



UNIVERSITY OF IBADAN JOURNAL

OF

PRIVATE AND BUSINESS LAW

U.I.J.P.L.

Vol. 8 2013

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UNIVERSITY OF IBADAN

JOURNAL OF
PRIVATE AND BUSINESS LAW

Vol. 8 2013

Published by:

*Department of Private and Business Law
Faculty of Law,
University of Ibadan*

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ISSN 1595-2495

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EXAMINING THE LEGAL PROTECTION OF SOCIAL AND ECONOMIC RIGHTS OF CHILDREN IN NIGERIA

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Abstract

This paper begins with an examination of sociological conditions in Nigeria, followed by a review of the traditional arguments of the adoption of a rigid classification of social and economic rights which puts them, by definition into positive rights. It then examines the socio-economic rights obligated under the Convention on the Rights of the Child (CRC), African Charter on the Rights and Welfare of the Child (ACRWC) the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Social and Economic and Cultural Rights (IECSCR). The paper then examines and analyses the domestic frameworks for the implementation of social and economic rights of children. It argues that the government's refusal to consider social and economic rights as justiciable rights amounts to a deprivation of the safeguards obligated by the international treaties to which children in Nigeria are entitled. The paper discusses that the enforcement of social and economic rights depends both on the language of constitutional rights and the willingness of the judiciary to review the constitutionality of legal rules related to social rights. The paper illustrates that courts in some jurisdictions such as India and South Africa have found ways of protecting social rights either directly, through determining the minimum content of a right, or indirectly, through other rights that are justiciable. A comparative analysis with other jurisdictions is carried out to support this assertion. A comparative jurisprudence is instructive in order to guide the state, so that it can draw examples from other jurisdictions. While noting that in Nigeria there is a lack of a judicial tradition of enforcing social and economic rights, it demonstrates that judges in India and South Africa are generally receptive to injunctive and precautionary procedures in urgent socio-economic rights cases. The purpose of this paper is to develop a more precise understanding of the nature of the state's obligations concerning social and economic rights of children in Nigeria. The central outcome of the paper are twofold; first it sheds light on

the existing realities about the protection of socio-economic rights of children in Nigeria with the hope that at the end of the exposé a solution will be proffered that might be considered by future policy makers. Second, it shows the urgency for protection and provision of basic necessities of life for children. The paper concludes that the protection of social and economic rights of children in Nigeria is inadequate.

Introduction

A state's highest commitment to protection of the rights of its children is to enshrine the salient rights of the child such as rights to education, health and shelter and housing in its constitution, as an affirmation of strong commitment to protection of these rights. State parties under the international human rights instruments are responsible for creating conditions that support the full realisation of the social and economic rights of children in their respective countries. For the majority of children in Nigeria, social protection of basic necessities of life, such as education, shelter and primary health care remains a pipedream. The majority of children live in poverty, disease and are uneducated; they lack food and other basic necessities such as water. The realisation of socio-economic rights in Nigeria, even at a minimum level, remains poor. The central questions to be addressed in this paper are: What are the legislative measures in Nigeria for the implementation of the socio-economic rights as obligated under the Convention on the Rights of the Child (CRC) and the International Covenant on Economic Social and Cultural Rights (ICESCR)? What is the extent of commitment by the state in the implementation of these rights? Are there adequate resources for the implementation of these rights by the state? These questions will guide me in addressing the issues being investigated in this paper. The methodology adopted is through an approach based on international human rights standard, analysing the nature, scope and content and obligations of socio-economic rights under the international laws to reveal the extent of the compliance or denial by the state.

Sociological Situations of Nigeria

An examination of the socio-economic condition in Nigeria needs take into account the historical, economic and social characteristics of the State. Nigeria existed as a single territory dating back from 1914, obtaining her

independence in 1960. The Federal Republic of Nigeria is located on the West Coast of Africa. Nigeria is a federation, with 36 states and a Federal Capital Territory, Abuja. Nigeria is the most populous state in Africa with a population of 162.5 million people.¹ Total population of children below the age of 18 are 71,895,067 which is about 45% of the population.² GDP is approximately \$244 billion,³ GDP growth 7.3%,⁴ and inflation is 10.8%.⁵ The country is rich in petroleum and many other natural resources. Agriculture is the dominant means of livelihood, but is not the main source of public revenue. At the time of independence, agriculture remained the mainstay of the Nigerian economy, accounting for about 65% of the gross domestic product (GDP) and 70% of exports. It provided the foreign exchange used to import raw materials and capital goods.⁶ In the mid-1950s oil was discovered in commercial quantity in Nigeria and by the 1970s it constituted 90% of the foreign exchange earnings and about 85% of total exports. Nigeria became a major exporter of oil in the 1970s which resulted in the dramatic expansion of both the formal educational sector and other services such as health. The 1970's were the period of the oil boom in Nigeria. The economy expanded and with it came rapid growth and development of the social sectors such as education and health.

The downturn in oil revenue after 1979, combined with other factors such as political instability brought about gradual impoverishment during the two decades that followed. By the 1980s, major economic problems were encountered following the decline in revenue from petroleum products. The decline in the real gross domestic product in the

1 www.world-bank.org/en/country/Nigeria accessed on 24th January 2013. The statistics is as at 2011.

2 Nigeria Population Commission. NPopC- Median Variant Projections from 2006 Census

3 www.world-bank.org/en/country/Nigeria accessed on 24th January 2013. The statistics is as at 2011.

4 *ibid*

5 *ibid*

6 Ekpo, A. & Umo, O.(2000). 'An Overview of Economic Growth and Development. In: H.

Ajaegbu, B. St Matthew-Daniel & O. Uyop (eds) *Nigeria: A People United, a Future Assured*. Abuja: Federal Ministry of Information, (2000), pp.125-131.

1980s and 1990s was estimated to be 6%.⁷ By 1995, the value of the Naira had fallen from a US\$ ratio of 1:1 in 1985, to one of 85:1. Presently at the parallel market the naira exchanged at N169.59 for US\$1.00. The subsequent decline in national revenue from oil and other unfavourable economic conditions brought about high inflation, high unemployment, fiscal imbalance and an increase in external borrowing. This thus had a negative impact on the social sector as well. The resultant effect are; there began a decline in the country's revenue from oil and this brought about high inflation having a negative effect on the socio- economic condition of the populace the quality of life drastically fell, access to food, drinking water, health care and education which are fundamental to human freedom and dignity became unattainable to several especially children. Accountability wanes and corruption holds sway. In Nigeria, many children are denied essentials such as clean water, sanitation, free primary education and medical facilities. Lots of children are forced into dangerous and exploitative work, instead of being able to attend schools. Today, many children are homeless, dwelling in ramshackle dwellings and are highly vulnerable to disease and disaster.

