

U16303823

Critique of socio-economic rights provisions under chapter two of Nigerian Constitution and their non-justiciability

BY

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**SUBMITTED IN FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE
(LLM)**

**IN THE FACULTY OF LAW,
CENTRE FOR HUMAN RIGHTS
UNIVERSITY OF PRETORIA**

2017 JUNE

SUPERVISOR: PROF MICHELO HANSUNGULE

Acknowledgements

The expression of my profound gratitude is given to the Almighty God for his grace and mercy that enabled me to write this mini-dissertation without any problems. The wisdom from God to articulate the thoughts and organize this work is hereby acknowledged greatly. I am undeniably grateful to my erudite professor and supervisor, Prof Michelo Hansungule of the Centre for Human Rights, University of Pretoria, South Africa for his immense guidance and prompt intervention in all the aspects of my research: I adjudge myself to be privileged to stand on the shoulder of such an academic giant. I quite appreciate the meticulous nature of Prof Frans Viljoen in correcting and insisting on qualitative and well-articulated work during my multi-disciplinary module which shaped me for this research work.

I acknowledge the encouragement and support of Dr. Cristiano D'orsi during my LLM program at Centre for Human Rights, UP and Thembisa Dodo a kind-hearted lady who helped in many ways to make sure that I finalized necessary steps to pursue my LLM course work at University of Pretoria.

Am seriously indebted to Mr. Victor Ayeni (Doctoral Fellow and Research Associate Human Rights Law Implementation Project Centre for Human Rights University of Pretoria, South Africa), you are one of a kind and eagle-eyed in editing this dissertation. Thanks for your contributions and corrections that enriched this work. I deeply appreciate the time and labour you exacted to see this research through the finishing line.

My gratitude goes to Prince Pius Imiera whose encouragement and motivation led to this level in my academic pursuit. I can't write the story of my life completely

without acknowledging your input in numerous ways in my life.

I lack words to adequately convey the depth of my gratitude to my loving wife, sister and friend, my Best Gift, Mrs. Odion Josephine Ezechukwu for her love, care, encouragement, motivation, patience, tolerance, and understanding at all times. You are a rare breed. To the entire Ezechukwu family, my sons, Chijioke Peniel and Miracle Chukwuebuka Ezechukwu, my brother, Mr. Francis Ezechukwu and my sweet mother, Mrs. Avuloba Ezechukwu of the blessed memory, I say thank you all for all your prayers and may God bless you.

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Dedication

I dedicate this mini-dissertation to the Almighty God

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TABLE OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AHRLJ	African Human Rights Law Journal
AHRLR	African Human Rights Law Reports
CESCR	International Covenant on Economic, Social, and Cultural Rights
CCPR	International Covenant on Civil and Political Rights
DPSP	Directive Principle of State Policy
ECOSOC	Economic and Social Council
ESCR	Economic, Social, and Cultural Rights
HRC	Human Rights Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
ICEAFRD	International Covenant on Elimination of All Racial Discrimination
DSPD	Declaration on Social Progress and Development
CEDAW	Convention on the Elimination of All Forms of Discriminations Against Women
CRC	Convention on the Rights of the Child
ICPRMWMF	International Convention on the Protection of the Rights of Migrant Workers and Members of their Families
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
CCPR	Committee on Civil and Political Rights

CEDAW	Committee on Elimination of Discrimination against Women
CAT	Committee against Torture
CERD	Committee on the Elimination of Racial Discrimination
CRPD	Committee on the Rights of Persons with Disabilities
CED	Committee on Enforced Disappearances
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Committee on the Rights of the Child
CMW	Committee on Migrant Workers (yet to be formed)

Chapter Outline

The mini dissertation seeks to 'shed light on the possibility of the justiciability of economic, social and cultural rights [in Nigeria] through juridical interpretation', thereby advocating that Nigerian courts need to be more active and vibrant in their approach to these issues to ensure that socio-economic rights are upheld, as the courts in India have done. This research comprises of six chapters, and the chapter breakdown is as follows. Chapter I contextualizes the research problem with the short introduction of what gave rise to the research, what challenges exist, what questions need to be resolved in dealing with these challenges, and what methodology will be adopted? Chapter II provides the theoretical and conceptual framework for the research. The chapter deals specifically with the origin and evolution of human rights, particularly socio-economic and cultural rights. It highlights some of the theories of human rights protection, and examines the difference in the ways in which Africa and the West conceive socio-economic and cultural rights.

Chapter three looks at the protection, and means of enforcement of socio-economic and cultural rights at the international, regional and national levels which cascades on the immediate chapter dwelling on the chapter II of the Nigerian Constitution 1999, especially on socio-economic rights.

Chapter four outlines the provisions of the Nigerian Constitution on economic, social and cultural rights, and focuses thereby on the status of these rights in Nigeria, the interpretation thereof, and the enforcement mechanisms. The strict interpretation approach of Nigerian courts to locus standi is highlighted as a further hindrance to the justiciability of socio-economic rights. Also, other institutional enforcement/implementation of socio-economic rights in Nigeria were considered

Chapter five, does the same as chapter four in the case of India. In this comparison, the chapter examines the way in which the Indian legal system has actively engaged in protecting these rights through liberal attitude towards interpretation of socio-economic rights by relaxing the doctrine of locus standi to enhance public interest litigation. Finally,

chapter six concludes the dissertation with recommendations.

ABSTRACT

Human rights became a global issue after the atrocity and barbaric genocide unleashed on over six million Jews, Sinti, and Romani (Gypsies), homosexuals, persons with disabilities and the 'Negro' (blacks) during the second world war by Nazis regime of Germany. Initially, individuals' rights were not the subject of international law, because the norm of the international law is to regulate relationship amongst member states as sovereign nations; thus, United Nations [(UN) founded in 1945] were reluctant to interfere in state parties' affairs. The unfortunate wanton abuse and violation of human rights at the domestic level by governments of the state parties were not addressed, as such issues are the remit of nationals; until it culminated to genocide, crimes against humanity, crimes against peace and war crimes which received an international attention at Nuremberg and Tokyo trials of the Nazis war generals and the subsequent punishment of the defeated countries' officials. From this point, individuals became subject of international law with the subsequent declaration of human rights in 1948. Charged with the peace and security; promotion of human dignity and economic wellbeing of the world, the UN established Economic and Social Council [(ECOSOC) in article 7 of UN Charter 1945] with the responsibility to initiate studies and to report on international level socio-economic matters. Invariably, article 68 of UN Charter empowered The Council to set up commissions for promotion of human rights. Subsequently, Human Rights Commission (HRC) was established and headed for the first time by Ms. Elizabeth Roosevelt (the wife of then president Franklin Roosevelt of America). The Commission prepared the Universal Declaration of Human Rights (Universal Declaration or UDHR), 10 December 1948 which was a declaratory standard of human rights promotion and protection expected of the state parties and not legal binding document. An international legal binding instrument was sought for; in 1966, HRC created International Covenant on Economic, Social, and Cultural Rights (CESCR) with the twin document, International Covenant on Civil and Political Rights (CCPR) which form the International Bill of Rights together with Universal Declaration. CESCR and CCPR are meant to be complimentary and indivisible but due to

western bloc politics and cold war; western scholars privileged civil and political rights above economic, social, and cultural rights; arguing that CPR is expressed in clear language and does not place an obligation on government for their implementation: Whereas ESC rights depends on government to perform their obligations to guarantee them and is expressed in vague language which renders it unenforceable. They maintain that socio-economic rights are political aspirations/goals or directive objectives of state policies which can only be realized progressively and not of immediate actualization or enforcement. This poor attitude towards socio-economic rights led so many countries of the world including Nigeria to treat ESCR as fundamental objectives of government policy to be progressively realized. In Nigeria jurisdiction, the issue of locus standi, was a clog on the wheel of litigating socio-economic rights; however, this issue has been put to rest by the Chief Justice of Nigeria who made a new rule of court in section 3(e) of Fundamental Rights (Enforcement Procedure) Rules 2009, which provides that no human rights case should be struck out or dismissed on the grounds of want of locus standi. The dissertation will be making comparative analysis of two legal systems comprising India and Nigeria as common law countries and as an emerging economy, although India is well ahead of Nigeria right now and both countries' Constitutions made socio-economic rights Directive Principle of State Policy (DPSP). The study enunciates the definition and historical development of human rights from the inception of UN and delves into the challenges in the two countries chosen as samples of the research, and considers the virile attitude of India's judicial authority towards a liberal interpretation of socio-economic rights and juxtaposes it with Nigeria's dismal and reluctant attitude towards implementation and enforcement of ESC rights. The work proceeded to prove that socio-economic rights can be justiciable in Nigeria, if the judicial attitude in administration of justice can positively change to that of enforcement driving. It drew lessons from Indian system and what could be emulated from their integral approach and public interest litigation, because the world attitude towards ESC rights has revamped towards enforceability and concludes with recommendations

CHAPTER ONE

General Introduction

1.0 Background

Rights generally are very controversial and the subject of intense jurisprudential debate.¹ However, Black's law dictionary defined rights to include "that which is proper under law, morality, or ethics; something that is due to a person by just claims, legal guarantee, or moral principle; a power, privilege, immunity..."² The term is said to be claim or demand,³ an interest,⁴ or simply the favorable enjoyed by a person in law.

Narrowing rights down to humans, human rights denotes a special kind of moral claim⁵ that all may invoke. Human rights are those rights which are inalienable and inherent in human beings that make us member of Homo sapiens family and when denied of it will lead to break down of law and order in society. Put differently, Jack Donnelly defined human rights as 'the rights that one has simply as a human being,'⁶ 'without any supplementary condition being required.'⁷ And these rights have been classified or divided into three generations/divisions, namely: First generation which are civil and political rights; second generation are economic, social and cultural rights (ESC rights);⁸ and third generation are solidarity/collective rights⁹ which are inalienable claims or entitlements

¹ M Shaw, *International law* (2006)265.

² H Black, *Black's Law Dictionary*. 9th edition (2004)8

³ The proponents were Inhering and Salmond, see Ihering: Geist des romischen Rechsts 111 p.339, Salmond: jurisprudence p.217.

⁴ Corporation v. Pickles (1895) A C 587.

⁵ S. Meckled, Garcia & B. Cali, *Lost in translation: The human Rights Ideal and International Human Rights Law* (2006)11.

⁶ J Donnelly, 'Human rights, democracy, and development' (1999) 21 (3) *Human rights quarterly* 608-32 at 612.

⁷ M Cranston, *What are human rights* (London, Brodley Head, 1973)36

⁸ Sometimes is referred to as 'social rights', 'socio-economic rights', 'fundamental social rights', 'welfare rights' or 'welfare benefits'. While there is some reluctance by common law countries to recognize the existence of ESC rights as 'fundamental' or 'constitutional', the fact is that some of these rights are already enshrined in statutes and sometimes in national constitutions.

