-General of Lagos State*,⁴⁸¹ the Court of Appeal held that; the arbiter for any breach of the objectives and Directive Principles of State Policy is the legislature itself or the electorate.

The question on the justiciability of Chapter II rights have continued to raise issues and concerns of constitutional debate on what should be the correct position of the law from the municipal law and international law perspectives with regard to the implication of the ratification and domestication of the African Charter on Human and Peoples' Rights into the Nigerian legal system. The Charter's relevance in the discourse is underscored by the fact that Nigeria is a State party to the Charter and has fully received it into its legal order, by ratifying it on 22nd June, 1983 and domesticating it in the same year. By virtue of its reception in accordance with the provision of Section 12 of the 1999 Constitution, the African Charter on Human and Peoples Rights has become part of Nigerian law.

Remarkably in the decision of the African Commission on Human and Peoples Rights (African Commission) in *Social and Economic Rights Action (SERAC) and another v Nigeria*⁴⁸² the African Commission categorically made clear that there is no right in the African Charter that cannot be made effective. In other words these rights are justiciable in Nigerian courts. The non-justiciability of Chapter II of the 1999 Nigerian Constitution is predicated on the provisions of Section 6 (6) (c) of the Constitution itself. That provision is further reinforced by the decision of the Court in the case of *Archbishop Anthony Okogie and Others v Attorney-General of Lagos State*.⁴⁸³ Section 6 (6) (c) provides that the judicial powers vested in accordance with the foregoing provisions "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". While Section 13 makes it a duty and responsibility of the judiciary among other organs of government to conform to and apply the provisions of chapter II, Section 6 (6) (c) of the same Constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles. It is clear that Section 13 has not made Chapter II justiciable.

⁴⁸¹ (1981) 2 NCLR 350

⁴⁸² (2001) AHRLR 60.

⁴⁸³ *Supra*.

However, the provisions of Section 6 (6) (c) by no means preclude the ventilation of those rights through other platforms and any law to that effect is in no way rendered null and void by virtue of inconsistency with the constitution. Furthermore, Section 6 (6) (c) does not restrain the legislature to create socio-economic rights similar to those contained in Chapter II. In the case *A.G. Ondo State v A.G. Federation*,⁴⁸⁴ the Supreme Court emphasised that where provisions of a law, the Constitution as the fundamental law inclusive are clear, and unambiguous, they must be construed literally. Section 6 (6) (c) by no means preclude the legislature from making laws effectuating Chapter II rights nor does it bar the ventilation and espousal of a socio-economic right which is conferred by law nor are the courts barred from hearing such cases. When Chapter II of the 1999 Nigerian Constitution is considered against the backdrop of Section 13 of that Constitution, which imposes a duty on all agencies of State to conform and apply the provisions of Chapter II, it is clear that the Constitution imposes a duty on the State which gives rise to enforceable correlative socio-economic rights in all Nigerians. To be considered alongside Section 13 is item 60 (a) of the Exclusive Legislative List, which gives the National Assembly a clear mandate to make laws for the creation and regulation of agencies to promote and enforce the provisions of Chapter II of the Constitution.

In the case of *A.G. Lagos State v A.G. Federation*,⁴⁸⁵ the Supreme Court held that the National Assembly can make the Federal Environmental Protection Agency Act for the purpose of protecting the environment in furtherance of Chapter II of the 1999 Nigerian Constitution. Similarly, the Court also upheld the National Assembly's legislative competence regarding Section 15 (5) of the Constitution in *A.G. Ondo State v A.G. Federation and Others*.⁴⁸⁶ The foregoing are indicative of the fact that provisions of Chapter II of the 1999 Nigerian Constitution can be the subject of legislation and once they become the subject-matter of a law, the courts can enforce the provisions of such a law unfettered by Section 6 (6) (c) of the 1999 Constitution. The issue of inconsistency with the Constitution will only arise where the Constitution is exhaustive on an issue as held by the Supreme Court in *INEC v Musa*.⁴⁸⁷ The Constitution to all intent and purposes cannot and has not exhaustively covered or enacted upon socio-economic and cultural rights. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act is a Nigerian law which confers authority on Nigerian Courts to entertain cases regarding the espousal of socio-economic rights embedded in Chapter II of the 1999 Nigerian Constitution. In *Abaeba v Fawebinni*⁴⁸⁸ the Supreme Court held inter alia that: '...the African Charter which is incorporated into our municipal law becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts.' In the case of *Oronto Douglas v Shell Petroleum Development Company Limited*⁴⁸⁹ the Nigerian Court of Appeal held that an action brought on the basis of Article 24 of the African Charter (Ratification and Enforcement) Act was

⁴⁸⁴ (2002) 9 NWLR (Pt 772) 418

⁴⁸⁵ (2003) 15 NWLR (Pt 842) 113,175.

⁴⁸⁶ (2002) 9 NWLR (Pt 772) 418.

⁴⁸⁷ (2003) 3 NWLR (Pt. 806) 72, 152.

⁴⁸⁸ (2000) 6 NWLR (Pt 600) 228

⁴⁸⁹ (1999) 2 NWLR (Pt 591) 466.

justiciable regardless of the similarity of the provisions of Article 24 of the African Charter with the provisions of Section 20 of the 1999 Nigerian Constitution.⁴⁹⁰ Thus while Chapter II does not expressly confer enforceable rights, it nevertheless imposes an enforceable duty which the courts can compel the State to perform within the constraints of the Nation's financial resources.

The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights was adopted on 27th June, 1981 and entered into force on 21st October, 1986.⁴⁹¹ The African Charter on Human and Peoples' Right (Ratification and Enforcement Act)⁴⁹² brings into effect in Nigeria the provisions of the African Charter on Human and Peoples' Rights. Apart from the recognition given to civil and political rights, the Act also provides for a number of economic, social and cultural rights. Specifically, the Act provides for right to health and right to education as economic, social and cultural rights.⁴⁹³

Where an Act implementing a treaty adopts the text of the treaty it is implementing by having it attached to the Act, the Act enjoys a superior status in relation to other Acts⁴⁹⁴ although it is not superior to the Constitution.⁴⁹⁵ In addition, in interpreting such an implementing Act, recourse will be had to international and civilised legal concepts.⁴⁹⁶ As the Act adopts the treaty text of the African Charter on Human and Peoples' Right,⁴⁹⁷ it means that the Act enjoys a superior status to other statutes in the hierarchy of norms within the Nigerian legal system and that in interpreting it, recourse must be had to international and civilised legal concepts in the interpretation and application of the provisions of the Act.⁴⁹⁸

⁴⁹⁰ Federal Republic of Nigeria, Abuja (August 2011): Nigeria's 4th Periodic Country Report: - 2008-2010 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria at pp. 10-13.