History, Nature and Scope of Socio Economic Rights

Modern human rights terminology usually distinguishes three generations of human rights: the first generation is civil and political rights, the second generation is economic social and cultural rights and the third generation are solidarity or group rights.⁸ Since all human rights are interdependent, indivisible and interrelated, the theory of three generations does not, of course, imply any hierarchy or lower and higher stages in the development of human rights law.⁹

The foremost instrument to proclaim the protection of economic, social and cultural rights (ESC), was the Universal Declaration of Human Rights

7 Adesina, S. 'Education for Development', in: N.A. Nwangwu, (ed) *UPE: Issues, Prospects and Problems*, Benin, Ethiopie Publishing Corp, (1976), p.32

8 Nowak, M., 'The Right to Education in Economic, Social and Cultural Rights' in: A. Eide, C. Krause and A. Rosas (eds), *Economic, Social and Cultural Rights: A Textbook* (2nd edn, Nijhoff, 2001), 195

9 *ibid*

(UDHR),¹⁰ which incorporated a wide range of economic, social and cultural rights, without distinguishing them from the civil and political rights.¹¹ The UDHR was adopted by the General Assembly of the United Nations in Paris on 10 December 1948. It was accepted without a dissenting vote, and with few abstentions, by all member states of the UN at that time.¹² It proclaims a catalogue of human rights which apply to all human beings and therefore implicitly to children.¹³ Steiner described the UDHR as the Constitution of the entire human rights movement.¹⁴ However, this declaration is not a treaty and does not impose binding legal obligations. Arguments continue over the status of the UDHR in international law,¹⁵ because it was adopted by a resolution of the General Assembly, which does not have the power under the United Nations Charter to make binding decisions on matters other than its own administrative and financial businesses, there are conflicting opinions as to its precise legal status in international law.¹⁶ UDHR, contains the whole range of human rights within one consolidated text. It includes specific ESC rights (in articles 22-27).

The subsequent division of human rights into two main categories resulted from a controversial and contested decision made by the UN General Assembly in 1951, during the drafting of the International Bill of Human Rights.¹⁷ The General Assembly decided that two separate human

10 Universal Declaration of Human Rights. G.A. Res 217, UNGAOR 3rd Sess.Supp. No 127 at 71 UN Doc A/80 (1948).

11 Articles 3-21 protect civil and political rights and articles 22-28 protect economic and social rights.

12 Universal Declaration of Human Rights. G.A. Res 217, UNGAOR 3rd Sess.Supp. No 127 at UN Doc A/ 811 (1948).

13 Van Bueren, G., *The International Law on the Rights of the Child*, The Hague, Martinus Nijhoff, 1998 at 17.

¹⁴ Steiner, H., Alston P. & Goodman, R., *International Human Rights in Context-Law, Politics, Morals*, Oxford, at 136, (2007)

¹⁵ Mac Donald, A. *The Rights of the Child: Law and Practice*, Bristol, Jordan Publishing Ltd, (2011) p.18

¹⁶ Van Bueren, supra note 13.

17 Eide, A., 'Economic, Social and Cultural Rights as Human Rights' in A. Eide, C. Krause and A. Ross (eds), *Economic, Social and Cultural Rights: A Textbook* (2ndedn), Nijhoff, 2001) 22.

rights covenants should be prepared, one in civil and political rights and another on economic, social and cultural rights.¹⁸ On 16 December 1966, at its twenty first sessions the United Nations General Assembly, adopted by unanimous vote two international instruments supplementing the Universal Declaration of Human Rights, these were the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). These two human rights covenants, the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁹ and the International Covenant on Civil and Political Rights (ICCPR),²⁰ were the first legally binding international agreements. The International Covenant on Economic, Social and Cultural Rights (CESCR), incorporates economic, social and cultural rights. There are various arguments over the separation of these sets of rights; Vierdag's argument is that the two sets of rights are of a different nature and therefore needed different instruments. Civil and political rights were considered to be 'absolute' and 'immediate', whereas economic, social and cultural rights were held to be programmatic, to be realized gradually and therefore not a matter of rights.²¹ He states further that civil and political rights are 'justiciable' in the sense that they could easily be applied by courts and similar judicial bodies, whereas economic, social and cultural rights are of a more political nature.²² Beiter comments that most people reject state action which violates civil and political rights in no uncertain terms.²³ He points out that however people are much more tolerant when misery is the result of preventable denials of basic necessities of life such as shelter, education and primary health care.²⁴ For many decades, socio-

18 *ibid*

19 International Covenant on Economic, Social and Cultural Rights, Dec 16 (1966) 993 UNTS 3 (entered into force Jan 3, 1976)

20 International Covenant on Civil and Political Rights, Dec 16(1966) 999 UNTS.171 (entered into force on March 23, 1976)

21 Vierdag, E.W., 'The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights', *Netherlands Journal of International Law*, (1978), Vol. 9, p.103

22 *ibid*

23 Beiter, K, *The Protection of the Right to Education by International Law*, Leiden: Martinus Nijhoff (2003) p. 47.

24 *ibid*

economic rights have been relegated to the status of secondary rights. Civil and political rights are thought to be 'absolute' and 'immediate', whereas economic, social and cultural rights are held to be programmatic; to be realised gradually and therefore not to be 'real' rights.²⁵ Craston poses four requirements for rights to qualify as human rights: First, the right must be counterbalanced by a duty of the state, in effect it must be judicially enforceable, secondly, legislation must suffice to secure the right, thirdly, the right must be genuinely universal and lastly, the right must be of paramount importance.²⁶ Craston concludes that civil and political rights fulfil these requirements but socio economic rights do not.²⁷ On the requirement that a right must be universal, socio economic rights, such as those to food, shelter or education, must clearly be considered to be universal, as all people require these rights to be fulfilled.²⁸ For example, the right to basic education is of universal acceptance. Kitty Arambulo states further that many socio economic rights do, in fact, pass Cranston's test of paramount importance. " [T]he importance of the right to food, shelter and an adequate standard of health for the very existence of a human being bear evidence to this.."²⁹ The protection of ESC rights remains a contentious, difficult, and challenging matter. Indeed, it has been stated that there hardly exists another human rights treaty which has been more frequently misinterpreted, downplayed or intentionally abused' than the ICESCR.³⁰

25 Eide, A, 'Economic, Social and Cultural rights as Human Rights,' in A. Eide, C Krause & A Rosas (eds), *Economic social and cultural rights. A text book*, (2001), pp. 9 & 10.