⁹ French lawyer Karel Vasak first proposes this notion of three human rights 'generations' in 1977. See K Vasak, 'A

necessary for life as a human being.¹⁰

Human rights being all inclusive encapsulates socio-economic rights (i.e. economic, social, and cultural rights). Committee on Economic, Social and Cultural Rights defined human rights, especially General Comment 17; as fundamental, inalienable, and universal entitlements which belongs to persons and, under certain circumstances, group of persons and communities. Human rights are fundamental as they are inherent to human person.¹¹ The term “socio-economic rights” refer to right “whose purpose is to assure that human beings have the ability to obtain and maintain a minimum decent standard of living consistent with human dignity.¹² These rights which are principally the rights to education, health care, food, work, social security, water, highest attainable living standard and shelter, give rise to the perception that they are programmatic and that their realization more often requires resources allocation (or at least greater allocation) than other rights.¹³ Given their legal (or juridical) nature, “justiciability of rights is central to international human rights law: ‘Juridical’ rights serve as authoritative sources of claims, aimed at holding violator-states accountable...”¹⁴

More vital to these is the 12 July 1993 Vienna Declaration and Programme of Action which represents an attempt at global consensus, that human rights “are the birthright of all human beings,” and that all human rights are universal, indivisible, interdependent and interrelated.”¹⁵

Socio-economic rights as contained in chapter 11 of Nigerian Constitution 1999 were

Thirty-Year Struggle: Sustained Effort to give Force of Law to the UDHR’ (November 1977) UNESCO Courier 29.

¹⁰ R Wallace, *International law* (London, Sweet & Maxwell, 5th ed, 225.

¹¹ General Comment 17: The Right of Everyone to Benefit from Protection of the Moral and Material Interest Resulting from Any Scientific, Literary or Artistic Production of which He or She is the Author (article 15, paragraph 1 (c), of the Covenant), UN Doc E/C. 12/GC/17 (12 January 2006), para 1

¹² H Conde, *A Handbook of International Human Rights Terminology* (Lincoln, Nebr: University of Nebraska, (2004)55.

¹³ C. Scott and. Mackclem, “Constitutional Ropes of Sand or Justiciable guarantees”? Social Rights in a New South Africa Constitution (1992)141, University of Pennsylvania L.Rev. 1, 9, categorize these rights as social rights.

¹⁴ F Viljoen ‘*International human rights law in Africa*’, Oxford University Press (2007)7

¹⁵ Vienna Declaration and Programme of Action UN Doc. A/cone 157. 12 July 1993, para 5.

made non-justiciable by S.6 (6) (c), which provides that, judicial powers:

“shall not, except as otherwise provided by this Constitution,¹⁶ 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 judicial decision is in conformity with the fundamental objectives and Directive Principles of state policy set out in chapter 11 of this Constitution.”

This study will delve into critical examination of the seeming non-justiciability of Chapter II of Nigeria Constitution and the dismal political attitude of progressive realization of socio-economic rights according to maximum available resources,¹⁷ which invariably encouraged siphoning of public funds, dilapidated infrastructures, and serious setback in the standard of living of the citizens. The wanton limitation of economic, social, and cultural rights has led to misappropriation of public funds by successive governments living behind trails of poverty in a country with immense natural resources; richly endowed with vast land and mineral resources.

However, the same section 6(6)(c) also stated “except as otherwise provided by this Constitution,” which connotes that the courts are empowered in item 60 (a), second schedule of the Exclusive Legislative List to enforce Fundamental Objectives and Directive Principles of State Policy, if legislatures enact laws and create institutions to this effect.¹⁸ It is axiomatic from this provision that vibrant judicial attitude towards interpreting socio-economic rights into civil and political rights, will make chapter 11 of the Nigerian

¹⁶ S Ibe, ‘Implementing, economic, social and cultural rights in Nigeria: Challenges and Opportunities’ (2010)1 AHRLJ 197-211, see *Federal Republic of Nigeria v Alhaji Mika Anache & Others* (2004) 14 WRN 1-90 61, Justice Niki Tobi explained that ‘the non-justiciability of section 6(6)(c) of the Constitution is neither total nor sacrosanct as the subsection provides a leeway using the words “except as otherwise provided by this Constitution”. This means that if the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiciable, it will be so interpreted by the courts.’

¹⁷ Article 2, International Covenant on Economic, Social and Cultural Rights (CESCR), adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966

¹⁸ Item 60 (a) provides ‘The establishment and regulation of authorities for the Federation or any part thereof – (a) To promote and enforce the observance of the fundamental objectives and directive principles contained in this Constitution’

Constitution justiciable like their Indian counterpart who developed virile judicial approach to the enforcement of Economic, Social and Cultural Rights.

Also, the mini dissertation examines the strict interpretation of the common law procedural practice of *locus standi* by the courts in Nigeria, and advocates for relaxing of this rule to pave way for public interest litigation. The mini dissertation explores the possibility of the Nigerian courts learning from the way and manner in which the courts in India (which has similar limitation as our constitution) have been able to deal with the non-justiciability of socio-economic rights through creative and innovative thinking.

1.1 Problem Statement

In dealing with the issues, the dissertation starts from the premise of identifying the failure by the 1999 Constitution of the Federal Republic of Nigeria to uphold socio-economic and cultural rights as fundamental human rights, and points out that rather, the said Constitution captures these rights in its chapter two, titled 'Fundamental Objectives and Directive Principles of State Policy.' Furthermore, the dissertation points out that section 6(6) (c) of the Constitution makes these rights non-justiciable. By implication the government take queue from Western world who conceives social rights as political goals and social policies to be realized in future, which cannot be litigated upon immediately; but the problem with this assumption is that African countries are indigent and cannot compare with the Western world's development and implementation of social rights through other means, without relying on government only. The research takes the position that the 'guarantee of socio-economic rights in Nigeria will lead to development which will invariably enhance living standards' and the lack of resources must not be used by the state as a means of escaping from their obligation to protect, promote and respect socio-economic rights.

Obviously, the legislatures have neglected their duties to enact laws or amend the Constitution, so that social rights will be justiciable like South African Constitution; but

the judiciary can take the lead like their India counterpart in demonstrating a liberal interpretation to ESC rights, also both countries are common law countries with almost the same constitutional framework in respect of socio-economic rights.

The research also examines the challenges created by common law procedural practice of *locus standi* which the courts rely heavily upon to deny/grant a litigant standing before the courts, as a claw back to justiciability of socio-economic rights and public interest litigation in Nigeria. Whereas *locus standi* was relax in Indian jurisdiction to pave way for public interest litigation which encouraged vibrant legal enforcement of social rights.

1.2 Research Questions

Main Research Question: Are socio-economic rights in chapter II of Nigerian Constitution justiciable and what is their status?

1. What are the obvious challenges of the provisions and enforcement of Economic, Social and Cultural Rights in Nigeria jurisdiction?
2. What is the attitude of the judiciary in the Indian jurisdictions towards interpretation and enforcement of socio-economic rights provisions in their Constitution?
3. On comparative rating of each of the jurisdictions being used as my case study; which of the jurisdictions has the most effective juridical activism for the enforcement of socio-economic rights?
4. Finally, how can socio-economic rights be made justiciable in Nigeria considering the dismal and parlous provision of Chapter II of Nigerian Constitution?

1.3 Research Methodology:

The information obtained for this study are basically from library sources, international and regional treaties, Nigerian Constitution of 1999 and legislation of the National Assembly and other Acts, civil society, Indian Constitution, case law (or judicial reports), and other desk research methods.

Comparative study of India jurisdiction as a common-law country which is outstanding in judicial attitude towards enforceability of economic, social, and cultural rights has been engaged to elucidate the challenges of non-enforceability of socio-economic rights and the relaxed attitude of Nigeria judiciary to enforce ESCR.

The mini dissertation also engaged the performance of the statutory institutions in both countries in vibrant enforcement and implementation of socio-economic and cultural rights without waiting for the legislatures; so that Nigeria will conform to best practices around the world and comply with international standard of human rights regime.

1.4 Significance of The Study

Socio-economic realities in Nigeria are calling for urgent attention that cannot be ignored in order to equip Nigerians to move the nation to next level of civilization and industrialization; and most specially to improve the living standard of the population. It is pitiable indeed that education is played down and the health care is deplorable, teeming unemployed graduates are swelling by the day, there is no job in such highly endowed nation; however, this study is set to address all these issues.

The dissertation is a thrust on how economic, social and cultural rights can be justiciable through judicial activities, to 'encourage social integration, solidarity and equality including tackling the question of income distribution'¹⁹ which ultimately will serve as

¹⁹ A. Eide, *Economic, Social, and Cultural Rights as Human Rights* (1995) 17

protection to the less privileged; indigent/savage people, handicapped and vulnerable groups. This will be achieved through comparative analysis of Indian and Nigerian jurisdictions in virile interpretation of civil and political rights into economic, social and cultural rights. Specifically, the dissertation will consider the extent that socio-economic rights are protected and enforced in the two legal systems and determine their performances over the years. The research will carry out evaluation/assessment of the judicial attitude towards interpretation, enforcement and protection of economic, social and cultural rights. This write up will reveal areas of weaknesses and strengths in the two countries of my study, encouraging Nigerian system to learn from vibrant judicial approach to socio-economic rights. It will also debunk the long-held view that socio-economic rights are non-justiciable, through engaging the judicial interpretation of economic, social and cultural rights. The dissertation aims at improving and contributing immensely towards strengthening the socio-economic well-being of Nigerians and thus my motivation to embark on this dissertation.

1.5 Literature Review

This study will engage plethora of scholarly materials on this subject matter (i.e. economic, social, and cultural rights) world over, to tease out germane information for my discourse which seeks to debunk the fatal incidence of non-justiciability of socio-economic rights as contained in Nigeria Constitution 1999 by a phrase in the same section 6 (6) (c) that states 'except as otherwise provided by this Constitution'.²⁰

Non-justiciability of economic, social and cultural rights in Nigeria could be partly attributed to the fact that the right-holders lack locus standi (i.e. the strict interpretation of common law doctrine which a litigant must prove before the court that he/she has personal interest in the cause of action or the person will be affected directly to have a

²⁰ Section 6 (6) (c) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999

right to institute an action or joined as a party to a litigation) before maintaining legal actions against the duty-bearers as the violators of these rights. As Olowu put it that the

*“parlous state of economic, social and cultural rights adjudication in Nigeria is due to substantive issues of the legal framework; he said perhaps the most formidable impediments to the effective protection of such rights remains, the common law procedural doctrine of locus standi”.*²¹

The dissertation will tackle the issue of non-justiciability provision under Chapter II of Nigeria Constitution by aligning with the works of these scholars viz:

Asbjorn Eide,²² who posited that seeming significant differences between civil and political rights and that of the economic, social and cultural rights revolves around the obligations of the state. The argument holds that civil and political rights does not require state interference whereas economic, social, and cultural rights depends on the state to guarantee and protect them, but this position has been debunked because the right to participate in the electoral process and right to fair hearing which are civil and political rights requires government to provide electoral materials and to equip the courts. Moreover, the author maintains that there are some socio-economic rights that are justiciable; and upholding economic, social, and cultural rights will lead to ‘social integration, solidarity and equality including tackling the question of income distribution’²³ which ultimately will serve as protection to the less privileged; indigent people, handicapped and vulnerable groups.²⁴

The work of Abdullahi A. An-Na’im,²⁵ majoring on justiciability of economic, social and

²¹ D. Olowu (2009), ‘An integrative right-based approach to human development in Africa,’ (Pretoria University Law Press) 175

²² A. Eide, n19 above (1995) 17

²³ As above

²⁴ As above

²⁵ ‘To Affirm the Full Human Rights Standing of Economic, Social and Cultural Rights’ in Yash Ghai and Jill Cottrell(eds.), *Economic, Social and Cultural Rights in Practice- The Role of Judges in Implementing Economic, Social and Cultural Rights* (London: Interrights, 2004) p.12.

cultural rights linked the relegation of socio-economic rights to the erroneous/mistaken belief that human rights can be categorized into two (i.e. CPR and ESCR). Although the divide between CPR and ESCR has been laid to rest by the Vienna Declaration 1993 which states that human rights are universal, indivisible, interrelated and interdependent, still some state parties' attitude have not changed.