⁴⁹¹ OAU Doc. CAB/LEG/67/3 rev 5, 21 LL.M. 58 (1982)

⁴⁹² Cap A9 Laws of the Federation of Nigeria (LFN) 2004.

⁴⁹³ On the issue of development, Article 20 recognises people's right to 'pursue their economic and social development'. Article 22 recognises peoples' right 'to their economic, social and cultural development' and imposes obligations on states 'to ensure the exercise of the right to development.' Article 24 provides that 'All peoples shall have the right to a general satisfactory environment favourable to their development.' It can therefore be stated that right to development subsists and is justiciable in Nigeria.

⁴⁹⁴ *Oshesire v British Caledonian Airways Ltd* [1990] 7 NWLR (Pt. 163) 507

⁴⁹⁵ *Abacha v Fawehinmi* [2000] 6 NWLR (Pt. 660) 228

⁴⁹⁶ In *Abacha v Fawehinmi*, *ibid* at 342-343, the Supreme Court of Nigeria held that 'the spirit of a convention or treaty demands that the interpretation and application of its provision should meet international and civilised legal concepts. That means those concepts which are widely acceptable and at the same time of clear certainty in application.'

⁴⁹⁷ Section 1 of the Act states that: 'As from the commencement of this Act, the provisions of the Africa Charter on Human and Peoples' Rights which are set out in the schedule to this Act, shall, subject as thereunder provided, have force of law and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.'

⁴⁹⁸ In *Abacha v Fawehinmi*, *op. cit.*, the Supreme Court of Nigeria held in respect of the African Charter on Human and Peoples' Rights that '... where we have a treaty like the African Charter on Human and Peoples' Rights and similar treaties applicable to Nigeria, we must be prepared to stand on the side of civilized societies the world over in the way we consider and apply them, particularly when we have adopted them as part of our law... we cannot afford to be immunised (sic) from the progressive movements manifesting themselves in international agreements, treaties, resolutions, protocols, and other similar understanding...' See also *Oshesire v British Caledonian Airways Ltd*. [1990] 7 NWLR (Pt. 163) 507, 521-522 where it was held that 'A Convention or treaty whose purpose is the unification of the law must be interpreted on the basis of the specific characteristics of the Convention, in particular, its object,

The comprehensive fulfillment of all human rights implies the fulfillment of civil and political rights and economic, social and cultural rights. While civil and political rights are justiciable in Nigeria,⁴⁹⁹ economic, social and cultural rights are not.⁵⁰⁰ The implication is that the African Charter on Human and People's Rights (Ratification and Enforcement) Act has made justiciable economic, social and cultural rights by recognising right to development which gives vent to the realisation of all human rights including economic, social and cultural rights whereas the 1999 Nigerian Constitution does not make justiciable these economic, social and cultural rights. Thus, Right to Development to the extent that all human rights must be fulfilled is enforceable under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act whereas the right is not enforceable under the Constitution since it limits the fulfillment of human rights to civil and political rights alone. There is no doubt that the doctrine of constitutional supremacy would render this right to development nugatory. However, the right appears to have been recognised by the decision of the Supreme Court in *Attorney General Ondo State v Attorney General Federation*,⁵⁰¹ having held that the National Assembly could legislate on any of the Fundamental Objectives, which contain economic, social and cultural rights to make it enforceable.⁵⁰² Therefore, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act can be said to be the National Assembly's legislation to make enforceable the fulfillment of economic, social and cultural rights implicit in right to development and as contained in the Fundamental Objectives. Similarly, section 254C(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended by Third Alteration Act, 2010 which amended the 1999 Nigerian Constitution, empowers the National Industrial Court in Nigeria to apply treaties on labour matters upon ratification even if they are yet to be domesticated in Nigeria. The section provides that:

Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

Apart from the fact that section 254C(2) of the 1999 Nigerian Constitution as amended by Third Alteration Act, 2010 has made applicable international conventions on labour matters

purpose and context as well as of the travaux preparatoires and its origins, as it would be pointless to work out a Convention establishing international rules if it were to be interpreted by the Courts of each State in accordance with that State's own legal concepts.'

⁴⁹⁹ See Chapter IV of the 1999 Nigerian Constitution.

⁵⁰⁰ See Chapter II of the 1999 Nigerian Constitution under the Fundamental Objectives and Directive Principles of State Policy and section 6(6)(c) of the Constitution. Provisions of the Constitution which are relevant for right to development are the following-Section 16(2)(c): 'The State shall direct its policy towards ensuring the promotion of a planned and balanced economic development;' Section 17(d): 'exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented;' Section 19(e): 'The foreign policy objectives shall be the promotion of a just world economic order;' Section 20: 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.'

⁵⁰¹ [2002] 9 NWLR (Pt. 772) 222

⁵⁰² *Ibid.*

in Nigeria, one notable implication of this provision is that obsolete laws on labour matters can be dispensed with once those laws are incompatible with international convention on labour matters. While the law frowns on implied repeal, nonetheless, the presumptions that Nigeria does not intend to breach international obligations freely incurred unless expressly declared by the law making organ weighs heavily in favour of implied repeal.⁵⁰³ In fact, dormant trade union organisations, which ordinarily will be expected to push for the repeal of obsolete laws, are saved the trouble.

As previously noted, the decision of the Supreme Court in *Attorney General Ondo State v Attorney General Federation*,⁵⁰⁴ is favourable to the actualisation of right to development and of course the actualisation of economic, social and cultural rights. However, the decision of the same Court in *Attorney-General of Lagos State v Attorney General of the Federation*⁵⁰⁵ constitutes a set-back. The Supreme Court held that urban planning and management of the environment are distinct and separate⁵⁰⁶ and that save the Federal Capital Territory,⁵⁰⁷ the National Assembly is incompetent to legislate for the State Governments with respect to urban planning. This interpretation is unduly restrictive. A discordant situation has now been created where people who have the right to a generally satisfactory environment favourable to their development under the Act cannot enforce planning laws under the same Act on the pretext that urban planning and environmental management are separate and distinct. It is however worthy of note that the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act was not considered by the Court.