26 Cranston, M., *What are Human Rights*, London: Bodley Head, (1973), 66.

27 *ibid*

28 Arambulo, K., *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and Procedural Aspects*, Antwerp: Intersentia, (1999), p 62

29 Arambulo, p.68

30 Simma, B., "The Implementation of the International Covenant of Economic, Social and Cultural Rights' in: F Matcher (ed), *The Implementation of Economic and Social Rights: National, International and Comparative Aspects*, (Engel, 1991), p 79

The Interdependence and Indivisibility of Human Rights

Civil and political rights cannot be enjoyed if socio economic rights are not realised at the same time, and vice versa. Hence, the two categories of rights are said to be interdependent. On the basis of the appreciation that civil and political rights and socio economic rights closely depend on each other, it has been argued that it does not make sense to accord civil and political rights human rights status and not socio economic rights.³¹ It is held that both civil and political rights and socio economic rights should be recognised as human rights and that equal attention and urgent consideration should be given to both groups of rights.³² So obligations under the socio economic rights should not be considered less important than obligations under civil and political rights. The notion of the interdependence and indivisibility of all human rights constitutes a fundamental principle in the protection of human rights within the framework of the UN.³³ It is implicit in the UDHR and has been reaffirmed in other subsequent UN documents. For example the CRC and the ACRWC incorporate both socio economic rights and civil and political rights. The notion of interdependence has prevailed, and is reflected in numerous international documents, for example the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights of 1987.³⁴ It states;

“As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and

31 Beiter, K.D., *The Protection of the Right to Education by International Law*, Martinus Nijhoff Publishers, Leiden, 2005,48

32 *ibid*.

33 On the notion that all human rights are interdependent and indivisible, see Arambulo, 1999, pp. 100-112

34 Limburg Principles; UN Doc. E/CN.4/1987/17). A group of distinguished experts in international law met in Maastricht the Netherlands on 2-6 June 1986 to consider the nature and scope of the obligations of states parties to the International Covenant on Economic, Social and Cultural Rights, the consideration of states parties' reports and international cooperation under Part IV of the Covenant. The participants agreed unanimously upon the following principles which they believe reflect the present state of international law. Limburg Principles is published in *Human Rights Quarterly*, Vol 9, 1987, pp 122-135.

*protection of civil and political, and economic, social and cultural rights”.*³⁵

Also Maastricht Guidelines on Violations of Economic, social and Cultural Rights” of 1997, prepared by experts on Economic, Social and Cultural Rights (ESCR), which states;

*“[It] is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights”.*³⁶

The implication is that treaty obligations concerning civil and political rights and socio economic rights should be treated on the same footing and with the same emphasis.

The recognition of the universality, interdependence and indivisibility of human rights is gaining ground internationally now. This was reiterated at the 1993 United Nations World Conference on Human Rights in Vienna where it was proclaimed that; *‘[all] human rights are universal, indivisible and interdependent and interrelated.’*³⁷ Along the same vein, the African Charter on Human and Peoples’ Rights (ACHPR)³⁸ recapped the universality of rights and recognises in its preamble that the *‘satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.’* Sadly, despite this assertion, this is not the practice in most African countries including Nigeria.

35 The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights of 1987 (UN Doc. E/CN.4/1987/17), para 3.

36 Para. 4 of the Maastricht Guidelines on Violations of Economic, social and Cultural Rights” of 1997

37 Vienna Declaration and Programme of Action’ (12 July 1993) UN Doc. A/CONF.157/23 art 5

38 Also known as the Banjul Charter (adopted 17 June 1981, entered into force 21 October 1986) OAU

Doc CAB/LEG/67/3 rev 5.

Legislative Measures of Domestic Implementation of Social and Economic Rights

The ICESCR and the CRC are the primary international treaties incorporating socio-economic rights considered in this paper. Nigeria has ratified several international and regional instruments that obligate implementation of social and economic rights.³⁹ The two main regional human rights conventions relevant in the African region are the African Charter on Human and People's Rights (ACHPR)⁴⁰ and the African Charter on the Rights and Welfare of the Child (ACRWC).⁴¹ On ratification of an instrument, it must be domesticated into the national law before it can be applicable.⁴²

The obligation to implement the CRC upon ratification by a State Party is clearly set out in Article 4:

State Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention...

There are various approaches to giving domestic legal effect to international instruments. The UN Committee has provided clear guidelines for implementation of the CRC by State Parties.⁴³ Although the Convention does not formally require State Parties to incorporate the provisions into domestic law, the UN Committee has recognised that such

39 Office of the High Commissioner of Human Rights, Status of ratification of the Convention on the Rights of the Child, available at <http://www.ohchr.org/english/law/crc-ratify.htm> (accessed on 12th August 2012).