In his book, 'International Human Rights Law in Africa',²⁶ Prof F Viljoen, decrying the bifurcation of human rights, writes on a subtopic in chapter 1, 'universality, not uniformity, of human rights',²⁷ positing that human rights are not Western-biased or neo-colonial imposition, or not 'African' considering the fact that most African states adopted Universal Declaration of Human Rights and subsequent human rights treaties; right now all African states subscribe to human rights by domesticating it into their national Constitutions and laws.²⁸ Aligning with Vienna Declaration and Programme of Action that 'human rights are the birthright of all human beings', he observed that 'national and regional particularities and various historical, cultural and religious backgrounds' which informs the debate of universality against cultural relativism of rights should be acknowledged.²⁹

Manisuli Ssenyonjo,³⁰ writing on the domestic protection of economic, social and cultural rights pointed out that the effectiveness of international human rights treaties at the national level must reflect the state obligations and must as well be 'reflected in the content of the domestic law'.³¹ The reason being that through the instrumentality of the municipal/ national or internal law; domestic institutions (e.g., courts, tribunals and human rights commission) can effectively enforce human rights.

Arguing in his report about bridging the gap of justiciability between CPR and ESCR which

²⁶ n 14 above, p7

²⁷ As above

²⁸ As aboves

²⁹ As above

³⁰ *Economic, Social and Cultural Rights in International Law*, TJ International Ltd, Padstow, Cornwall (2009) p. 140. Under the topic: The Domestic Protection of Economic, Social and Cultural Rights

³¹ R Higgins, 'Problem and Process: International Law and How We Use It' (Oxford, Clarendon Press, 1994)96. Also, see CESCR, General Comment 9: The Domestic Application of the Covenant, UN Doc E/C.12/.1998/24 (1998).

was created by Western countries due to the cold war divide, Christian Curtis³² and co-authors enunciated the following:

*'ECS rights can be adjudicated

*adjudication is desirable, and

*adjudication is already put into practice, to a varying degree in many courts throughout the world'.³³

Stanley Ibe,³⁴ articulated the justiciability of ESC rights at the regional level, elucidating that ACHPR made all human rights justiciable before the African Commission on Human and Peoples' Rights (African Commission) which is laudable in the Commission's landmark judgements on socio-economic cases while interpreting the provisions of some articles in African Charter on Human and Peoples' Rights. African Commission had challenges with enforcement, therefore the court was sought for, which can adjudicate on the cases of countries that accepted its jurisdiction to pronounce binding judgment/rulings.

Justice S. Muralidhar,³⁵ explains in his report on 'The Expectations and Challenges of Judiciary Enforcement of Social Rights,' the position of socio-economic rights in the Indian Constitution and access to legal services as well as the judicial activism, public interest litigation and judicial decisions in areas of specific rights.³⁶ He also sheds light on the factors that contributed to the laudable judicial performance of Indian courts in enforcement of economic, social and cultural rights.

³² C Curtis, 'Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative experience of justiciability', International Commission of Jurists, (2008)1. Reviewed by the following: Federico Andreu-Guzmán, Wilder Tayler and Nicholas Howen. Jonathan Cooper, Claire Mahon and Priyamvada Yarnell

³³ As above

³⁴ S Ibe, 'Beyond justiciability: Realizing the promise of socio-economic rights in Nigeria' (2007) 7 African Human Rights Law Journal 225

³⁵ J Muralidhar, 'The expectation and challenges of judicial enforcement of social rights'. Also see www.delhidistrictcourts.nic.in/ejournal/Social_Rights_Jurisprudence.pdf. Accessed 30 August 2016.

³⁶ As above

The Nigerian experience as articulated by Stanley Ibe³⁷ shows that previous Constitutions of Nigeria made provisions for Bills of Rights prior to the 1979/1999 Constitutions which adopted Indian Directive Principles of State Policy (DPSP) without relaxing the requirement of locus standi for public interest litigation. He observed that there is no integrative approach to the interpretation of human rights; moreover, the judiciary is reluctant to hear and determine cases on socio-economic rights. The executive and legislature have failed to live up to their responsibility to provide security and welfare for the people which the Constitution affirms that sovereignty belongs to;³⁸ and all the arms of the government are to work for the realization of this goal. He argues that recourse should be had to the judiciary to enforce socio-economic rights in a poverty-stricken state like Nigeria.³⁹

G. N. Okeke,⁴⁰ made a case that justiciability of Fundamental Objectives and Directives Principles of State Policy (FODPSP) will tackle the monstrous social ill called corruption and make government (Executive, Legislature and the Judiciary) duty-bound to engage all at its disposal for the realization of socio-economic rights immediately and progressively which will be a step ahead in attenuating or confronting corruption in Nigeria. Moreover, the era of 'duty without responsibility'⁴¹ will be a thing of the past, as accountability will serve as checks on the extravagancies of government officials and citizens are equally duty-bound⁴² to observe and apply fundamental objectives and directives principles of state policy.

³⁷S Ibe, 'Implementing economic, social and cultural rights in Nigeria: Challenges and Opportunities' (2010)1 AHJ 197-211.

³⁸ Section 14 of the CFRN 1999

³⁹ n 37 above

⁴⁰ N Okeke, 'Fundamental objectives and directives principles of state policy: a viable anti-corruption tool in Nigeria' (2011)176-179. See also www.ajol.info/index.php/nauijilj/article/download/82400/72555.

⁴¹ Section 13 of CFRN, 1999, which is an introductory chapter of chapter 11, containing fundamental objectives and directives principles of state policy

⁴² The supreme court's interpretation of chapter 11, that not only the people exercising Executive, Legislative and Judiciary power of the state owes this duty, rather all persons must observe and apply FDPSP.

CHAPTER TWO

Theoretical and conceptual framework on human rights, particularly Socio-economic and Cultural Rights

2.1 Introduction

This chapter, articulates the origin, evolutionary theory and concepts of human rights from the Greek civilization based on natural law/rights to this Twenty-First Century of human rights; and delves into the international recognition of human rights. Also, the normative framework of human rights on international level will be considered to enhance theoretical understanding of the jurisprudential discourse of ESC rights.

The last segment of this section will be dwelling on the origin, concept and evolution of economic, social and cultural rights in human rights discourse. The purpose of this is to enhance a clearer understanding of socio-economic rights jurisprudence.

2.1.1 The origin, evolutionary theory and concept of human rights

Human rights are inherent in man and this could be traced in God's relationship with man from the creation story,⁴³ after man has eaten the forbidden fruit; God displayed his recognition of freedom of expression and fair hearing by asking Adam what led to his disobedience.⁴⁴ Human being's worth and dignity was accorded to him by his creator and this was axiomatic as the savage people co-existed in communities and groups according one another their rights; they realized that solidarity rights became absolutely necessary for their survival in those primordial days.

The evolution and development of rights were the works of Greek philosophers of Hellenistic stoics⁴⁵ who improved on Roman law called Jus Gentium (Laws and rules for

⁴³ Genesis chapter one, the first book of the bible on the beginning of the world and creation activities as recorded by prophet Moses.

⁴⁴ Genesis 3: 6-12, The holy bible.

⁴⁵ Scholars/members of Zano's ancient Greek philosophers whose philosophical adumbrations bothers on attainment of happiness and virtue through obedience and submission to natural law and destiny.

all mankind) and asserted that the gods are not the determinant factor of what happens to man, rather man is the architect of his fate; that gods and men are subject to this law called “natural law”.⁴⁶

2.1.2 Natural Law Theory

The early philosophical and legal theories of natural law school of jurisprudence postulated that there is higher law which the positive law of the states must take cue from, to be recognized as law.⁴⁷ In his writings, Fuller posited that “There is an ideal system of law dictated by God, by nature of man, or by nature itself;”⁴⁸ which is higher than man made law and can be understood by reasoning. A divine law of morals given by God to guide the conduct of man in society.

In the middle ages, the concept of natural law was propounded by Christian theologians like St. Augustine and St. Thomas Aquinas, who postulated that “Natural law was the participation in the eternal law of the mind of a rational creature;” the state is not above the law which regulates between her and the individuals, rather the legitimacy of the state is determined by service to the individual. Any state or king who is unfaithful to this law forfeits his right to rule and command obedience. This led to the flourishing of natural law in the middle ages.⁴⁹

Lloyd, explaining natural law (*jus naturale*) intimated that it is a law based on moral principles which is predicated on the nature of the universe and can be understood by the reasoning which rule human conduct and the nature of the universe is part of man’s nature.⁵⁰

Natural rights have its foundation on natural law and was developed in England which

⁴⁶ A Sokefun, O Hiromen, A Ige, O Obayemi, *Human Rights Law*, (2008) 4

⁴⁷ As above

⁴⁸ M Chitkara, *‘Human rights’* Aph publishing corporation , New Delhi (1996) 10

⁴⁹ A politico-religious movement of the 16th Century Europe that started as an attempt to reform the Roman Catholic Church and ended in the establishment of the Protestant church.

⁵⁰ D Lloyd et al, *Introduction to Jurisprudence*, London: ELBS, (1998) 229

articulated that every individual has natural, fundamental, inherent, absolute and sacred rights from birth as Marcus Tullius Cicero puts it "There is one eternal and immutable law which will apply to all people at all times and which emanates from God is natural law."⁵¹

Eighteenth Century (Enlightenment period) saw the ascendance/development of natural rights to human rights. In this century, the postulations of Hugo Grotius (1583-1645) father of modern international law, John Locke (1632-1704) became popular in Europe, he propounded comprehensive concept of natural rights list as follows: Right to life, liberty/freedom and property/possession as well as social contract which articulates that when government fails to protect the rights of its citizens, it forfeits the power to rule.⁵² Baron de Montesquieu, Thomas Hobbes and Jean Jacques Rousseau (1712-1778) were philosophers who elaborated that 'all men are born free and created equal, and are endowed with certain inalienable rights to life, liberty and the pursuit of happiness' and sovereign derives its power from the citizen in form of social contract.⁵³ Their works deeply influenced the philosophical and legal foundations of natural rights as it is known today.⁵⁴ It is worthy of note that their theories concentrated more on civil rights which was a tool in fighting the arbitrariness of rulers and freedom from slavery.