Even if the above Supreme Court decision in *Attorney General Ondo State v Attorney General Federation*,⁵⁰⁸ cannot be invoked for the enforcement of economic, social and cultural rights within the context of right to development, it is pertinent to realise that the African Charter on Human and People's Rights itself can be made enforceable in Nigeria by an international tribunal which is competent to apply the Charter and whose decision is binding on Nigeria. In *SERAP v Federal Republic of Nigeria and Universal Basic Education Commission*,⁵⁰⁹ the plaintiff alleged the violation of the right to quality education, the right to dignity, the right of peoples to their wealth and national resources and the right of peoples to economic and social development guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights. The Defendants challenged the jurisdiction of the Community Court of Justice of the Economic Community of West African States (ECOWAS Court) on the ground that the Compulsory and Basic Education Act 2004 and the Child's Right Act 2004 are Municipal Laws of Nigeria and therefore, not a Treaty, Convention or Protocol of ECOWAS; that the educational objective of the Federal Republic of Nigeria is provided for under section 18(1), (2) and (3) of Chapter II of the 1999 Nigerian Constitution and is non-

⁵⁰³ See *Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116; *Abacha v Fawehinmi*, op. cit. [2000] 6 NWLR (Pt 660) 228.

⁵⁰⁴ [2002] 9 NWLR (Pt. 772) 222.

⁵⁰⁵ [2003] 12 NWLR (Pt 833) 1.

⁵⁰⁶ *Ibid*, p. 72.

⁵⁰⁷ *Ibid*, p. 57.

⁵⁰⁸ [2002] 9 NWLR (Pt. 772) 222.

⁵⁰⁹ ECW/CCJ/APP/08/08. Read in open Court to the public on 27th October, 2009.

justiciable or unenforceable and cannot be determined by the Court; and that the plaintiff has no *locus standi* because the plaintiff has not suffered any damage, loss or personal injury. The ECOWAS Court dismissed the objection of the Nigerian government on the ground that it could assume jurisdiction to interpret the African Charter on Human and Peoples' Rights which Nigeria has ratified and that public interest litigation is permissible within its jurisprudence.

The implication of the above judgment is that ECOWAS Court can be approached to give effect to right to development even if Nigerian Courts will not. It is apposite to state that the rule of exhaustion of local remedies does not apply to ECOWAS Court. This principle of international law which is also referred to as "the rule of exhaustion of domestic remedies" requires that "a State should be given the opportunity to redress an alleged wrong within the framework of its own domestic legal system before its international responsibility can be called into question"⁵¹⁰ The Permanent Court of International Justice (PCIJ) applied this principle in the *Panevezys-Saldutikis Railway Case*.⁵¹¹ In the *Akdivar* case (*Akdivar and Others v Turkey*, Application No. 21893, 16 September 1996 in Reports 1996-IV, para. 65), the European Court of Human Rights explained the rationale of the rule by stating that "...the rule of exhaustion of local remedies...obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system...The rule is based on the assumption... that there is an effective remedy available in respect of the alleged breach in the domestic system...In this way it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights."

While it is arguable that the validity of the rule is not in doubt having been applied by various international tribunals, however human rights instruments contain precise provisions on the exhaustion of domestic remedies. For instance, Article 41.1c of the International Covenant on Civil and Political Rights provides that "The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognised principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged." There is also a similar provision in Article 5.2 of the optional protocol to the Covenant. Also, Article 35.1 of the European Convention on Human Rights provides that the Court may only deal with a matter after all domestic remedies have been exhausted. Article 46.1 of the American Convention on Human Rights contains similar provision. In Article 56(5) and (6) of the African Charter on Human and Peoples' Rights, it is provided that matters brought before the African Commission on

⁵¹⁰ C. Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law: Its Rationale in the International Protection of Individual Rights*, Cambridge University Press, Cambridge, 1983, p. 1.

⁵¹¹ (PCIJ), Series A/B, No. 76 at 47 and in the *Phosphates in Morocco Case (France v Italy)*, PCIJ, Series A/B, No. 74 (1938) at 28. The International Court of Justice also applied the principle in the *Case Concerning Elettronica Sicula S.p.A. (United States of America v Italy)*, ICJ, Judgment of 20 July 1989, ICJ Reports 1989, para. 49; where Italy contended that the claim filed by the United States was inadmissible due to the alleged failure of the two US corporations concerned to exhaust on a primary basis the local remedies available to them in Italy.

Human and Peoples' Rights shall be considered if they are sent after the exhaustion of local remedies, if any, unless it is obvious that the procedure is unduly prolonged.

It therefore appears that the provisions contained in these instruments form the legal basis upon which International Human Rights bodies such as the UN Human Rights Committee or the European Court of Human Rights are called to apply the rule. This is however not the position before the ECOWAS Community Court which has no provisions in the Treaty establishing it nor in its protocol any point supporting the rule of exhaustion of local remedies. While the absence of the rule of exhaustion of local remedies in ECOWAS jurisprudence is favourable to the actualisation of economic, social and cultural rights, however most Member States of ECOWAS have resisted the enforcement of the judgments of that Court.⁵¹²

Apart from the fact that the African Charter on Human and Peoples' Rights can be enforced by the ECOWAS Court, Udombana also contends that the African Charter on Human and Peoples' Rights has become a local custom.⁵¹³ His argument is premised on the universal ratification that the Charter has enjoyed in Africa,⁵¹⁴ and the *sui generis* nature of the Charter.⁵¹⁵ The necessary implication is that the Charter may not only be enforced by ECOWAS Court, it may also be enforced as customary international law by any other international tribunal where relevant and invariably have Right to Development given effect.