40 *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <http://www.refworld.org/docid/3ae6b3630.html> [accessed 17 June 2011] [emphasis own]

41 *African Charter on the Rights and Welfare of the Child (ACRWC)* (1990), OAU/Doc/CAB/LEG/24.9/49(1990) entered into force Nov 29 1999, available at: <http://www.refworld.org/docid/3ae6b38c18.html> [accessed 17 June 2012] [emphasis own]

42 Art 4 Convention on the Rights of the Child.

43 Committee on the Rights of the Child, General Comment No.5, *General Measures of Implementation of the Convention on the Rights of the Child (art 4, para6)*, CRC 34th Session, UN Doc. CRC/GC/2003/5 (2003)

an approach is desirable in order to ensure that domestic legislation is compatible with the principles and provisions of the Convention.⁴⁴ Some of the various ways a State Party can give domestic legal effect to the treaties protecting children's social and economic rights are; ensuring legal effect of the instrument within the domestic legal system through constitutional reform,⁴⁵ or the incorporation of the provisions and principles of the treaty into legislation,⁴⁶ or by enacting consolidated children's rights statutes that emphasise the treaty's principles.⁴⁷ The municipal law of each state party states the permissible mode of incorporation of the treaty, and where this is not expressly stated it could be inferred from the type of legal system in operation in the country. Usually, common law countries adopt dualism while civil law countries are monist. Monism is associated with self-executing treaties, for which no domestic legislation is required to give it the force of law. No legislative action is needed; the official publication of the treaty is in the relevant government gazette. For example, in Senegal⁴⁸ treaties duly ratified have upon publication an authority superior to other municipal laws. Dualism on the other hand, is fundamentally different, under this theory, domestic law making (enabling legislation) is required to incorporate the international law into national law in order to domesticate it. This can be done either by amendment into existing laws or adoption of new domestic legislation in line with the treaty. For example, the preamble of the Kenya Children's Act⁴⁹ explicitly reaffirms that the Act is to give effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child for connected purposes.

44 Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (New York; UNICEF, 2002) at 65.

45 Article 43 Constitution of Kenya 2010

46 For example, the Nigerian government enacted the Child's Rights Act (CRA) in 2003 which is to give effect to the principles of the Convention on the Rights of the Child and the African Charter on the Right and Welfare of the Child. The CRA guarantees and protects the rights of children in Nigeria.

47 The Children's Act of Ghana (1998) Laws of Ghana states it is an Act to consolidate the laws relating to children Children's Act in its preamble

48 Art. 79 Constitution of Senegal

49 Children's Act 2001 Laws of Kenya

Legal Framework for the Protection of Economic, Social and Cultural Rights of Children in Nigeria

The legal framework of protection of economic, social and cultural rights in Nigeria derives from the universal and regional levels and filters down to the domestic level. The laws on economic and social rights of children in Nigeria are the Constitution and the Child's Rights Act (CRA).

Recognition of Children in the Nigerian Constitution

Nigerian constitution does not contain provisions dealing with children. In the Constitution, laws on matters pertaining to children are not listed on either the exclusive or the concurrent list; it is therefore in the residual list, which is to be legislated on by the states' legislatures. Children are classified for legislation under the residual matter which is legislated by the states.⁵⁰ The implication is that the various states can adopt or refuse to adopt any law enacted at the national level on children. Even all the on-going debate leading to the proposed amendment of the constitution, none has addressed the inclusion of children's rights in the on-going constitutional review. Therefore since the constitution is silent on the rights of children, it makes it difficult to use the constitution to challenge the violation of children's rights. The assumption may be that children are also recognised as persons under the constitution. It is true that children technically possess the same rights as adults, but the protection those supposed rights afford differs from those enjoyed by adults. A child may possess a constitutional right of lesser magnitude than an adult possess. Houlgate explains that what is meant by the phrase "right of a lesser magnitude" is that the scope of the right may be smaller for the child than for adults.⁵¹ For example, children's right to privacy and liberty requires parental supervision.⁵² In other words, a child can have a constitutional right, but he is at the same time regarded as a subject to the custody and control of his parents and the state.⁵³ Depending on the circumstance, there might be the need to postpone a child's exercising some of his

50 Section 4 and 2nd Schedule, Parts I and II.

51 Houlgate, Laurence, 'Three Concepts of children's Constitutional Rights Reflection on the Enjoyment Theory', 2 U.Pa.J.Const.L.77 (1999-2000), 81

52 *ibid*

53 *ibid*

constitutional rights when it is thought that there is a substantial risk by his exercising of those rights. Many states have incorporated sections on children's rights into their national constitutions, for example in the South African constitution; children are given a set of specially defined rights. In the 1996 Constitution of South Africa some of the provisions in the Bill of Rights have also been classified as socio-economic rights. These include section 28 which provides for children's rights and section 35(2) (e) which guarantees the right of detained persons to be provided with adequate accommodation, nutrition, reading material and medical treatment. Section 26(1) provides for the right of access to adequate housing while section 27(1) provides for the right of access to health care services; sufficient food and water; and social security. These are all socio-economic rights. Similarly, section 53 of the Constitution of Kenya lists out sets of right under the heading 'children' among the key provisions entrenched in the Kenyan Constitution is a comprehensive Bill of Rights which encompasses civil, political, economic, social and cultural and group rights. Of key relevance is article 53 1(b) which provided for free and compulsory basic education as a human right to every Kenyan child.⁵⁴ Also article 43(1) (f) of the Constitution, provides for the right to education. Children's rights in constitutions will provide a means for enforcement. Constitutional recognition of children's rights can be an invaluable springboard to launch a concerted effort to change legal policy and framework in protecting the rights of children by nations. It is important that children and their rights are included in countries' constitution because children are peculiar group of persons for constitutional analysis; they must be safeguarded from abuses. Therefore a state's highest commitment to protection of the rights of its children is to enshrine the social and economic rights of the child, such as rights to education, health and shelter and housing in its constitution, as an affirmation of strong commitment to protection of these rights.

Economic and Social Rights in Nigeria's Constitution

Human Rights were incorporated into Nigeria's Independence Constitution of 1960, following the Report of the Commission appointed to inquire into

54 Article 53 (1)(b) 2010 Constitution of Kenya

the fears of minorities and the means of allaying them.⁵⁵ It took Nigeria's 1979 Constitution to accord social and economic rights constitutional recognition for the first time. Even then, they were mostly recognized as non-justiciable Fundamental Objectives and Directive Principles of State Policy in Chapter II of the Constitution. This arrangement was repeated in Nigeria's current 1999 Constitution. Chapter II of Nigeria's Constitution contains provisions relating to economic and political equity, rights to economic activity, adequate shelter, welfare rights, access to health and medical care, social justice, access to education, and the environment.⁵⁶ In addition, Chapter IV of Nigeria's Constitution contains an enforceable Bill of Rights. The rights guaranteed in this chapter fall into the category generally described as civil and political rights, including the rights to life, liberty, dignity, fair trial, free expression, association, assembly, freedom, from discrimination, and the prohibition of torture. Economic, social and cultural rights are covered generally by Chapter II of the 1990 Constitution. Chapter II is titled 'Fundamental Objectives and Directive Principles of State Policy'. Notwithstanding the aspirational form in which the provisions are cast, the Constitution provides expressly that provisions in Chapter II are not justiciable. Judicial authorities have therefore declined to apply or enforce any of the principles in Chapter II directly, save where they are incorporated in legislative or executive action. Whereas, Section 13 of the Constitution provides that : *"It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution"*. This is in my interpretation means that all organs of the state, including the legislature, executive and judiciary are obliged to take cognisance of, observe and apply the Fundamental Objectives and Directive Principles of State Policy. Sadly, Nigerian courts have held that they are precluded by section 6(6)(c) of the constitution from enforcing the provisions of chapter II, including social and economic rights. For example, the court was reluctant to hear cases on right to education as with other social and