Modern conceptions of human rights also drew great inspiration, directly or indirectly, from their writings. It must be quickly stated that the belief of equal right of every human being by their humanity is a recent development in that some groups of people were denied of their rights; like slaves, women, children, certain race and class of people.⁵⁵ Documentation of rights of individual such as Magna Carta (1215), English Bill of Rights

⁵¹ G Bajwa, 'Human rights in india, anmol publication pvt, New Delhi (1997) 27

⁵² Icelandic human rights centre, Part 1: The concept of human rights/ definitions and classifications. See also www.Humansrights.is/.../human-rights-human-rights/definitions-and-c. Accessed on 21 May 2016

⁵³ As above

⁵⁴ As above

⁵⁵ N Fowers, 'Human rights here and now, celebrating Universal Declaration of Human Rights (2016) 1. Also see <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/part-1/short-history.htm>

(1689), are pointers or foundational instruments for human rights as contained in some countries and on international level documents.⁵⁶ "The term human rights was introduced in the United States Declaration of independence in 1776 and the U.S Constitution and Bill of Rights 1791."⁵⁷ In 1789, French Revolution declared the rights of man.

2.1.3 Legal theory of Human Rights:

Theorist/scholars like Jeremy Bentham and John Austin postulated that states creates rights, as such individuals have no right to claim against the state rather the state ensures them. They maintained that rights are not natural to man, the law made by the state guarantees the rights of the citizens.⁵⁸ The works of these theorist whittled down natural law in direct attack, until the despotic regime of Nazi Germany which carried out gruesome killings and disregard for human rights, that led the world to seek a lasting peace and protection of human rights and dignity of man. The atrocities of the second world war which relied heavily on positive law revived natural law from its deadly blow.

2.1.4 Universality Theory of Human rights:

Scholars like Roman Cicero throw weight on universality and inalienability of rights; Jack Donnelly, is a leading advocate of universality of human, although he acknowledged that there are minor differences in culture, religious background etc. but that will not obfuscate the reality of the universality of human rights. Human rights, according the definition of Jack Donnelly are rights we have as humans, which guarantees equal rights to all, because we are human beings. These rights are inseparable, because humans are born with it. It is not based on claims, merit or boundaries of nations, but universally applicable to all from nature.⁵⁹ The argument of universality gave substantial backing to

⁵⁶ As above

⁵⁷ n 42 above 5

⁵⁸ P Sadish, *Theories of human rights*, Puducherry 605 107, 994973538.

⁵⁹ J Donnelly, *Human rights, and human dignity: An analytic critique of non-western human rights conceptions*, (1982)303-16; J Donnelly, *Cultural relativism, and universal human rights*, (1984)400; J Donnelly, *Universal human rights in theory and practice* (Ithaca: Cornell Univ. Press, 1989)

Universal Declaration of Human rights and the Vienna Declaration and Programme of Action 1993; but some states are contending nowadays that some portion of Universal Declaration are not applicable to their notion of human rights based on some religious, cultural and social reasons.⁶⁰

2.1.5 Cultural Relativism Theory

By a way of definition, cultural relativism means two different propositions to these groups of theorists. They hold two radical views of this theory: Strong cultural relativism asserts that culture is a major source/validity of moral rights or rule, whereas weak cultural relativism holds that culture may be an important source of moral right or rule. This presupposes a recognition of universality of human rights.⁶¹

*Cultural relativity is an undeniable fact; moral rules and social institutions evidence an astonishing cultural and historical variability. Cultural relativism is a doctrine that holds that (at least some) such variations are exempt from legitimate criticism by outsiders, a doctrine that is strongly supported by notions of communal autonomy and self-determination.*⁶²

However, Rhoda Haword (1989) argued that the idea of universality of human rights is irritable and nonsense;⁶³ she likened rights to human body with difference parts like the hands, legs and head and so on. It is believed that the argument of universality/ cultural relativism can never be won.⁶⁴

These various theories of human rights dwell majorly on civil and political rights, for

⁶⁰ Project MUSE, Human rights quarterly, (The Johns Hopkins University Press) Volume 29, Number 2, (2007) 281-306

⁶¹ J Donnelly, 'Cultural relativism and universal human rights' (1984) 6 Human rights quarterly 400.

⁶² As above

⁶³ M Hansungule, Lecture note on socio-economic rights, 3 march (2016), Centre for human rights University of Pretoria, South Africa.

⁶⁴ As above

instance the works of John Locke which influenced Europe were based on right to life, liberty/freedom and possession/property. Although property has been classified by some authors as socio-economic right, and some civil and political right; but the thrust of these writers was the emancipation of people from the arbitrary rule of the sovereign of their day. Jean Jacques Rosseau in France elaborated on equality of right, saying that all men are born free and expounded on social contract.⁶⁵ Thus, socio-economic rights were not their major focus, and this shift of focus added to the relegating of social rights by western scholars.

2.2.1 Normative Framework of Human Rights on International Level

The birth of United Nations by the draft document called the UN Charter of San Francisco 1945 predicated on the peace and security of the world, recognized the protection of human rights and dignity of man as a necessity for development and socio-economic wellbeing of the world. This was captured by the statement of President Franklin Delano Roosevelt in 1941 Union Address on four essential freedoms: "Freedom of speech and religion, freedom from want and fear (see using Human Rights Here and Now)."⁶⁶ The entry into force of the UN Charter on 24 October 1945 marked the formal recognition of human rights as a universal principle; also, compliance with human rights was mentioned in the preamble and article 55, which provides, 'with a view to the creation of condition of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nation shall promote:⁶⁷

- a. Higher standard of living, full employment, and conditions of economic and social progress and development;*
- b. Solutions of international economic, social, health, and related problems; and*

⁶⁵ As above

⁶⁶ n 49 above 2

⁶⁷ Charter of the United Nations (UN Charter) and statute of the international court of justice, San Francisco 1945

international cultural and educational cooperation; and

*c. Universal respect for and observance of human rights and fundamental freedom for all without distinction as to race, sex, language, or religion.*⁶⁸

In article 56 of UN Charter, all the member states were enjoined to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55.

1945 saw the establishment of United Nations which articulated human rights on international level, after failure of League of Nations because Americans distanced themselves from that body coupled with internal politics amongst European nation states. The UN Charter established and empowered Human Rights Commission (HRC) to prepare a document on human rights which produced Universal Declaration of Human Rights (UDHR) 1948. The UDHR is a declaratory document which has no legal binding force; (though it has acquired the force of customary international law/peremptory norm by its applicability worldwide, as well as being contained in the Constitutions of 185 nations: it is also regarded as “common standard of achievement for all people and all nations”⁶⁹ and reference of other international legal instruments to it). To make Universal Declaration enforceable instrument, the state parties clamored that it should be made legally binding document; the UN General Assembly authorized Human Rights Commission to draft two international treaties viz: International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. However, the main focus of this dissertation will be on Economic, Social and Cultural Rights and invariably on International Covenant on Economic, Social and Cultural Rights.

There are other good numbers of international legal instruments that provided for socio-economic rights, which can be listed without detailed discussion due to constraints of this dissertation; they are as follows: Universal Declaration of Human Rights [UDHR 1948, (social rights in this instrument will be briefly discussed)]; International Covenant on

⁶⁸ As above

⁶⁹ n 48 above 2

Elimination of All Forms of Racial Discrimination (ICEAFRD, 1965), Declaration on Social Progress and Development (1969); Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW 1979); Convention on the Rights of the Child (CRC 1989); International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (1990) and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR 2009).

Also on regional level, socio-economic rights have been provided in the following instruments: African Charter on Human and peoples' Rights (1981/1986); Statutes of the Economic, Social and Cultural Council (2004) and other international treaties which shall be apply in the region in keeping with protection and promotion of human rights on the regional level.

2.3.1 Origin and Concept of Socio-Economic Rights

The origin of socio-economic rights has so many sources which includes the works of these:⁷⁰

philosophical analysists such as those of Thomas Paine, Karl Marx, Immanuel Kant and John Rawls; the political programmes of the 19th century Fabian socialists in Britain, Chancellor Bismarck in Germany (who introduced social insurance schemes in the 1880s), and the New Dealers in the United States of America, as well as certain constitutional precedents (e.g. Mexican Constitution of 1917, First and Subsequent Constitution and the 1919 Constitution of Weimer Republic) which emphasized importance of the right to subsistence with dignity.

Also, there has been claims that these rights emerged as a result of Karl Marx's attacks/critique of capitalist exploitation in 19th centuries during socialist revolutions;⁷¹ but Palley in her work maintained that 'United Kingdom Factory Act of 1833 and the Mines

⁷⁰ A Uche, 'Comparative appraisal of the protection and enforcement of economic, social and cultural rights under the law in South Africa' (2013) lxiv, (PG. LL.M/06/46045)

⁷¹ As above

Regulation Act of 1842, as well as from Select Committee and Royal Commission Reports' antedated Marx's work which he drew largely from.⁷² Palley stated that:

*...the concept of socio-economic rights sprang in large measure from legislation and criticism of social policy (in the United Kingdom) from the 18th century onwards...*⁷³

This postulation by Prof Claire Palley, could be adjudged occidental tendency and racial contract (European dominance of the world and the claim of cradle of civilization),⁷⁴ because different peoples of different origin and background has socio-economic rights expressed in rights and duties contained in their religion, tradition and other codes (Babylon Code of Hammurabi, Holy Bible, Analects of Confucius, Qu' ran, Hindu Vedas etc.) before contact with western civilization.⁷⁵ Steiner and Alston argued that the commands or admonition of the traditions and religious persuasions is based on taking care of one's neighbours and the needy which to a large extent is predicated on socio-economic rights.⁷⁶

This argument which asserts right in the community or group of individuals by ensuring peoples' welfare is taken further by Krishna Mohan Mathur, quoting Atharva Veda:

"Man, is not an individual. He is a social organism. God loves only who serves other beings; men, cattle, and other creatures. His glory lies in being a member of a big family. On the one hand, man is bound by blood, kinship, his parents, his wife, his children and on the other, he is linked with every individual of society whether near or far, it is given to man to link himself with those who could be his posterity. Man, thus lives, works, and dies, for society possessed of certain

⁷² C Palley, *The United Kingdom and Human Rights* (London: Sweet and Maxwell, 1991)25.

⁷³ As above

⁷⁴ C Mills, *The Racial Contract* (Cornell University Press, 1997)1. An expression of unnamed political system in which whites dominates the rest of the world in this modern day (White supremacy).

⁷⁵ H Steiner, P Alston, 'International Human Rights in Context: Law, Politics, Morals' (Oxford: Clarendon Press. 1996) 257

⁷⁶ As above

inalienable rights. Man, is expected to develop his craft, sciences and technology, and lead society from poverty to prosperity, with a happy today and a happier tomorrow".⁷⁷

However, some erudite scholars have argued that socio-economic rights is of African origin and what is known to be human rights; and maintains that rights creates duties.⁷⁸ The notion of duty in pre-colonial Africa was basically to strengthen family and community ties and social cohesiveness, creating a shared fate and common destiny which gives individuals a sense of responsibility, belonging and communal development,⁷⁹ as opined by Professor Hansungule, 'The ACHPR 1981, African plan on human rights, is perhaps the first treaty to give concrete expression in its terms to the idea of an African concept of human rights.'⁸⁰

The western world termed socio-economic rights as the idea of socialist states and the aspirations of the post-colonial world or third-world countries; but it has been stated that civil and political rights cannot be enjoyed without economic social and cultural rights as expressed by Bhagwati J, of India Supreme Court:

To the large majority of people who are living in almost sub-human existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notions of individual freedom and liberation, though representing some of the most cherished values of a free society, would sound as empty words bandied about in the drawing rooms of the rich and the well-to-do...⁸¹

This notion found expression in Tehran Proclamation 1968 that enjoyment of civil and political right will be impossible without socio-economic rights.⁸²

⁷⁷ M Mathur, 'Crime Human Rights and National Security', Gyan Publishing House, New Delhi, (1996) 159

⁷⁸ M Mutua, 'The Banjul Charter and the African cultural fingerprint: An evaluation of the language of duties (1995)' 35 *Virginia of international law* 339

⁷⁹ As above

⁸⁰ *Professor of human rights law*, Centre for human rights, Faculty of law, University of Pretoria, South Africa: 'African Charter on human and peoples' rights 1981. In *European issues*, (1998)

⁸¹ In the case of *Minerva Mills v. Union of India (1980)* SC of India.