Right to Development from Regional and Municipal Perspectives

The African Charter of Human and Peoples' Rights (ACHPR) (also known as the African Charter or the Banjul Charter) was enacted by the African Union in 1981 and its provisions are binding on its signatories. One outstanding feature of the African Charter over all other

⁵¹² Premium Times (22 April 2014), 'ECOWAS Court Frowns at Non-Enforcement of Decisions by Member States' <http://www.premiumtimesng.com/news/159166-ecowas-court-frowns-non-enforcement-decisions-member-states.html> accessed on 3 March 2017; Daily Post (28 June 2016), 'ECOWAS Court Laments Non-Execution of Judgment by Member States' <http://dailypost.ng/2016/06/28/ecowas-court-laments-non-execution-of-judgment-by-member-states/> accessed on 3 March 2017; The Punch (28 June 2016), 'ECOWAS Court Laments Non-Execution of Judgments by Member States' <http://punchng.com/ecowas-court-laments-non-execution-judgments-member-states/> accessed on 3 March 2017; Vanguard (28 June 2016), 'ECOWAS Court Laments Non Execution of Judgment by Member States' <http://www.vanguardngr.com/2016/06/ecowas-court-laments-non-execution-judgment-member-states/> accessed on 3 March 2017.

⁵¹³ Udombana contends that the African Charter has become a local custom in view of the universal ratification that the treaty enjoyed in Africa. See Nsongurua Johnson Udombana, 'Shifting Institutional Paradigms to Advance Socio-Economic Rights in Africa,' (unpublished LL.D Thesis), University of South Africa, October, 2007, p. 208.; In the Asylum Case 1950 I.C.J. Rep. 266, the International Court of Justice (ICJ) recognised the possibility of the existence of a local custom or regional customs amongst a group of states in their relations *inter se*, in addition to a general custom binding on the international community as a whole. Local customs could also exist between two states, as was held to exist between India and Portugal in the Right of Passage Case 1960 I.C.J. Rep. 6. See also *Trnitéc Trading Corp v Central Bank of Nigeria* [1977] Q.B. 529 (English C.A.); [2004] All FWLR (Pt 238) 776.

⁵¹⁴ Nsongurua Johnson Udombana, 'Shifting Institutional Paradigms to Advance Socio-Economic Rights in Africa,' *ibid.*

⁵¹⁵ Udombana relies on the insightful statement of Drzemczewski: 'a Treaty of a normative character which is developing an evolving notion of 'Convention law', which interpenetrates and transcends both the international and domestic legal structures.' See A. Drzemczewski, *European Human Rights Convention in Domestic Law: A Comparative Study*, 1983, p. 33 (arguing that the European Convention On Human Rights, though an international treaty, has given rise to a new type of law that defies classification as either international or domestic law).

regional and international literature on human right is that, it did not make classification of human rights as civil liberties rights or socio-economic rights.⁵¹⁶ Therefore, there is neither first, second, nor even third categorization of human rights by ACHPR. It made provisions for individuals' rights,⁵¹⁷ peoples' rights,⁵¹⁸ duty of state parties to the charter,⁵¹⁹ and individual duties.⁵²⁰ Article 22 of the ACHPR provides for Peoples' Right to Development (PRTD) in the following words:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

This PRTD is binding unlike the provisions of UNRTD. In the celebrated case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (Endorois case)*⁵²¹ the African Commission on Human Rights (the African Commission) upheld a suit for ventilation of PRTD. In this case, the Endorois an indigenous Kenyan tribe challenged the establishment of a games reserve in their tribal forest for over 30 years by the Kenyan government without consultation, adherence to the Kenyan Constitution, or even compensations for the pastoral lands acquired and religious sites desecrated; as a denial of the Endorois people's right to practice their culture and religion, and above all, their PRTD. Oduwole noted that "the African Commission was of the view that, if the government of Kenya had created conditions to facilitate the PRTD in

⁵¹⁶ Ebobrah S.T., 2007 The Future of Economic, Social and Cultural Rights Litigation in Nigeria, *Review of Nigerian Law and Practice* 1:2 108, 114-124

⁵¹⁷ 'Right to the enjoyment of rights without distinction of any kind (article 2); right to equality before the law and the equal protection of the law (article 3(1)(2)); right to life (article 4); right to the dignity of the human person (article 5); right to liberty and security (article 6); right to have cause heard (article 7); right to freedom of conscience, the profession and free practice of religion (article 8); right to receive information and to express and disseminate opinions (article 9); right to freedom of association (article 10); right to freedom of movement (article 12(1) (2)); right to seek asylum and freedom from arbitrary expulsion from a state (article 12(3)(4)); right to freedom from mass expulsion of non-nationals (article 12(5)); rights to participate in government, and equal access to the public service and public property (article 13(1)(2)(3)); right to work under equitable and satisfactory condition (article 15); right to physical and mental health (article 16); right to education and to participate in the cultural life of the community (article 17); right to property (article 14).' Culled from Ogbu N. 'The African Charter On Human and Peoples' Right as Compatible with Despotism: the Nigerian Experience'

⁵¹⁸ 'Equality of all peoples (article 19); right to existence and self-determination (article 20); right to free disposal of natural wealth and resources (article 21); right to economic, social and cultural development and the equal enjoyment of the common heritage of mankind (article 22); right to international peace and security (article 23); right to satisfactory environment (article 24).' Culled from Ogbu Ibid

⁵¹⁹ 'Duty to promote rights and freedoms contained in the Charter (article 25)' duty to guarantee the independence of the courts and to allow the establishment of human rights organizations (article 26).' Culled from Ogbu Ibid

⁵²⁰ 'Duty to the family, society, the state and the international community (article 27); duty to respect and not to discriminate against fellow beings (article 28); duty to preserve the harmonious development of the family, to respect his parents and to maintain them in case of need (article 29(1)); duty to preserve his national community (article 29(2)); duty not to compromise the security of his state of origin or residence (article 29(3)); duty to preserve and strengthen social and national solidarity (article 29(4)); duty to preserve independence and territorial integrity of his country (article 29(5)); duty to pay taxes (article 29(6)); duty to preserve African cultures (article 29(7)); duty to the achievement and promotion of African unity (article 29(8)).' Culled from Ogbu Ibid

⁵²¹ (2009) Commission on Human and People's Rights comm. No. 276/03(adopted May 2009, approved by the African Union January 2010) paras.22 and 297-8.

this context, the game reserve would have aided the development of the Endorois as they would have made an informed decision and actively benefited from it. However, the forced evictions eliminated any choice as to where they would live.”⁵²² It therefore found for the Endorois people.