55 The Commission was chaired by Sir Henry Willink, a colonial officer, and its report is better known as the Willink Commission Report [1959]

56 Sections 15-18 & 20, Constitution of the Federal Republic of Nigeria 1999.

economic rights.⁵⁷ Judicial attitude to litigation on these rights is characterised by great caution and passivity.⁵⁸ This was manifested by the Court of Appeal in *Archbishop Anthony Okogie &ors v The Attorney-General of Lagos State*.⁵⁹ Justice Mamman Nassir stated thus;

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."

He concluded that the arbiter for any breach of and guardian of the fundamental objectives '...is the legislature itself or the electorate.'⁶⁰ With such a pronouncement, the judiciary in Nigeria has disabled itself from considering the justifiability of the right to education through this self-imposed constraint. Nigerian courts are more favourably disposed to the enforcement of civil and political rights than to economic and social rights. There is dearth of jurisprudence on social and economic rights of children in Nigeria because of the constitutional provision which has ousted the courts' jurisdiction.⁶¹

It is true that directive principles do not give legal strength to substantive equality as fundamental rights, nor do they meet the argument of judicial interference upon the political process, but it sets out societal goals in a fashion which should encourage the judiciary to engage in review of legislature and executive action, though this will require a bold judiciary to vest these principles legal significance. The record of Indian

57 *Archbishop Anthony Okogie &ors v The Attorney- General of Lagos State*, (1981), 2 *NCLR*,.350

58 Ibe, S. 'Beyond justiciability: Realising the Promise of socio-economic rights in Nigeria', 7 *African. Human. Rights. Law .Journal*, (2007) 225 at.241.

59 *Archbishop Okogie & ors V A.G. Lagos State supra*

60 *ibid*

61 S.6(6)(c) 1999 Nigeria Constitution

courts reveals this. In a case before the Supreme Court of India,⁶² the Court reaffirmed that the fundamental right to life under Article 21 of the Indian Constitution includes the right to live with human dignity and all that goes along with it. In the view of the Court, the right to education flows directly from the right to life. The life and dignity of an individual cannot be assured unless they are accompanied by the right to education. Consequently, the state government is under an obligation to endeavour to provide educational facilities at all levels to its citizens. In the Indian Constitution, the right to education was not a justiciable right; it was included in the Directive Principle of State Policy contained in Chapter IV of the Constitution (Articles 41 and 45). It was thus not part of the fundamental rights included in Chapter III. However, the Court argued that these Principles had to be read into fundamental rights. Both are complementary to each other: 'without making the right to education under Article 41 of the Constitution a reality, the fundamental rights under Chapter III shall remain beyond the reach of the large majority which is illiterate'.⁶³ In the *Mohini Jain*, case⁶⁴ the Court held that the right to education was implicit in the fundamental right to life. This broad interpretation by the Court of the right to life, in combination with the key importance of education as a fundamental right for living a life in dignity, led to a constitutional amendment.⁶⁵ As a result, in 2002, a new article was included in the Constitution making the right to free and compulsory education for children aged between 6 and 14 a fundamental right under Chapter III of the Constitution. The Indian experience is instructive because it provides nascent factual support for the contention that the judiciary both can and should seek to protect social rights which have consistently been welcomed by human rights proponents. The Court's activist approach in this area and its effective re-characterisation of the right to education as a fundamental right, despite the arguably clear contrary intent of the drafters of the Constitution, it must be asked whether such a powerful judicial reinterpretation could be achieved in any

62 Unni Krishnan J.P. v State of Andhra Pradesh, AIR 1993 SC 2178.

63 *ibid*

64 *Mohini Jain v State of Karnataka*, AIR 1992 SC 1858

65 *Mohini Jain v State of Karnataka*, AIR 1992 SC 1858; *Unni Krishnan J.P. v State of Andhra Pradesh*, AIR 1993 SC 2178.

other constitutional system. Suffices to say, the right to life, includes the right to a livelihood, the basic necessities of life such as adequate nutrition, clothing, reading facilities and the rights to shelter, health and education as concluded by the Indian Courts.

Certain noteworthy cases involving socio-economic rights have come before the South African courts, particularly the Constitutional Court. These are: *Soobramoney v. Minister of Health, KwaZulu-Natal*,⁶⁶ *Government of the Republic of South Africa v. Grootboom*,⁶⁷ and *Minister of Health and Others v. Treatment Action Campaign and Others*,⁶⁸ In *Grootboom*, a group of adults and children had been rendered homeless as a result of eviction from their informal dwellings situated on private land earmarked for low cost housing. They applied for an order directing the local government to provide them with temporary shelter, adequate basic nutrition, health care and other social services. The Constitutional Court held that the state had failed to meet the obligations placed on it by section 26 and declared that the state's housing programme was inconsistent with section 26(1) of the Constitution. In the *Treatment Action Campaign Case* (sometimes referred to as *TAC case*) the TAC, a non-governmental organisation, in a bid to force government to provide antiretroviral drugs under the public health care system, specifically demanded that nevirapine, a drug that could reduce by half the rate of HIV transmission from mothers to babies, be freely distributed to women infected with the virus. The Court held that the government's policy and measures to prevent mother-to-child transmission of HIV at birth fell short of compliance with section 27(1) and (2) of the Constitution and ordered the state to provide the required medication and remedy its programme. It is apparent from these cases discussed above that in South Africa, the Constitutional Court, played an important role in the judicial enforcement of socio-economic rights in South Africa.