⁸² Proclamation of Tehran, Final Act of the International Conference on Human Rights, Tehran, 22 April to 13 May

CHAPTER THREE

Annotation of Substantive Socio-Economic Rights on International and Regional Instruments and its Implementation/Enforcement.

3.0 Introduction

This chapter is bothering on the international declarations and treaties which form the bedrock of our human rights jurisprudence today. Every human rights instrument at the domestic or municipal level must take cue from the standards set by the various UN documents which authenticate its validity. The chapter devotes time to annotate the articles of International Covenant on Economic, Social and Cultural Rights as the main binding instrument for socio-economic rights which form the basis for this dissertation. Also, the articles of the African Charter on Human and Peoples' Rights on socio-economic rights are considered to enable us understand Africa jurisprudence of socio-economic rights on the regional level. Lastly, the implementation of socio-economic rights on the international and regional level concludes the chapter.

3.1.1 ESC Rights under the Universal Declaration:

Economic, social and cultural rights provisions could be found in articles 22 to 26 of Universal Declaration, and was further improved and set out as binding treaty norms in the International Covenant on Economic, Social and Cultural Rights.⁸³ These rights provide the condition necessary for decent standard of living, prosperity, wellbeing, and development of peoples. Economic rights refer, for example, right to own property, the right to work, which one freely chooses or accepts, the right to a fair wage, a reasonable limitation of working hours, and trade union rights. Social rights are necessary rights for an adequate standard of living, including rights to health, shelter, food, social

1968, UN Doc A/CONF 32/41 at 3 (1968), para 13. 'Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.'

⁸³ n-48 above

care/welfare, and the right to education⁸⁴.

The UDHR lists cultural rights in articles 27 and 28: the right to participate freely in the cultural life of the community, the right share to in scientific, literary or artistic production of which one is the author.⁸⁵ These rights are declaratory and not binding treaty; as result state parties demanded for legal binding document.

3.1.2 Bifurcation of UDHR into Two Separate Legal Instruments

The desirability for a legal binding document to protect human rights internationally and mechanisms for enforcing Universal Declaration led the United Nations General Assembly (UNGA) to mandate the UN Commission on Human Rights (UNCHR) to draft an instrument for this purpose.⁸⁶ Soon after this mandate, there was a dichotomy between civil and political rights on the one hand and economic, social and cultural rights on the other hand; because of the way these concepts were construed by the dominant ideological worldview of that time.⁸⁷

Initially, the UN General Assembly's decision was to create a single document for civil and political rights together with economic, social and cultural rights;⁸⁸ but due to the cold war politics, the General Assembly changed its stand in 1952⁸⁹ and mandated the Human Rights Commission to separate the UDHR into two international covenants or categories of rights but they should be almost similar as far as possible in their provisions and they should be approved; opened for signature and ratification simultaneously.⁹⁰ On 16 December 1966 both Covenants, International Covenant on Civil and Political Rights (CCPR) and International Covenant on Economic, Social and Cultural Rights (ESCR) were ready for signature and ratification and they entered into force on 3 January 1976 after

⁸⁴ Articles, 6 to 14 of CESCR.

⁸⁵ See, also Article 15 ICESCR and Article 27 ICCPR.

⁸⁶ n-50 above 3

⁸⁷ n-48 above

⁸⁸ UN General Assembly Resolution(GAR) 421 (V) of 4 December 1950

⁸⁹ GAR 543 (V1) of 5 February 1952

⁹⁰ UN Doc A/2929 (1955) 7, Annotation on the Text of the Draft International Covenants on Human Rights

ratification by at least 35 state parties.⁹¹

The aftermath of the bifurcation is that civil and political rights are privileged above economic, social and cultural rights by Western scholars based on the obligation of the state:⁹² Whereas socialist states and African states argued that what is actual human rights is economic, social and cultural rights based on developmental goals and the fact that civil and political rights cannot be enjoyed without economic, social and cultural rights.⁹³

3.2.0 Annotation of Substantive Rights in the ICESCR

Part I, starts with article 1 which made provision for self-determination, which includes political, economic, social and cultural development. This article started with peoples' right or collective right.

Part II, article 2 contains implementation of the Covenant and defines the duty or obligation of the state parties: Every other article should be interpreted based on this grandfather clause to the Covenant.

Article 3, articulates the rights of women and gender mainstreaming or equality of men and women to the enjoyment of rights in the present Covenant.

Article 4, empowers the state parties to limit the rights in the Covenant solely for promoting the general welfare in a democratic society. This is a limitation clause in relation to the developing countries.

Article 5, prohibits sanctions and derogations against the rights or freedoms recognized

⁹¹ CESCR, article 27

⁹²A An-Na'im, "To Affirm the Full Human Rights Standing of Economic, Social and Cultural Rights" in Yash Ghai and Jill Cottrell(eds.), *Economic, Social and Cultural Rights in Practice- The Role of Judges in Implementing Economic, Social and Cultural Rights* (London: Interrights, 2004) p.12.

⁹³Proclamation of Tehran, Final Act of the International Conference on Human Rights, Tehran, 22 April to 13 May 1968, UN Doc A/CONF 32/41 at 3 (1968), para 13. 'Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.'

in this present covenant.

Part III marks the beginning of the substantive rights outlined in the Covenant.

Article 6, provides for the right to work which will create opportunity for everyone to gain his/her living through the work that is freely chosen or accepted and the state parties are obligated to take appropriate steps to safeguard this right.

Article 7 provides for the enjoyment of just and favourable conditions of work which ensures the following: remuneration as minimum wage, fair wage, and equal remuneration for work of equal value without distinction of any kind, decent living for workers and their families, safe and healthy working conditions, leisure and holidays with pay, equal opportunity for promotion in his/her employment subject to regulatory guidelines.

Article 8 ensures the right for every worker to form/join unions of his/her choice subject only to the rules of the organization concerned for the promotion and protection of his economic and social interests; to be exercised under a prescribed law in a democratic society in the interest of national security or public order or for the protection of the rights of others. Also, the right to strike action is included, if it is exercised in conformity with laws of a country.

Article 9 recognizes the right to social security, including social insurance; but the problem with social security in almost every country is the interpretation of this provision into article 2 (1) that the state party shall take steps to the maximum of its available resources, with a view to achieving progressively the full realization of these rights: many government officials normally rely on no available resources to avoid article 9.

Article 10 recognizes the right of protection and assistance that should be accorded to the family as the natural fundamental group unit of society; as well as marriage to be entered with the free consent of the intending spouses. This article did not define family because it includes different types of families. This article places obligation or duty on the

state to protect and maintain the mother through developmental policies.

Article 11 concerns the UN minimum core (i.e. food, housing, healthcare, and clothing) which is fundamental, basic and binding on the state parties to provide. They are not to be derogated or limited rather it places responsibility on the state to provide adequate standard of living and improve methods of food production, conservation, and distribution by making full use of technical and scientific knowledge to develop or reform agrarian systems.

Article 12 provides for the highest attainable standard of physical health. This includes the provision for reduction of stillbirth-rate and infant mortality and for healthy development of the child; improved aspects of environmental and industrial hygiene. This article is subjective or rather relative to available resources of a country to ensure its provision which renders it unenforceable.

Article 13 recognizes the right to education, especially for the full development of human personality and his/her dignity, respect for human rights and freedom. Article 13(2a) made primary education compulsory and should be available and free for all; secondary education including technical vocational secondary education shall be accessible to all by every appropriate means and by progressive introduction of free education.

Article 13(3) provides that the parents and legal guardians shall have the right to choose for their children schools either public or private and state should ensure the religious and moral education in conformity with their own convictions. Also, individuals and bodies were empowered to establish educational institutions and such should conform to the standard set by the state.

Article 14 enjoins the state parties who have not taken steps to ensuring free and compulsory primary education to undertake measures within two years, to work out plan of action within a reasonable number of years to be fixed in the plan, to achieve free education for all. It is binding on all states to provide free and compulsory basic education.

Article 15 provides the right for everyone to take part in the cultural life, enjoy scientific progress and its application without compulsion. It extends to making profit out of a person's scientific inventions. This right is connected to civil and political rights of protecting individual rights of ingenuity. With the brief explanation of the articles, the study delves into the misconceptions of article 2 by western scholars.

3.2.1 The Claim of Vagueness, Lack of Certainty of the Language of Socio-economic Rights

The vagueness claim is premised on the provision of article 2 of CESCER which states that "Each state party to the present Covenant undertakes to take steps...with a view to achieving progressively the full realization of the rights recognized in the present Covenant...."⁹⁴ Western scholars argued based on this provision that ESCR are political policies and social welfare which are intended to be achieved in the future and the denial of them tends to be seen as social injustice and not as violations of rights;⁹⁵ they are not qualified for immediate legal entitlements and enforcement but to be realized progressively.⁹⁶ Whereas civil and political rights are clear according to the provision in article 3 of CCPR that state parties to the present Covenant shall ensure that the rights provided in the present covenant are guaranteed. "Similarly, article 17(1) and (2) of the CCPR obliges governments to protect individuals against unlawful interference with their privacy."⁹⁷They contend that CCPR is plain and certain to be passed on judicially when violated. Due to this watershed and bifurcation; human rights provisions in the Universal Declaration was subjected to preferential treatment and privileging of civil and political rights, above economic, social and cultural rights.⁹⁸ Euro-centric rights scholars who are

⁹⁴ Article 2(1) of CESCER, G A Res. 2200A (XX1) of 16 December 1966

⁹⁵ M Ssenyonjo, *Economic, social and cultural rights in international law* TY International Ltd, Padstow, Cornwall (2009) 4-5s

⁹⁶ As above

⁹⁷ n-48 above

⁹⁸ Universal Declaration housed civil and political rights, and economic, social and cultural rights in one document: Civil and Political Rights were provided for in articles 1 to 21; whereas Economic, Social and Cultural Rights were articulated in articles 22 to 28.

individualistic further argued that civil and political rights are negative because it doesn't require government to do anything to guarantee them whereas ESCR requires government intervention to be realized; however, this argument have been debunked because government must equip the courts and the police to guarantee right to fair hearing; also the right to vote or participate in an electoral process must be guaranteed by government through provision of electoral materials. Economic, social and cultural rights were classified as positive rights because it demands or depends on government to provide them per available resources.⁹⁹ Also the proponents of civil and political rights have argued that socio-economic rights are the ideas of socialist states¹⁰⁰ and the aspirations of post-colonial countries towards development.¹⁰¹

However, European Union (EU) and its member states have reached conclusions that CCPR and CESCRC are indivisible and of equal importance in their Declaration of 21 July 1986 for the realization of human rights and attainment of individual aspirations.¹⁰² Also Vienna Declaration and Programme of Action 1993 have put an end to this debate by declaring that rights are indivisible, universal, interrelated and interdependent.¹⁰³

3.2.2 'Maximum Available Resources' and 'Progressive Realization'

Article 2(1) of CESCRC provides that the state parties shall guarantee the rights in the present covenant according "To the maximum of its available resources, with the view of achieving progressively the full realization of the rights..." The state parties have relied heavily on non-availability of resources as a leeway for denial of socio-economic rights by the governments of African countries; a good illustration of this subheading is the

⁹⁹ n-48 above

¹⁰⁰ B Stark, 'Economic rights in the United States and international human rights law: Towards an "entirely new strategy"' (1992) 44 Hastings law journal 79 at 81.