The ECOWAS Treaty of 1975 did not make express provision on RTD.⁵²³ However, the several and serial political killings and civil wars in Liberia (1989) and Sierra Leone (1991), made the ECOWAS Heads of States to adopt a Declaration of Political Principles in July, 1991.⁵²⁴ The declaration among other things agreed to promote and encourage the full enjoyment of human rights for all.⁵²⁵ The above, being a mere declaration, is not binding on the ECOWAS States. However, in July 1993 at Cotonou, Benin Republic, the 1975 ECOWAS Treaty was revised. The Revised ECOWAS Treaty of 1993 unlike its predecessor made reference to ACHPR. Article 4 of the Revised ECOWAS Treaty is to the effect that the fundamental principles of the Treaty are as follows:

maintenance of regional peace, stability and security through the promotion of good neighbourliness, peaceful settlement of disputes among member States, recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights, accountability, economic and social justice and popular participation in development, promotion and consolidation of a distribution system of governance in each member State, and equitable and just distribution of the costs and benefits of economic integration. Commitment to the African Charter on Human and Peoples’ Rights and to protection of both fundamental human rights and international humanitarian laws are also fundamental principles of the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.⁵²⁶

Furthermore, ECOWAS States covenanted under Article 56 (2) of the ECOWAS Revised Treaty to cooperate with one another towards the actualization of several treaties which ACHPR is one of them. The ECOWAS Court of Justice in the case of *Hon. Dr. Jerry Ugokwe v Federal Republic of Nigeria & Hon. Dr. Christian Okeke & Other Intervening*⁵²⁷ while asserting its

⁵²² Olajumoke O. Odunwole, *International Law and the Right to Development: A Pragmatic Approach for Africa*. Inaugural Lecture delivered on 20 May 2014 at the International Institute of Social Studies, The Hague, The Netherlands, p. 16.

⁵²³ Treaty of the Economic Community of West African States 14 ILM, 1200 (1975), hereafter called ‘1975 ECOWAS Treaty’.

⁵²⁴ Ladan, M.T., 2010 ‘Access to Justice as a Human Right under the ECOWAS Community Law’, being a PAPER presented at Commonwealth Regional Conference with the theme- ‘21st Century Lawyer, Present Challenges and Future Skills’, Organized by Commonwealth Lawyers Association CLA, UK in collaboration with the Nigerian Bar Association, held at Transcorp Hilton Hotel, Abuja, Nigeria between 8 – 11 APRIL, 2010. P.10

⁵²⁵ *Ibid*, p. 11

⁵²⁶ *Ibid*, p. 12-13

⁵²⁷ *Ibid*

jurisdiction over ACHPR stated that the reference of ACHPR in Article 4 (g) of the ECOWAS Revised Treaty as a fundamental principle of the Community means that the Court is to “bring in the application of those rights catalogued in the African Charter.”⁵²⁸ Ladan posited that in similar provision (that is, provisions on fundamental principle of a treaty) under the EU, that the European Court of Justice has clarified the legal significance of such principles thus:

Fundamental rights form an integral part of the general principles of the law, the observance of which is ensured by the Court. In safeguarding these rights, the Court has to look to the constitutional traditions common to the member States, so that measures, which are incompatible with the fundamental rights recognized by the constitutions of those States, may not find acceptance in the Community.⁵²⁹

Suffice it to note that all the ECOWAS States have signed and ratified the ACHPR.⁵³⁰ It therefore means that the rights enshrined under ACHPR (especially PRTD) are enforceable at the African Court of Justice and the ECOWAS Court of Justice against these ECOWAS States, persons, agencies, and corporations within these ECOWAS States.⁵³¹

Nigeria is a signatory to the ACHPR and has also domesticated this Charter.⁵³² ACHPR having satisfied the requirements of ratification and domestication under Section 12 of the 1999 Constitution of the Federal Republic of Nigeria as Amended in 2011⁵³³ is now part and parcel of the Nigerian laws, and is therefore enforceable in Nigerian courts.⁵³⁴ Furthermore, the Fundamental Rights (Enforcement Procedure) rules 2009 in its Order 1 Rule 2 defined fundamental rights to include “any of the rights stipulated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act’. It therefore means that the first and second generations of rights which flowing from our above discussion cumulates to RTD are guaranteed under the extant Nigerian legal jurisprudence.

In the case of *Gbemre v Shell Petroleum Development Company Nigeria Limited and 2 others (SPDC)*⁵³⁵ the Federal High Court of Nigeria held that the peoples’ right to environment under Article 24 of ACHPR has been violated by the gas flaring of the first Defendant in the suit in the Complainant’s community. The court arrived at the above decision based on the African charter not minding the fact that environmental right under Section 20 of the 1999

⁵²⁸ Ibid

⁵²⁹ Ibid

⁵³⁰ Benin (1986), Burkina Faso (1984), Cape Verde (1987), Ivory Coast (1992), Gambia (1983), Ghana (1989), Guinea (1982), Guinea-Bissau (1985), Liberia (1982), Mali (1981), Niger (1986), Nigeria (1983), Senegal (1982), Sierra Leone (1983), Togo (1982) and Mauritania (1986) (which is not a member of ECOWAS). Retrieved October 22, 2015 from www.achpr.org/states/

⁵³¹ Ibid; See also *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (Endorois case)* (Supra).

⁵³² Nigeria ratified the African Charter on 22/6/83 and domesticated it in 1983.

⁵³³ Cap. C23, Laws of the Federation of Nigeria, 2004.

⁵³⁴ *Abacha v Fawehinmi*, (2000) 6 NWLR (Pt 600) 228.