Another effective way of challenging a violation of the social and economic right of the child before the court is through international, regional or sub-regional courts. Here court can invoke the provisions of

66 *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC);

67 *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC)

68 *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (5) SA 703 (CC)

international human rights law. For example, in the case before the Economic Community of West African States (ECOWAS) Court,⁶⁹ *SERAP v. Nigeria & UBE*,⁷⁰ issues raised are:

- a) whether ECOWAS court has jurisdiction.
- b) whether the right to education is justiciable and can be litigated before ECOWAS court.

On issue of jurisdiction, it was stated that article 9 (4) of the supplementary protocol clearly asserts jurisdiction to the ECOWAS court because it gives the court the power to adjudicate over applications concerning the violation of human rights that occur in member states of ECOWAS.⁷¹ Also, the fact that Nigeria is a signatory to the ACHPR which has been domesticated; it therefore cannot oust the jurisdiction of the ECOWAS court. The rights guaranteed in the ACHPR are justiciable before the ECOWAS courts. Although the plaintiff's application was based on the right to education (which is a social and economic right) within the provision of the ACHPR and not the Nigerian Constitution which groups right to education under directive principle of state policy, making it not justiciable. The ECOWAS court's decision that economic and social rights are justiciable by the court has brought hope for lots of Nigerian children who are denied the right to challenge violation of their social and economic rights. It has also opened floodgate to other ECOWAS states' citizens to challenge enforcement of their social and economic rights even when these rights are in the Directive Principles of State Policy of the country's constitution. Unfortunately in most African nations including

69 ECOWAS was established in 28 May 1975 and comprises 15 member states: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. Article 15 of the Treaty of ECOWAS provided for the establishment of the Community Court of Justice. The CCJ has, among other competencies, the jurisdiction to hear human rights cases based on general principles of international and regional human rights law article 9 (4) of the supplementary protocol (supplementary protocol A/SP.1/01/05). The judgments of the court are binding on member states.

70 *SERAP v. Nigeria*, Judgment, ECW/CCJ/APP/12/07; ECW/CCJ/JUD/07/10 (ECOWAS, Nov. 30, 2010).

71 See Article 15(4) of the ECOWAS Treaty & article 19(2) of the 1991 protocol.

Nigeria, there is no guarantee of enforcement or compliance, especially in cases where the decision affects the assets of government. Follow up to public law decisions leads nowhere. Compliance trails do not exist, and many court decisions do not seem to produce desired or, indeed, any policy consequences.⁷²

Judicial enforcement of human rights is fundamental; this is obligated in various instruments. According to Article 8 of the Universal Declaration of Human Rights, *'Everyone has a right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.'*⁷³ In its General Comment No 9 (1998), on the domestic application of the Covenant, the UN Committee on Economic, Social and Cultural Rights considered that,

*"...appropriate means of redress or remedies, must be available to any aggrieved individual or group and appropriate means of ensuring government accountability must be put in place."*⁷⁴

It is generally accepted that domestic law should be interpreted as far as possible in a way which conforms to a State's international legal obligations. Thus, when a domestic decision maker is faced with a choice between an interpretation of domestic law that would place the State in breach of the treaties it has ratified and one that would enable the State to comply with the Covenant, international law requires the choice of the latter.

Child's Rights Act 2003

The enactment of the Child's Rights Act 2003 (CRA) which is the national legislation which protects the rights of children in Nigeria is an indication

72 Odinkalu, Chidi, "The Impact of economic and social rights in Nigeria: An assessment of the legal framework for implementing education and health as a human rights", Gauri, V & Brinks, D eds, in; *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in Developing World*, Cambridge University Press, (2008), 182 at 198.

73 Universal Declaration of Human Rights Article 8, G.A. Res. 217A (III) (10 Dec. 1948).

74 General Comment No 9: *The Domestic Application of the Covenant*, U.N.ESCOR, 19th Sess, at para. 2, U.N.Doc. E/C.12/1998/24, CESCR

of Nigeria's attempt to fulfil its obligation under the UN Child's Rights Act (CRC)⁷⁵ and the African Charter on the Rights and Welfare of the Child (ACRWC)⁷⁶ by domesticating these two treaties which specifically protect the rights of children.⁷⁷

The CRC Committee has provided clear guidelines for implementation of the CRC by State Parties.⁷⁸ Although the Convention does not formally require State Parties to incorporate the provisions into domestic law, the CRC Committee has recognised that such an approach is desirable in order to ensure that domestic legislation is compatible with the principles and provisions of the Convention.⁷⁹ Nigeria having ratified the CRC,⁸⁰ thereby agree to 'respect and ensure' the children's rights set forth therein.⁸¹ Nigeria thereby committed itself to conform its legislation, and administrative practice to the requirement contained in the CRC.

The CRA incorporates the social and economic rights of the child in Nigeria. However, the enactment does not obviate the need to for the rights of children to be in the proposed new Constitution. Social and economic rights such as right to health and education currently provided for in the Children's Rights Act 2003 but not in the central body of

75Convention on the Right of the Child opened for signature 20 November 1989, 1588 UNTS 530 (entered into force 3rd January 1980) available at: <http://www.refworld.org/docid/3ae6b38c18.html> [accessed 17 October 2012] [emphasis own]

76African Charter on the Rights and Welfare of the Child (ACRWC) (1990), OAU/Doc/CAB/LEG/24.9/49(1990) entered into force Nov 29 1999, available at: <http://www.refworld.org/docid/3ae6b38c18.html> [accessed 17 October 2011].

77Art 26 Vienna Convention

78 Committee on the Rights of the Child, General Comment No.5, General Measures of Implementation of the Convention on the Rights of the Child (art 4, para6), CRC 34th Session, UN Doc. CRC/GC/2003/5 (2003)

79 Hodgkin, Rachel and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (New York; UNICEF, 2002) at 65.

80 Nigeria ratified CRC on 19 April 1991. See Office of the High Commissioner of Human Rights, Status of ratification of the Convention on the Rights of the Child, available at <http://www.ohchr.org/english/law/crc-ratify.htm> (accessed on 12th August 2012).