¹⁰¹ Comments submitted by the United States of America, Report of the open-Ended Working Group on the right to development, UN ESCOR, Commission on Human Rights, 57th session, UN Doc E/CN4/2001/26 (2001), para 8

¹⁰² As above

¹⁰³ Vienna Declaration and programme of action, World Conference on Human Rights, Vienna, 14-25 June 1993, UN Doc A/CONF157/24 (Part 1) at 20 (1993), 32 ILM 1661(1993) (Vienna Declaration).

Swaziland National Ex-Miners' Association (SNEMA) case 2009:¹⁰⁴ Ex-Miners who worked for government of Swaziland but are now old, sued the government to enforce the only socio-economic right [Right to Free primary education (FPE)] contained in the Constitution of Swaziland on behalf of their children who were sent out of school because of inability to pay school fees; government counsels contended that there was no fund to pay for them. The court ruled in favour of the Ex-miners but the government didn't honour the ruling on the bases of non-availability of funds. The trail of poverty that pervaded the continent is traceable to this poor attitude towards socio-economic rights; yet the cases of embezzlement of public fund, corruption by government officials abounds. However, reliance on article 2 cannot relieve them of the obligation to ensure minimum core rights of the UNs; to guarantee food, shelter, housing, and water. Having discussed some of the misconceptions around the bifurcated UDHR, the study will proceed to ACHPR.

3.3.0 Annotation of ESC rights in African Charter on Human and Peoples' Rights (ACHPR)

What is known to be human rights in Africa is socio-economic rights and group or solidarity rights, because Africans lead a communal life; but this did not negate the fact that individuals have their personal rights which is protected under the community; as the UDHR blazed the trail when it provided that 'Everyone has the duties to the community in which alone the free and full development of his personality is possible.'¹⁰⁵ According to Professor Hansungule, 'The ACHPR 1981, African plan on human rights, is perhaps the first treaty to give concrete expression in its terms to the idea of an African concept of human rights.'¹⁰⁶

¹⁰⁴

¹⁰⁵ M Mutua, 'The Banjul Charter and the African cultural fingerprint: An evaluation of the language of duties (1995)' 35 *Virginia of international law* 339

¹⁰⁶ Professor of human rights law, Centre for human rights, Faculty of law, University of Pretoria, South Africa: 'African Charter on human and peoples' rights 1981. In *European issues*, (1998)

Although, ESC rights provisions in ACHPR may not have been comprehensive; but other omitted rights can be interpreted into the provisions contained in the Charter through integrative approach; for example:

*The right to housing is not explicitly recognized under the African Charter, the combination of provisions protecting the right to enjoy the best attainable state of mental and physical health, the right to property and the protection accorded to the family approximates to a right to shelter or housing for which a state party could be held to account. The right to food is implicit in such provisions, as the right to life, the right to health and the right to economic, social and cultural development.*¹⁰⁷

Articles 15 to 18 articulated socio-economic rights: Article 15 provides, the right of everyone to work under equitable and satisfactory conditions.

Article 16, guarantees right to health care both physical and mental health.

Article 17, elaborates on right to education and to partake in the cultural life of his or her community.

Article 18, guarantees the protection of the family by the state whose duty is to take care of its physical health and moral; also, group rights were provided under this article in respect of elimination of discrimination against women, protection of women and children's rights, disabled, the aged. African Charter:

*provides a useful reference tool for domestic enforcement of socio-economic rights; it presents socio-economic rights free of claw-back clauses — a refreshing departure from the regime of civil and political rights, which are subject to these clauses.*¹⁰⁸

Moreover, there was no provision for derogation clause, as contained in the International

¹⁰⁷ n-32 above 228

¹⁰⁸ n-32 above 227

Covenant on Economic, Social and Cultural Rights (CESCR); African Charter has no provision on the principle of derogation as was illustrated in the decision of African Commission on Human and Peoples' Rights: *Commission Nationale des Droits de l'Homme et des Libertés v Chad*,¹⁰⁹ it was decided that African Charter does not permit the state party to derogate their obligations during emergency situations. 'Thus, even a civil war in Chad is not an excuse for the state party to violate rights contained in African Charter'.¹¹⁰ Also see the case of *Constitutional Rights Projects, Civil Liberties Organization and Media Rights Agenda v Nigeria*,¹¹¹ where the Commission decided similarly that unlike 'other international human rights instrument, African Charter does not contain a derogation clause. Therefore, violation of rights and freedoms by emergency and special circumstances is not justified:¹¹² member states to the African Charter assume obligations/responsibility with immediate effect and not subject to the 'progressive realization' requirement.¹¹³ In ACHPR, the two rights regimes (CCPR and CESCR) are on the same pedestal, no one is preferred above the other. A remarkable touchstone of African Charter is that all categories of rights (CPR, ESCR and Solidarity rights) are justiciable before the African Commission and the African Court; it is said to be the first international instrument to house all these divisions of rights.¹¹⁴

3.4.0 ESC rights Enforcement and Implementation Mechanism at the International and Regional Levels

UN system of institutional safeguard and implementation, established several courts to try war crimes like the Nuremburg trial, crimes against humanity, International Court of

¹⁰⁹ Communication No 74/92 (1995), para 21; (2000) AHRLR 66 (9th Annual Activity Report)

¹¹⁰ As above

¹¹¹ Communication No 140/94, 141/94 145/95 (1999), para 41; (2000) AHRLR 212 (12th Annual Activity Report)

¹¹² As above

¹¹³ n-32 above 227

¹¹⁴ M Hansungule, 'Lecture note on Socio-Economic Rights under Comparative International Law,' March 2016, Centre for Human Rights, University of Pretoria, South Africa.

Justice, International Criminal Court but has not established any court on human rights. However, UN Human Rights Council established Committee on every treaty bodies to assist in considering the complaints of human rights violations: There are three main procedures for lodging complaints of violations before the human rights treaty bodies viz:¹¹⁵ Individual communications; State-to-state complaints; and Inquiries.

UN human rights treaty bodies are nine viz: Committee on Civil and Political Rights (CCPR); Committee on Elimination of Discrimination against Women (CEDAW); Committee against Torture (CAT); Committee on the Elimination of Racial Discrimination (CERD); Committee on the Rights of Persons with Disabilities (CRPD); Committee on Enforced Disappearances (CED); Committee on Economic, Social and Cultural Rights (CESCR); Committee on the Rights of the Child (CRC); Committee on Migrant Workers (CMW yet to be formed).¹¹⁶

The United Nations enforcement and implementation mechanism for ESC rights are not contained in International Covenant on Economic, Social and Cultural Rights rather it was provided for in a separate document much later, known as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008.¹¹⁷ The UN Human Rights Council established the Committee on Economic, Social and Cultural Rights to carry out the functions of the optional protocol and to monitor the implementation of the provisions of this present covenant. Article 1, provides the scope of bindingness of the optional protocol over all the state parties to the covenant, while article 2, incorporates reception of communications from state parties on behalf of individuals with their consent or group of individuals claiming violations of their rights in the jurisdiction of the same state party. It has been observed that the UN treaty monitoring bodies considered less

¹¹⁵ n-39 above

¹¹⁶ As above

¹¹⁷ UN General Assembly Res 8/2 18 June 2008, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

cases on individual communication compared to regional courts.¹¹⁸

3.4.1 Regional enforcement of ESC rights

On regional level, African Commission on Human and Peoples' Rights was established in article 30 as an institutional safeguard to promote, implement and to ensure the protection of rights contained in African Charter. The Commission was inaugurated under ACHPR in 1987; with the composition of 11 members or part-time commissioners¹¹⁹ serving in their personal capacity. In order to streamline their operations, African Union (AU) provided Rules of Procedure of the African Commission on Human and Peoples' Rights (2010) as a framework in carrying their duties.¹²⁰ The function of African Commission on Human and Peoples' Rights could be found in article 45(1) of ACHPR which amongst other things provides for: "promotion of human and peoples' rights, by collecting documents, undertake studies or researches, organize seminars, symposia or conferences, disseminate information... and make recommendations to governments."¹²¹ Article 45(2) provides that the Commission should ensure the protection of human and people's rights laid down in this present Charter.¹²² In order to carry out this function, the Commission shall receive communication from individuals, NGOs or group of individuals about violations of human and peoples' rights. Also, a state can make a complaint to the Commission about another state party who has violated the rights contained in the African Charter. See the case of *Democratic Republic of Congo (DRC) v Burundi, Rwanda and Uganda (2004)*,¹²³ where the Commission received a communication from the government of Congo in accordance with article 49 (about communication to the chairman of the Commission on violation of the provisions of African Charter) filed against Burundi, Rwanda and Uganda on massive violations of

¹¹⁸ n-85 above

¹¹⁹ Article 31 African Charter/Banjul Charter 27 June 1981/ 21 October 1986

¹²⁰ Article 3, Rules of Procedure of the African Commission on Human and PEOPLES rights (2010)

¹²¹ Article 45 of African Charter 1981/1986

¹²² As above

¹²³ D.R.C. v Burundi, Rwanda and Uganda (2004) AHRLR 19 CACHPR (2003), Communication22/199

human and peoples' rights. The armed forces of the aforementioned countries assassinated about 38 officers and 100 men of the Congolese forces on Monday, 3 August 1998; raped women before killing them, massacre, mutilations, lootings, displaced people, cutting electricity supply, looted mineral resources and firms, and made life unbearable for the people in D.R.C. provinces of Kalema, Mamiema etc. The Commission ruled against the respondents and made recommendations.

Another landmark decision is the case of *Social and Economic Rights Action Centre (SERAC) v. Nigeria*,¹²⁴ for violation of articles 2, 5, 16, 18, 21, 22, and 24 which guarantee right to protection of family (which implies right to life, property, health, housing); right to food, right of people to freely dispose their wealth and right to safe environment: The Commission ruled that Nigeria breached these articles.

The Commission demonstrated their function to promote ESC rights in the case of *Malawi Africa Association and Others v. Mauritania*,¹²⁵ where five joined communications alleging enslavement of black Mauritians, eviction from their lands and confiscation of their livestock by the government, poor health condition of the prisoners due to insufficient food, blankets and poor hygiene; the Commission ruled against the government, that article 16 of ACHPR which provides that 'Every individual has right to enjoy best attainable state of physical and mental health'¹²⁶ has been violated. Lastly, the case of *Purohit and Another v. Gambia*,¹²⁷ African Commission held that Gambia was in breach of articles 16 and 18(4) of the African Charter on right to health and the right of the aged and disabled to protection in keeping with their physical and moral needs. A major challenge of the African Commission is enforceability of their rulings or decisions which gave rise to the establishment of the Court.