⁵³⁵ (Unreported) Suit no: FHC/B/CS/53/05. Text of judgment available at www.climatelaw.org The matter is now on appeal in the Court of Appeal

Constitution of the Federal Republic of Nigeria as Amended in 2011 is not justiciable pursuant to its Section 6 (6) (c).⁵³⁶

Therefore, there exist RTD, or rather PRD in Nigeria, which is enforceable as a fundamental human right. The major hindrance to this right is its unpopularity among the Nigerian citizens when compared to sister rights under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as Amended in 2011. Therefore, there is a great need for creation of awareness of the existence of this right among the Nigerian people. In this respect the role of the National Human Rights Commission is most apposite. The National Human Rights Commission of Nigeria was established by the National Human Rights Commission Act 1995 as amended by the National Human Rights Commission Act 2010 in line with Resolution 48/134 of the United Nations General Assembly which enjoins all member states to establish independent national institutions for the promotion, protection and enforcement of human rights. The Commission serves as an extra-judicial mechanism for the respect and enjoyment of human rights and provides avenues for public enlightenment, research and dialogue in order to raise awareness on human rights issues.⁵³⁷ By and large, RTD is not a "right to everything" as some developed nations have expressed this fear, but it is a right to a process of development having the human person at its centre. At the national level, it has individuals and 'peoples' as the right holders; with their government (at all levels) and other individuals or 'peoples' sharing the joint responsibility of duty bearers. In essence, RTD is a golden right, which demands from individuals and nations to treat others with the very manner that they would want to be treated in order to actualize their desired true development and emancipation.

Fundamental Principles of International Economic Law

As an attempt to implement the objectives of the New International Economic Order (NIEO) and to establish the norms of international economic relations, the UN General Assembly adopted as part of its resolutions on the NIEO the Charter of Economic Rights and Duties of States (CERDS) of 1974. Chapter 1 of the Charter outlines the fundamentals of international relations. Economic as well as political and other relations among states shall be governed, *inter alia*, by such principles as (a) Sovereignty, territorial integrity and political independence of States; (b) Sovereign equality of all States; (c) Non-aggression; (d) Non-intervention; (e) Mutual and equitable benefit; (f) Peaceful coexistence; (g) Equal rights and self-determination of peoples; (h) Peaceful settlement of disputes; (i) Remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development; (j) Fulfillment in good faith of international obligations; (k) Respect for human rights and international obligations; (l) No attempt to

⁵³⁶ 'Certainly, the drafters of the Constitution did not intend that individuals should be put in a position to monitor state compliance with the duties imposed by chapter II until and unless the legislature takes the duty further by making a positive law in respect of any particular area contained in chapter II.' See Ebovrah S.T., 2007 op. cit. p.119; See also the cases of *Archbishop Anthony Okogie and others v The Attorney General of Lagos State* (1981) 2 NCLR 350; and *A.G Lagos v A.G Federation* (2003) 15 NWLR (Pt 842) 113, 175.

⁵³⁷ National Human Rights Commission Act, 'The Commission' accessed from <https://www.nigeriarights.govng/Commission.php> on 30 September 2018.

seek hegemony and spheres of influence; (m) Promotion of international social justice; (n) International co-operation for development; and (o) Free access to and from the sea by land-locked countries within the framework of the above principles. These are principles of a general nature, which include both economic and political principles and reflect the trend of the early 1970s. Specifically Articles 1, 2, 4 and 5 outlined the economic rights and duties of states.⁵³⁸ It is geared towards accelerating the development of developing countries. Correspondingly, all States have the duty to respect that right by refraining from applying economic and political measures that would limit it. Although the charter was not a 'hard law' instrument having binding legal effect, many of the principles embodied in it have been regarded as representing the basis for the development of international economic law. Indeed, the charter reiterates some of the principles that were already widely accepted as representing customary rules of international law, such as the permanent sovereignty of states over their natural resources.

Economic Development and Exclusion factors militating against enjoyment of citizens' economic rights in Nigeria

One of the central elements of the NIEO and CERDS was the economic development of states. This element was reinforced and strengthened through a 1986 resolution of the UN

⁵³⁸ Article 1: Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.

Article 2: 1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities. 2. Each state has the right:

- (a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;
- (b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, cooperate with other States in the exercise of the right set forth in this subparagraph;
- (c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

Article 4: Every State has the right to engage in international trade and other forms of economic cooperation irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences. In the pursuit of international trade and other forms of economic cooperation, every State is free to choose the forms of organisation of its foreign economic relations and to enter into bilateral and multilateral arrangements consistent with its international obligations and with the needs of international economic cooperation.

Article 5: All States have the right to associate in organizations of primary commodity producers in order to develop their national economies, to achieve stable financing for their development and, in pursuance of their aims, to assist in the promotion of sustained growth of the world economy.

General Assembly on the right to economic development of states. The main operative provisions of this declaration read as follows:⁵³⁹

Although the right to development is a difficult right to define in concrete terms and does not have much legal significance, the articulation of this right in 1986 has enabled the international community to rely on it to support and develop other principles of international trade and development special and preferential treatment for developing countries the need to address the problem of the international debt. It can also be argued that the right to development was a contributor to the adoption of the Millennium Development Goals by the international community in 2000, at the dawn of the new millennium and principles of the sustainable development goals of 2015.

Nigeria is so richly blessed yet inhabited by the poor. Her poverty level majored statistically indicate that Nigerian people live in one of the 20 poorest countries in the world. The national poverty trend, which stood at 54.4% between 2004 and 2009, sharply rose in 2011 to 70% (105 million) of Nigerians are now living below the poverty line. Out of this 70% are the majority rural poor between the ages of 25-60 yrs. In terms of absolute poverty line by geo-political zone, the North-West and North-East have recorded the highest poverty rates at 70 and 60 percent respectively while the South-West and South-East recorded the least rate at 49.8%.⁵⁴⁰ As a result of mismanagement of public fund, corruption bedevilled by massive loot of the treasury only a few Nigerians are benefiting from the country's economic wealth. Hence, experts have explained that one of the ways of improving the nation's economy is to translate economic growth into development by reducing poverty and creating jobs especially among youth as well as addressing the security challenges facing Nigeria.

Included in this troubling reality is the double digit unemployment rate (from 10.9% in 2007 to 12.9% in 2009, 21.1% in 2010 and 21.9% in 2011) with over 14 million unemployed

⁵³⁹ Article 1:1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. The human right to development also implies the full realization of the right of peoples to self determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. Article 2: 1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development. 2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development. 3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from.