81 Art 26 Vienna Convention

legislation governing social and economic rights in Nigeria; the Constitution. The economic social rights provisions under the Nigerian Child's Right Act 2003 cannot be enforced, because the Constitution which is the supreme law in the state and all laws must conform to it. The Constitution has placed these sets of rights under the fundamental objectives and directive principle of state policy and the jurisdiction of the court has been ousted in respect of such matters, thereby an aggrieved party cannot go to the domestic courts for remedy when any of such rights have been infringed. The passing of the law is just the first part of the process. The second part which is implementation requires a lot of orchestrated change. Words on paper alone do little justice to the aspirations inherent in these documents: the rights they contain must be humanised.

Resource Limitations as Impediment to Implementing Children's Economic and Social Rights in Nigeria

The main sources of funds that the Nigerian government has are federal taxes and duties on petroleum, profits, imports and exports, which form the revenue of the Federation Account, and the centrally collected value added tax (VAT) which was introduced in 1976.⁸² The government claims that there are limited funds to implement social services by the state. Where resources are scarce, under such circumstances, as much as possible the state needs to increase the budgetary allocation to ensure there is access to quality education, health care delivery that envisages free availability of services (free of charge), for all children. Presently, in the national budget, social services have consistently received poor budgetary allocations when compared with other sectors. Budgetary allocations frequently show that military expenditure exceeds the allocation for education or health, and debts repayments exceed investment in development. Discussions about budgetary allocations are without doubt accompanied by switch in the topic to corruption in the government. If it is said that the country is poor, the same cannot be said for certain few individuals in the government. As a consequence of the massive misappropriation of national resources, social services in the

82 Hinchliffe, K., *Public expenditure on education in Nigeria: issues, estimates and some implications* Abuja, World Bank, 1989

nation are neglected or underfunded.⁸³ Thus; even where the available resources are demonstrably inadequate, the obligation remains for a state party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.⁸⁴

Truly, the full realisation of social and economic rights cannot be achieved overnight as sufficient resources may not be available. But the U. N. Committee on Economic, Social and Cultural Rights has rejected the notion that the implementation of these rights may be deferred indefinitely. The Committee has stated:

*... while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.*⁸⁵

Also the interpretative guidelines of The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights under Article 13, states in its Principle 21 that;

The obligation "to achieve progressively the full realization of the rights" requires States Parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.

83 See Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr S.J.Sorabjee, United Nations (UN) DocE/CN.4/1999/36.pp.60-62.

84 Craven ,M., The International Covenant on Economic, Social and Cultural Rights, Oxford, Clarendon Press, 1995 p138.

85 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, para 2, available at: <http://www.refworld.org/docid/4538838e10.html> [accessed 26 December 2012]

Any deliberately retrogressive measure would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources'.⁸⁶ Therefore the need for the effective and expeditious realisation of social and economic rights has been affirmed internationally. Where resources are scarce, under such circumstances, as much as possible the State needs to increase the budgetary allocation to ensure there is access to quality education, health care delivery that envisages free availability of services (free of charge), for all children. Both the Convention on the Rights of the Child⁸⁷ and the International Covenant on Economic, Social and Cultural Rights,⁸⁸ require that States undertake all appropriate legislative, administrative and other measures to the maximum extent of their available resources for the implementation of education rights. The committees of CRC and ICESCR have both argued that;

*"...even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of relevant rights under prevailing circumstances."*⁸⁹

State parties need to develop strategic plans for the progressive realization of educational rights that include a time frame for the introduction of measures to enable the enjoyment of social and economic rights by children in Nigeria. For example, extending access to both primary and secondary education; ensuring that children live in safe environment and enjoy the best attainable health services. If States fail to meet minimum core obligations, such as universal access to free, compulsory primary education, they are required to demonstrate that every effort has been

86 UNCESCR, General Comment No. 3 (1990), available at: <http://www.unhcr.ch/tbs/doc.nsf> (last visited 10 March 2007). On retrogressive measures, see also ICJ Report, above n. 5, at 29-32

87 Article 4 CRC

88 Articles 2 and 13 ICESCR

89 General Comment No. 5 Committee on the Rights of the Child, CRC/GC/2003/527, November 2003, para. 8.

General Comment No. 3 of Committee on Social, Economic and Cultural Rights, 14/12/90, 1990, para. 10.

made to use all resources available to satisfy as a matter of priority those minimum obligations.⁹⁰

No doubt, there will always be fiscal constraints, but it is possible to manoeuvre to better allocate resources. CESCR explained at length that nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant, this should not be misinterpreted as depriving the obligation of all meaningful content.⁹¹ It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified.⁹² Accordingly, theoretically, the right must be protected and enforced. States' parties have immediate obligations in relation to the right to education.⁹³ Progressive realization means that States parties have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full realization of Article 13".⁹⁴ Kumar points out that it is possible that the standard of progressive realisation may be used by States to claim a lack of resources as the reason for not meeting the obligations relating to the right to education.⁹⁵ Arambulo along the same vein argues that progressively achieving the realisation of these rights should not be considered to mean that States have the right to defer indefinitely efforts to ensure full realization.⁹⁶ To ensure that does not happen, a number of restrictions

90 Committee on Economic, Social and Cultural Rights, *'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights'*, E/C.12/2001/15, December 2001, para. 12.

91 CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant) 14 December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.html> [accessed 18 August 2012], para 9

92 *ibid*

93 CESCR General Comment 13 para 42

94 *ibid* para 44

95 Kumar, Rāj., 'International Human Rights Perspectives on the Fundamental Right to Education-Integration of Human Rights and Human Development in the Indian Constitution', 12 *Tulane. J. Int'l & Comp. Law*, Vol 12 (2004) 237 at 250

96 Arambulo, K., 'Giving Meaning to Economic, Social and Cultural Rights: A Continuing Struggle', *Human Rights and Human Welfare*, Vol3-2003 p122

have been imposed on progressive realization, both through the language of the ICESCR and its following interpretation.⁹⁷ The problem of non-enforcement of the right to education can be overcome by referring to the concept of "minimum core content" in economic, social, and cultural rights. The Committee on Economic, Social and Cultural Rights (CESCR) has established that there is a "minimum core content" with regard to each economic, social, and cultural right which all State parties have obligations to fulfil.⁹⁸ Accordingly, States Parties are under a continuous obligation to report on the measures taken under existing plans of action, improve such plans and, to that effect, set appropriate indicators and benchmarks in their periodic reports to the Committee. In its concluding observation to Nigeria's report submitted to the Committee of the CRC, the Committee recommends that the State party should ensure effective implementation of the National Plan of Action on CRC/CRA 2009-2015, including by designing and implementing a cost plan with clear indicators and allocating adequate financial and human resources for its operationalisation.⁹⁹

The international community can also be a major contributor to the realization of the social and economic rights of children. Government funding is often complemented by inputs from external partners. Hence, there is the need for partnership participation with Development Partners, such as the World Bank, IMF, UNDP, UNICEF, UNESCO and the organised private sector, non-government agencies as well as other philanthropic organizations and individuals. Financing education, health services and other social services, appears to have become a heavy burden on government and thus requires participation from other stakeholders.