¹²⁴ *Social and Economic Rights Action Centre (SERAC) & Another v. Nigeria* (2001) AHRLR 60 (ACHPR 2001)

¹²⁵ (2000) AHRLR 149 (ACHPR 2000).

¹²⁶ Article 16 of ACHPR 1981.

¹²⁷ (2003) AHRLR 96 (ACHPR 2003)

An omission in ACHPR was the court, which the protocol to African Human Rights Court 1998/2004 established. The Protocol on African Human Rights Court, particularly article 5(1) (a to c) provides that entitlement to submit a case to the court rests on the following: (a) the Commission; (b) the state party who lodged complaint to the commission, (c) the respondent state party whom complaint is lodged against, (d) the state party whose citizen's human rights has been violated, (e) African Intergovernmental Organization. Article 5(2) also allows a state party who has an interest in a case, a locus standi before the court. Article 5(3) provides that NGOs which has observer status before the Commission and individuals should maintain an action in accordance with article 34(6) of the Protocol on the African Human Rights Court, which provides that 'state shall make a declaration accepting the competence of the court to receive petitions under article 5(3) of this protocol;' and the court will reject any petition from a state that have not made the declaration. This provision [article 34(6)] was promptly challenged in the case of *Femi Falana v African Union (AU) (2012)*:¹²⁸

The Court did not rule on the validity of 34(6) itself, but rather applied it to find that the Court lacked jurisdiction. The Court concluded that an individual complaint against the AU, a non-state entity that had not made a declaration pursuant to 34(6), was outside the scope of the Court's jurisdiction. Additionally, the Court further concluded that the AU cannot be sued in the Court because, while the AU has separate legal personality, it is not a party to the Protocol.

African system on enforcement of human rights have fared well in adjudication of socio-economic rights in the region, but the internal courts of African countries are behind in enforcement of socio-economic rights by relegating ESC rights to the jurisdiction of policy makers and the politicians.¹²⁹ Lester and O'Kinneide¹³⁰ maintains that it is a:¹³¹

¹²⁸ Human Rights Briefs, 'Case in African Court on Human and Peoples' Rights Challenges Barrier to Individual Complainants', 31 October 2012.

¹²⁹ n-32 above 230

¹³⁰ L Lester & C O'Kinneide 'The effective protection of socio-economic rights' in Ghai & Cottrell (2004) 17-22.

¹³¹ As above

common mistake to place these broad categories of rights into separate and rigidly watertight compartments, with civil and political rights seen as 'justiciable' and enforceable in courts of law, while socio-economic rights are non-justiciable and a matter exclusively for the legislative and executive branches of government, along with voluntary action.

3.4.2 State Party Report

Another enforcement and implementation mechanism is the state reports on their compliance with the obligations of economic, social and cultural rights. Starting with UN system; the two International Covenants had no committee initially to receive state party reports, rather reports were directed to Secretary-General who in turn sends the reports to United Nations Economic and Social Council (ECOSOC) for inspection and monitoring. ECOSOC established a committee of 18 experts, Committee on Economic, Social and Cultural Rights (CESCR) 1985¹³² and outlined their functions; which is basically to assist in the consideration of state parties report and to monitor the compliance of state parties to their obligation on ESCR.¹³³ Implementation and monitoring of ESCR is the duty of CESCR who performs these duties through reporting procedure established by article 16 of the International Covenant on Economic, Social and Cultural Rights.¹³⁴

Normally the states are under obligation to submit their reports to the Committee after ratification of international treaties at prescribed intervals for introspection/stock-taking at the national level to assess how well the state party had fared in implementing ESCR and to facilitate international inspection.¹³⁵ This will inform the Committee on the measures adopted and the progress made towards implementation of the covenant as

¹³²ECOSOC resolution 1985/17 of 18 May 1985, partly reproduced in manual on human rights reporting, 1991, p. 71

¹³³ ECOSOC Res 1985/17, 28 May 1985 (in UN Document E/1985/85, 15), para f

¹³⁴ See article 17(2): 'Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present covenant.

¹³⁵ F Viljoen above, (2007) 37

well as the difficulties encountered and how the state party can be helped.¹³⁶

Also, article 18 of ICESCR provides, for non-state parties participation in writing reports with a state party on the scope of their activities to ensure ESCR. Report writing involves a constructive dialogue¹³⁷ between the representatives of a state party and the Committee on ESCR: The Committee prepares a list of questions based on the report presented before them to ask the government delegates during public hearing, and opportunity is given to the representatives to respond to these questions.¹³⁸ After the oral hearing, constructive observation made by the Committee will be communicated to the state party and the Secretary-General. For example, Israel was found in breach of the covenant in 1998 by the Committee who noted that:

*The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the state and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to the non-Jews. Thus, these practices constitute a breach of Israel's obligation under the Covenant.*¹³⁹

The Committee's observation which is usually a recommendation is not legally binding but a persuasion to the state party which they may choose to comply with or refuse. The success of a recommendation depends largely on the willingness of the state party to communicate a periodic report to the committee on steps taken to implement the Committee's recommendation.¹⁴⁰ The nature of recommendation and lack of compliance

¹³⁶ Report of the CESCR, UN Doc E/C. 12/1991/1; HRI/GEN/2/Rev 1; Appendix 1

¹³⁷ P Alston, 'The international covenant on economic, social and cultural rights', in manual on human rights reporting under six major international human rights instruments, UN Doc GV.E. 97.0.16 (Geneva, United Nations 2nd edn, 1997), 160

¹³⁸ P Alston, loc. Cit. (note 4), pp. 72-74. The presence of government representatives in the consideration of a state report can be traced to an amendment of the rules of procedure of the Committee on the Elimination of Racial Discrimination in 1972

¹³⁹ CESCR, concluding observations: Israel, UN Doc E/C.12/1/Ad27 (4 December 1998), para 11

¹⁴⁰ n10 above 29

by the state parties calls for establishment of a world court;¹⁴¹ that can make a binding ruling.

State party report is subject to many claw back due to failure of some states to submit their reports as at when due, also very irregular and non-compliance; some state parties present a good image of their government and positive pictures and some are blatantly distorted facts etc.¹⁴²

3.4.3 Fact-finding/Locus in quo or On-site Visits: This involves visit and gathering information about alleged human right violation particularly in the state where the violation occurred; to enable the Committee avail themselves with primary evidence and to assess the situation, as well as interact with government officials, other nationals and NGOs.¹⁴³ Such visit affords the Committee the opportunity to intervene in an urgent circumstance to be addressed. Although locus visit may not be possible without the consent of the state involved.

3.4.4 Treaty body's rapporteur: These are United Nations' appointed individuals, whose job is to conduct research and present an official report on an issue or human rights violation. There are two types of reporters: (a) country reporter and (b) Thematic reporter. Country reporter or Special Rapporteur is assigned to report generally on the violations of human rights that occurred in a state party. The success of a reporter assigned to a country depends on the state to allow such report and to permit the reporter into the country; although some reporters who were refused entry into a state may choose sometimes to work from a neighboring state to obtain his or her information and make use of some individuals to take picture of the venue of the violation, but the information obtained through this means cannot be accurately relied upon because of

¹⁴¹ n72 above

¹⁴² n76 above 38

¹⁴³ As above 39

distortion (hearsay evidence). Although the condition for a country reporter to be able to work depends on mandate from the UN body commissioning the reporter to investigate on the compliance of a country with Universal Declaration of Human Rights 1948 and not the conventions. An example of a country reporter is the UN Special Rapporteur 1994 to find the extent of human right violation during massive killings in Rwanda.¹⁴⁴

Thematic reporter is an appointed reporter from UN to research and present an official report on a theme: For example, living condition of prisoners in different countries. Thematic reporter is not dealing with a country but across the globe.

On the regional level, African Charter on Human and Peoples' Rights provides in article 62 that:

*Each state party shall undertake to submit every two years, from the date the Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.*¹⁴⁵

The reporting procedure in African Charter is like the UN reporting procedure except that the Heads of States and Government argued that the number of years (two yrs.) to report should have been extended to five years like that of UN. Also, fact-finding mission in African regional level is another good example; 'the Special Rapporteur of African Commission on Prisons and Conditions of Detention in Africa, established to study and make recommendations about the position of detainees in AU member states'.¹⁴⁶ It has been noticed that African Commission on a number of occasions undertook visit to locus inquo or engage in fact-finding visit to AU states like Nigeria, Sudan and so on to determine issues on communication against these states.¹⁴⁷

Also in Africa, there is provision for 'shadow report' or unofficial report which is majorly

¹⁴⁴ As above

¹⁴⁵ Article 62 ACHPR 1981/1986

¹⁴⁶ n76 above 39

¹⁴⁷ As above

from NGOs and group of persons to give accurate or true state of things because government report is sometimes doctored to favour the national level. During constructive dialogue, NGOs sometimes can witness the process, so that they can based their push for realization of human rights on the information gathered.

3.4.5 Conclusion

The modest attempt to present socio-economic rights on international and regional level is to create a foundation for the mini dissertation to examine their implementation on national level; particularly in the two jurisdictions chosen for the jurisprudential study. The practice on international and regional level sets the standard that must be followed on national level. Hence, the UDHR as declaratory document has been considered as well as the binding legal documents [CESCR and ACHPR] on socio-economic rights and their implementation. With this, the study will proceed to chapter four which is considering Nigerian's experience on socio-economic rights in chapter II of the 1999 Constitution of the Federal Republic of Nigeria.

CHAPTER FOUR

Brief annotation of chapter two of Nigerian Constitution 1999; socio-economic rights status in Nigeria and their institutional enforcement.

4.0 Introduction

This chapter is starting with brief annotation of the chapter two of Nigerian Constitution and status of economic, social and cultural rights provision in the same Constitution as a guiding principles of state policies, against the background of improved standard of living which socio-economic rights should offer. The fact that it is non-justiciable have denied right bearers the legal standing or right of action. This chapter will examine these issues critically viz -a-viz the judicial activism in enforcement/implementation of socio-economic rights against violators and delve into question of justiciability.

4.1 Brief Annotation of Chapter II of the Nigerian Constitution 1999

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 housed socio-economic rights in Chapter II, sections 13 to 24 of the Constitution under the caption: "FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY,"¹⁴⁸ meaning that ECS rights are goals to be achieved through taking steps by the various arms of the government, including the citizen to guarantee them.