⁵⁴⁰ See United Nations Office on Drugs and Crime, Vienna (2005): Why Fighting Crime Can Assist Development in Africa: Rule of Law and protection of the Most Vulnerable: Summary at pp. 9-59.

youths, mostly educated, able-bodied and potentially productive as at the end of 2011.⁵⁴¹ According to the United Nations Office for Drug and Crime, such high incidence of poverty threatened national economic growth and development. Similarly, a double-digit unemployment rate, with particular reference to youth, in a rich oil producing country like Nigeria, is necessarily a potential source of social instability and a real threat to national security and democracy. More troubling today, is the fact that in the context of such a high incidence of poverty and unemployment, 80% of the 2017 national budgetary allocation is for recurrent expenditure (i.e. resources going into salaries, allowances, travels and other related activities) and less than 20% on capital expenditure. No country develops significantly under such arrangement because what grows the country or builds the economy is the amount of investments been made on infrastructure and other structural issues.

Recommendations

It is often the case that there is a big gap between the existence of economic and social rights and their realization. Although the vast majority of countries in the world have ratified many of the conventions that spell out these rights, their realization continues to be elusive. It is therefore, important to look at the possible gaps that have created such a disparity and delineate a way forward.⁵⁴² The first recommendation on the economic and social rights is the fact that there is need to frame these rights in more specific terms. The fact of the matter is that these rights are outlined in such a way that they are very general and vague. This makes it difficult to measure them and subsequently monitor at both the national and international levels. In gauging the attainment of these rights, states are only required to take "progressive steps" to realize them. This means that states are required to take the appropriate steps to ensure the realization of the rights.⁵⁴³ States have easily exploited such weaknesses to justify lack of progress in achieving them. By being more specific about these rights, countries will find it more difficult to find excuses in not directing the required attention to achieving these rights.⁵⁴⁴

In many cases, the monitoring of the rights depends on information provided by state parties. In countries with very weak institutions and civil society especially in Sub-Saharan Africa, this has created the opportunity for governments to manipulate information on the implementation of these rights. Many governments who have not made the required progress in the underscored economic and social rights have often not been transparent in how far they have gone to realize the rights.⁵⁴⁵ Many state parties have even manipulated information to suit their political agenda. Sometimes, the states have refused to provide relevant data and update their information. Due to this challenge, there is a need to strengthen civil societies on the ground and place them at the centre of monitoring these

⁵⁴¹ Ibid.

⁵⁴² Yuval Shany, 'Stuck in a Moment in Time: The International Justiciability of Economic, Social and Cultural Rights' accessed from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=920753 on 1 October 2018.

⁵⁴³ 'Nine-Steps-States-Must-Take-against-Secret-Detention-Worldwide-June-1-2010', Human Rights Documents online.

⁵⁴⁴ [Ic J], *Human Rights from Below: Achieving Rights Through Community Development* (Cambridge: Cambridge University Press) 84

⁵⁴⁵ Miller MK, 'How Judges Decide Whether Social Parents Have Parental Rights: A Five-Factor Typology' (2011) 49 *Family Court Review* 72

rights. A strong civil society will be able to monitor governments more effectively and identify gaps in data and information on the implementation of economic and social rights.⁵⁴⁶

Finally, the justiciability of the social and economic rights would be virtually impossible without strong judicial and quasi-judicial mechanisms including courts, administrative bodies or agencies. In Nigeria and many parts of Africa, the judiciary and other institutions which purposedly implement the economic and social rights do not have the necessary orientation and capacity to hold state parties to account on their implementation of the economic and social rights. In many cases, the courts have often been susceptible to political interference making it very difficult for governments to be held to account in their human rights commitments. This shortcoming can be overcome by encouraging both national and international actors to build the capacity of local actors including courts to position them to hold state parties in their commitments to social and economic rights.⁵⁴⁷

One of the ways of improving the nation's economy is to translate economic growth into development by reducing poverty and creating jobs especially among youth as well as addressing the security challenges facing Nigeria. There is the urgent need to restructure the Federation to ensure a viable fiscal federalism. It is therefore suggested that for there to be real national development, Nigeria could consider going back to the regional structure, where regions generate revenue, create employment, develop their regions and contribute to the Federation at the centre.

To reduce the State of civil unrest and insecurity in the country, government should provide social security, such as quality health services and education in the Northern part of Nigeria, curtail environmental degradation in the Southern part of Nigeria and more inclusive policy for our brothers and sisters from the Eastern part of Nigeria. There is urgent need for greater inter-agency collaboration and cooperation in law enforcement, intelligence gathering and exchange for effective prevention and control of terrorism and terrorist financing as defined and criminalized by the most recent Anti-Terrorism and Money Laundering Acts 2011, the Terrorism Prevention Act 2015 and the Administration of Criminal Justice Act 2015. There is the need to promote good governance and prioritize investment in human security and human development in a sustainable manner. There is also the need to pursue vigorously the enhancement of the capacity (human, technical, material and financial) of criminal justice personnel through training, reform and re-organisation, information gathering and exchange, research analysis, and dissemination of information on terrorism and terrorist financing as well as proliferation of small arms and light weapons in West Africa.

⁵⁴⁶ Morphet S, 'Economic, Social and Cultural Rights: The Development of Governments' Views, 1941-88' [1992] *Economic, Social and Cultural Rights* 74.

⁵⁴⁷ Ellie Palmer, *Judicial Review, Socio-Economic Rights and the Human Rights Act* (Hart Publishing, 2007); Mark Tushnet, *Weak Courts, Strong Courts: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*, (Princeton University Press 2008). see the review of the two books by Keith D. Ewing in (2009) 7 *International Journal of Constitutional Law* 155.

Concluding Remarks

Economic rights⁵⁴⁸ and social justice⁵⁴⁹ are rights that are entrenched in the constitution of several countries that have experienced gross injustices and abuses of their fundamental⁵⁵⁰ and economic rights.⁵⁵¹ The consequences of such actions will persist, unless the state intervenes to correct these anomalies.⁵⁵² This is particularly the case where the perpetrators of such abuses continue to enjoy their loot and plunder unpunished⁵⁵³, and living close to their victims who live in abject poverty amidst plenty. This state of affairs could be classified to be totally contradictory⁵⁵⁴. As bridges and walls do not complement each other; neither do exclusion and inclusion policies enhance the other. The courts are the deal breakers empowered by the constitution to do justice⁵⁵⁵.