Article 4 of the CRC places obligation on the state as follows;

[...] With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum

97 *ibid*

98 CESCR, *General Comment No. 3*: The Nature of States Parties' Obligations U.N. Doc. E/1991/23 (1991) para 10.

99 Concluding observations: Nigeria, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, CRC/C/NGA/CO/3-4, 21 June 2010, para 71

extent of their available resources and, where needed, within the framework of international co-operation.

Similarly, Article 2 of ICESCR obligates State parties as follows;

'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'.

Also, in the General Comment No 11 of the CESCR, the Committee calls upon the relevant international agencies to assist States parties to the greatest extent possible to meet their obligations on an urgent basis.¹⁰⁰ Among their more financially significant projects in Nigeria in recent years is UNESCO's technical support for the Education Sector Analysis in 2000-2003 (costing about US\$1.2 million) that is funded by Japan. Others include UNICEF's support for school learning and girl's education over the same period (US\$3 million), and the DFID-funded Community Education Project of 1997-2002 (US\$5 million). Both DFID and USAID have assigned significant sums for education in the coming years. The Japanese Embassy in Nigeria expended US\$467,337 between 1999 and 2002 in supporting basic education through its grassroots aid for the renovation of primary school buildings in different parts of the country. In Nigeria, the critical international donors in supporting the education sector have largely been the World Bank, DFID, USAID, JICA, UNESCO, and UNICEF.

Political Will and Commitment

One of the most important prerequisites in realizing rights, especially those related to such global public goods as education, health or water and sanitation, is the presence of firm in-country political will and commitment. Government should make firm political commitments and

100 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), 10 May 1999, E/1992/23, available at: <http://www.refworld.org/docid/4538838c0.html> [accessed 6 June 2011]

allocate sufficient resources to all components of basic education. An absolutely essential step to meeting the state's obligation to all children in the country will require increasing the share of national income and budgets allocated to education and, within that, to basic education, balanced by reduced allocations to sectors of lower development priority. Resources have to be used with much greater efficiency and integrity. From the Concluding observation on Nigeria after consideration of its submitted report on 11th June 2010, the Committee on the rights of the child welcomed the positive developments related to the implementation of the Convention, such as: the adoption of legislation enacting the Child's Rights Act 2003 in twenty four states of the federation. The adoption of policies and strategies aimed at strengthening the implementation of the Convention, including: The National Child Policy and National Child Health Policy 2007. The National Plan of Action on CRC/CRA (2009-2015) of 2008. The National Plan of Action on Orphans and Vulnerable Children (2006-2010) of 2007. No doubt good policy formulations exist on paper but are not translated into action. Real decisions at the stage of implementation are taken at the time of preparation of action plans and projects or during budget allocations. Though the policy based approach is a provision of basic needs strategy but the social policies and institutions set up by legislation are inadequately resourced to achieve their objectives. The effect is that the policies put in place have not had the impact envisaged on the issues it seeks to address. All the listed policies have no legal enforcement mechanism. Corruption is a major drain on the effective use of resources for health and education of children and therefore should be drastically curbed. Access to the courts can be an effective means of challenging the acts of corrupt government officials. 101 Legal mechanisms are not the only means of achieving accountability. Others include: Transparency through ensuring that people understand what resources are being provided to support the social and economic rights of the children Information – rights are meaningless unless people are aware that they exist and that governments have obligations with regard to their implementation. There should be accountability for all the government's actions as regards implementing these rights.

101 SERAP case supra

Recommendation and Conclusion

As analysed in this paper, Nigeria has not effectively protected the socio-economic rights of its children as required by relevant international instruments to which it is a State party. It was further revealed that Nigeria has not effected the implementation of the National Plan of Action which 'puts children first as a state policy' and which emphasises health, education, and protection of children.¹⁰² This is a mandatory and continuous requirement and not subject to progressive realisation.¹⁰³ This clearly indicates a gap between the practice and Nigeria's obligation under the ICESCR. The paper has tried to show that it is not impossible to develop standards for adjudication of ESC rights as this has been done by courts and judges in certain jurisdictions who, through innovative conceptual approaches, consider different aspects of ESC rights as justiciable.¹⁰⁴ Judges must give meaning to, and apply, the relevant provisions of the Constitution in the context of the conditions prevailing in our society and the transformative goals of the constitution. This will relieve the burden on poor communities and thus enhance the achievement of dignity, equality and freedom of the populace especially the children.

Corruption and the associated lack of transparency and accountability have been obstacles to the adequate funding of implementing socio-economic rights especially of children. With no effective restraints on government officials' behaviour, corruption has remained widespread. In order to bring an end to corruption, there should be a 'zero tolerance to corruption'; policy with transparency and accountability on the part of the government must be adopted. Using judicial powers to protect people who have stolen public funds, then the court should similarly use judicial power in activist way to protect and defend the vulnerable which includes the children. In conclusion, Nigeria should resolve to invest in today's children, so that tomorrow they can stand strong as citizens, political leaders, entrepreneurs, and professionals as this will secure their rights and our common future.

¹⁰² Concluding observations: Nigeria, CRC/C/NGA/CO/3-4 21 June 2010, para 12.

¹⁰³ *Ibid* para 13

¹⁰⁴ *Minister of Health and Others v Treatment Action Campaign and Others (TAC Case)* (CCT9/02) [2002] ZACC 16; 2002 (5) SA 703; 2002 (10) BCLR 1075 (5 July 2002) see also; *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC). *Grootboom* 2001 (1) SA 46 (CC).