The need to internationally recognize political and socio-economic rights was included in the Universal Declaration of Human Rights in 1948,⁵⁵⁶ subsequently ratified by almost all United Nations member states. The developed countries became more interested in civil and political rights, while the less developed countries were more concerned with socio-economic rights. Eventually, the former rights were regarded as the primary human rights and the latter as secondary human right. The primary human rights (Bill of Rights) have been included in the constitutions of most of the states that drafted the constitutions of the newly independent states.⁵⁵⁷ Third world countries that failed to recognize these basic human rights have been declared failed states and economically sanctioned; in some instances the states were overthrown supported by foreign interventions.⁵⁵⁸ International institutions have also been set up to monitor and report gross abuses of political rights.⁵⁵⁹ Such abuses are reported to the Human Rights Council, and to the Security Council if necessary for remedial action. However, socio-economic rights and justice, also entrenched in the constitution of

⁵⁴⁸ Economic, social and cultural rights are socio-economic human rights, such as the right to education, right to housing, right to adequate standard of living, right to health and the right to science and culture.

⁵⁴⁹ Economic justice is a component of social justice. It is a set of moral principles for building economic institutions, the ultimate goal of which is to create an opportunity for each person to create a sufficient material foundation upon which to have a dignified, productive, and creative life.

⁵⁵⁰ UDHR Article 1-5

⁵⁵¹ South Africa under Apartheid rule.

⁵⁵² Current Constitutions of South Africa and Bangladesh included socio-economic rights in their respective Constitution, as a judiciable right.

⁵⁵³ In both South Africa and Zimbabwe the white community continues to enjoy the lands forcibly taken from the blacks with impunity.

⁵⁵⁴ Socio economic rights guaranteed under the Constitution, but the courts do not enforce the rights.

⁵⁵⁵ The Courts have the responsibility to interpret and justly enforce the law consistent with the Constitution.

⁵⁵⁶ Economic, social and cultural rights are enshrined in various international instruments, such as the 1948 Universal Declaration of Human Rights (arts. 22-27) and the 1966 International Covenant on Economic, Social and Cultural Rights.' Transitional Justice and Economic, Social and Cultural Rights, 2014 12 UNHR.

⁵⁵⁷ Socio-economic rights are, thus, housed in the modern constitutions like Bangladesh, India and South Africa along with the civil and political rights. But the question remains whether these pronouncements on the socio-economic rights are only lip-service or whether these are judicially enforceable human rights: Winkler, I, 'Judicial Enforcement of the Human Rights to Water-Case Law from South Africa, Argentina and India', 2008(1) Law, Social Justice and Global Development, 2.

⁵⁵⁸ In his book, *The Tyrannicide Brief*, Robertson Geoffrey explains how the trial of Charles I - the first trial of a head of state - was the precursor of modern proceedings against Augusto Pinochet, Slobodan Milosevic and Saddam Hussein. Robertson himself was involved in the cases against Pinochet and Hussein.

⁵⁵⁹ United Nations High Commissioner for Human Rights and Amnesty International.

many states did not attract the interest and concerns of the international community. Although the provision of such clauses are encouraged for inclusion in the constitutions of newly independent or liberated states, the enforcement of such laws are generally frowned at by the developed world, as it involves the redistribution of resources to correct economic and social inequities and injustices.

The court has an important and crucial role, as interpreters of the constitution and the law, to resolve any legal uncertainty on socio-economic rights. There is no ambiguity in interpreting rights given to citizens of a state, guaranteeing them the right to health, water, housing⁵⁶⁰, education, and a minimum living wage. The issues involved goes to the core of human decency, integrity and civilization. Instead, the judiciary has not done enough to uphold equity and justice, by constantly approbating and reprobating in its decisions on the subject matter. They argued that they have to be reasonable in the interpretation of this constitutional provision, as the states are hardly endowed with sufficient resource to honour its duty and obligations⁵⁶¹. The courts also failed to commit the states to a program of action to correct this anomaly⁵⁶². The court should demand from the state to provide annual budgetary allocation towards the fulfillment of its obligation, or to raise sufficient loans to kick-start a project meant to correct the problem⁵⁶³. Finally, the courts must, if necessary, resort to referring this matter to the people to vote on any option⁵⁶⁴. Let the population decide now, else civil turmoil is inevitable in the medium-term; that could be very costly economically with many loss of lives. The deprivation of these rights in any society affects the poor and the most vulnerable members of the society⁵⁶⁵. Justice delayed is justice denied.

⁵⁶⁰ In many cases the Indian Supreme Court fused socio-economic rights with civil and political rights and observed that a lack of financial resources does not excuse a failure to provide adequate services: J.A. Goldstone, 'Pathways go Failure', (2008) 25(4) Conflict Management and Peace Science 285-296.

⁵⁶¹ The reference to resource availability reflects the recognition that the realization of these rights can be hampered by a lack of resources. Equally, it means that a State's compliance with its obligation to take appropriate measures is assessed in the light of the resources—financial or otherwise—available to it.

⁵⁶² The case of *Dudley Lee* is utilised as a direct illustration of the interconnectedness between the state's duty to protect and the judicial enforcement of socio-economic rights in promoting state accountability. This article also highlights the judiciary's integral role in the pursuit of social justice, by maintaining an atmosphere of state accountability through positively interpreting Constitutional provisions. 'The interdependence between state accountability and socio-economic rights in South African prisons' Marc Roper, South African Journal on Human Rights Volume 32, 2016 - Issue 1

⁵⁶³ The State has an obligation to protect individuals from interference by third parties in the enjoyment of their rights. This obligation is generally of immediate effect. While the enjoyment of economic, social and cultural rights is subject to progressive realization, the obligation to fulfill also encompasses some immediate duties—including compliance with minimum core obligations, and the duty to take deliberate and targeted steps to realize the rights. Securing economic, social and cultural rights for vulnerable groups is a particularly important aspect of the obligation to fulfil. *Transitional Justice and Economic, Social and Cultural Rights*, HR/PUB/13/5 United Nations Publication 2014 17

⁵⁶⁴ Keep the socio-economic right as justiciable, subject it to specific conditions or remove from the Constitution.

⁵⁶⁵ The failure to realize economic, social and cultural rights as well as violations of these rights can be—and usually are—part of the root causes of conflict. Furthermore, the actions and omissions by States and non-State actors during conflict can also amount to violations of economic, social and cultural rights, and often have a particular impact on the most vulnerable. *Transitional Justice and Economic, Social and Cultural rights*, HR/PUB/13/5 United Nations Publication 2014 6