Section 13, imposes obligation and responsibility on the organs of government, all authorities and persons to conform, observe and apply the provisions of Chapter II of CFRN 1999. Section 14, places sovereignty on the peoples of Nigeria; and provides for security and welfare of the people, their participation in government, the composition of government should reflect federal character and belonging/loyalty in the states. Section 15, provides for the motto of Nigeria and political objectives; subsection (3), articulates adequate mobility of people, goods/services, inter-marriage, and formation of

¹⁴⁸ Chapter 2, sections 13 – 24 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999

association; subsection (5), provides for abolition of corrupt practices and abuse of power. Section 16, considers economic objectives such as harnessing the resources of the nation, control of the national economy for maximum welfare, section 16(1) (d) ensures suitable and adequate shelter, food, reasonable national minimum living wage, old age care/pension, unemployment, sick benefits, and welfare of the disabled. Section 17, bothers on social objectives, to guarantee freedom, equality, and justice; subsection (3) provides for means of livelihood and suitable employment, conditions of work, (3) (d) adequate medical and health facilities, equal pay for equal work and promotion of family life. Section 18, ensures educational objectives and opportunities; free compulsory universal primary, university, and adult literacy. Section 19, provides for foreign policy objectives. Section 20, environmental objectives. Section 21, contains the directives on Nigerian culture. Section 22, relates to obligations of the mass media. Section 23, bothers on national ethics such as discipline, integrity, dignity of labour, social justice, religious tolerance, self-reliance, and patriotism. Section 24, provides the duties of the citizen to abide by this Constitution and its ideals.

The provisions of Chapter II is a welcome development for a country in African continent ravaged by poverty and underdevelopment, but the Constitution drafters made the same chapter two toothless bulldog by the provision of section 6 (6) (c), which states:¹⁴⁹

The judicial powers vested in accordance with the foregoing provisions of this section – (c) shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter 11 of this Constitution.

However, this unfortunate incidence has been addressed by the phrase which reads 'except as otherwise provided by this Constitution' contained in the same section. In

¹⁴⁹ Section 6 (6) (c) of CFRN (1999) 20

accordance with this phrase, item 60, second schedule of Exclusive Legislative List which empowered the executive and legislature to create institution(s) to promote and implement fundamental objectives and directive principles of state policy, and the judiciary to objectively interpret socio-economic rights therein, in this terms:¹⁵⁰

The establishment and regulation of authorities for the Federation or any part thereof – to promote and enforce the observance of the fundamental objectives and directive principles contained in this Constitution.

It can be inferred from this provision in item 60 (a) that the judiciary has the responsibility to regulate federal authorities to ensure the observance of fundamental objectives and directives principles of state policy, if the legislatures create the necessary institutions by law; which is the focus of this dissertation.

4.2 The status of socio-economic rights in Nigeria

The rank or position of socio-economic rights in Nigeria's Constitution is 'fundamental objectives and directive principles of state policy,' which could be termed goals to be pursued by governmental arms and citizens in order to realize them; but due to the language of these set of rights; and the provision of article 2, CESCR 1966 which permits the state parties to take steps necessary towards progressive realization of socio-economic rights: there is laxity in their implementation.¹⁵¹ Based on this article, state governments often use their discretion to guarantee these rights at their pleasure or avoid responsibility, for those that lack the political will on the standard and timing of enforcement.¹⁵² In addition to this, is the issue of preferential treatment of civil and political rights over socio-economic rights which is largely western idea that posits that ESC rights are 'no more than pious wishes,'¹⁵³ but this argument should be a thing of the past after Vienna Declaration 1993 and other international treaties which asserts that

¹⁵⁰ Item 60 (a) of the second schedule under Exclusive Legislative List of the CFRN (1999) 173

¹⁵¹ n 17 above

¹⁵² n 33 above 225

¹⁵³ As above

rights are indivisible and cannot be enjoyed without the other.

Also, some scholars see ESC rights as state duties. In his lecture note for the course of PSD 127, Muhammad T. Ladan argued that Chapter II rights of Nigerian Constitution are merely state duties and does not make any specific provision for ESC rights as human rights. He further contended that socio-economic rights provided in the Constitution is the nearest articulation of ESC rights in Nigeria, the ideals of ESC rights contained in the said chapter are expressed not as rights but as goals.¹⁵⁴ He maintained that the provision of chapter two can serve as a barometer of government performance and accountability, which articulates the general feelings, desires, and the aspirations of the people.¹⁵⁵

Apart from the constitutional status of socio-economic rights which this research is set to debunk by engaging item 60(a) of the Second Schedule in the Exclusive Legislative List, the ESC rights can be guaranteed socially in African society where right to inherit a house is still practiced or a man who is of age is allotted family land to build his house for his immediate family. In same way, he could be allocated family land to farm and provide food for his immediate family. Although the points raised are not exhaustive due to the pages allotted for this mini dissertation, the judiciary pointed out that the status of socio-economic rights in Nigeria is non-justiciable as held by the Appeal Court in the case of *Archbishop Anthony Okojie and Others v. Attorney-General of Lagos State*,¹⁵⁶ that 'no court has jurisdiction to pronounce' that any arm of the government has complied with the provision of chapter II of the Nigerian Constitution or not.

4.2.0 Impediment of locus standi vis-à-vis public interest litigation

¹⁵⁴ 'Introduction to National and International Frameworks on Human Rights' lecture material for the course 'PSD 127' Abdusalami Abubakar Institute for Peace and Sustainable Development, Niger State College of Education, Minna, held November 2-7, 2009. p.3

¹⁵⁵ A Otubu, 'Fundamental Right to Property and Right to Housing in Nigeria: A Discourse' Available at www.academia.edu/...Fundamental-Right-to-Property-and-Right-to-Housing-in-Nigeria. Accessed 30/11/2016

¹⁵⁶ (1981)2 NCLR 350. The Appeal Court posited the courts lack the capacity to adjudicate on social rights.

The provision of section 46(1) of the Nigerian Constitution on standing before a court stated that:

*Any person who alleges that any provisions of this chapter has been, is being, or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.*¹⁵⁷

This provision has influenced the decisions of Nigerian Courts largely. The case of *Olawoyin v A. G. Northern Region of Nigeria*,¹⁵⁸ where the applicant questioned the validity of Children and Young Persons Law of Northern Nigeria 1958 which barred the participation of minors in political activities. The Court in dismissing the application, stated that since the applicant's rights were not violated, held *inter alia* that "Only a person whose rights had been violated by a statute may challenge its constitutional validity and that the person's must be directly or immediately threatened."¹⁵⁹

Another related provision could be found in section 6 (6) (b), which provides:¹⁶⁰

The judicial powers vested in accordance with the foregoing provisions of this section- shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any questions as to the civil rights and obligation of that person;

The interpretation of this provision by Mohammed Bello JSC in *Abraham Adesanya v. The President of Nigeria*, was summed up as follows:¹⁶¹

It seems to me that upon the construction of this subsection, it is only when the civil rights and obligations of the person who invokes the jurisdiction of the court,

¹⁵⁷ Section 46(1) of the CFRN 1999

¹⁵⁸ (1961) All NLR 269

¹⁵⁹ As above

¹⁶⁰ Section 6 (6) (b) of CFRN 1999

¹⁶¹ (1981) 1 All NLR 1358; see *Odenye v Efunuga* (1990) 7 NWLR (PT164).

are in issue for determination that the judicial powers of the court may be invoked. In other words, standing will be accorded to a plaintiff who show that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act being complained of.

This is the notion which everybody is running with today, that no litigant can institute a legal action, either in breach of fundamental rights or socio-economic rights without proving locus standi; although this was not the aggregate view of all the judges of the supreme court but that of the majority.

Locus standi is a Latin expression of right/cause of action or standing before a court of competent jurisdiction to be heard, 'It is the legal capacity to institute proceedings in a court of law or tribunal,'¹⁶² on behalf of another person, the public and or challenge government actions/violations of human rights.¹⁶³ The court expressed in the case of *Senator Abraham Adesanya v The President of Nigeria*¹⁶⁴ that the 'Plaintiff must show that he has suffered more, or he is likely to suffer more than the multitude of individuals who have been collectively wronged.'¹⁶⁵ To show interest in a case, there must be two criteria involved: (a) the claimant must show that he/she could have been joined as a party to the suit; (b) the claimant seeking redress should prove that he/she will suffer some injury or hardship because of the litigation.¹⁶⁶ This restrictive common law procedural doctrine must be proved before a case can go on trial, as lack of standing will

¹⁶² See *Berende v Usman* (2005) 14 NWLR Part 944 1 16 paras D-E, quoting the decision in *Alhaji Gombe v PW (Nigeria) Ltd* (1995) 6 NWLR Part 402 402. In *Thomas & Others v Olufosoye* (1986) 1 NWLR Part 18 669, Ademola JCA, referring to the *locus classicus* on the issue of *locus standi* in Nigeria, *Senator Abraham Adesanya v The President of Nigeria* (2002) WRN Vol 44 80, said: '[I]t is also the law ... that, to entitle a person to invoke judicial power, he must show that either his personal interest will immediately be or has been adversely affected by the action or that he has sustained or is in immediate danger of sustaining an injury to himself and which interest [*sic*] injury is over and above that of the general public.'

¹⁶³ A Ekeke, 'Access to justice and locus standi before Nigerian courts' (2014) 1 an LLM dissertation, Centre for human rights, University of Pretoria South Africa

¹⁶⁴ (1981) 1 All NLR 1358; *Odenye v Efunuga* (1990) 7 NWLR (PT164).

¹⁶⁵ As above

¹⁶⁶ Niki Tobi J in *Pam v Mohammed* (2008) 40 *Weekly Reports of Nigeria* 67 123

not allow the claimant to be heard or his case to be entertained by the court.

Approach to locus standi in most common-law jurisdiction is liberal but that of Nigeria is strict interpretation which is an impediment/hindrance to litigants to enforce their violated rights. Strict application of this doctrine denies a lot of indigent Nigerians access to justice, prevents NGOs and other bodies from applying to court on behalf others who don't know their rights.¹⁶⁷

The challenge of locus standi has complicated the non-justiciability of social rights provision under section 6(6)(c) of the 1999 Constitution, to the point that judicial authorities do not hear or determine any issue or question as to whether any act or omission by the executive, legislature and judiciary is in conformity with the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution of Nigeria.

However, Fundamental Rights (Enforcement Procedure) Rules 2009¹⁶⁸ of the courts has liberalize locus standi by encouraging Nigerian courts to adopt the principle of public interest litigation; but the argument is that courts enforcement procedural rules cannot alter or take precedence before the Constitution as was stated in section 1(3) that "If any other law is in consistence with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void." Some scholars and jurist maintain this view in respect of socio-economic rights, as argued by GN Okeke and C Okeke, that adjudication of Chapter II of the Nigerian Constitution on fundamental objectives and directive principles of state policy by any applicant will lack locus standi because of the provision of section (6) (6)(c) of CFRN 1999 which prohibits the courts to inquire into it.¹⁶⁹ The next section will address non-justiciability of socio-economic rights and its implication.

¹⁶⁷ n 82 above

¹⁶⁸ Section 3(e) of Fundamental Rights (Enforcement Procedure) Rules 2009

¹⁶⁹ GN Okeke & C Okeke, The Justiciability of the Non-Justiciable Constitutional Policy of Governance in Nigeria

4.2.1 Non-justiciability provision, its implication/impact on justiciability of socio-economic rights

The drafters of 1979 and 1999 Constitutions of Nigeria, patterned Chapter II after Indian Constitution in the provision of socio-economic rights under fundamental objectives and directive principles of state policy with the intendment that, the scope and power of the courts will not apply to it: They may have a few reasons for non-justiciability of these rights, ranging from:¹⁷⁰

social and cultural rights – the implications for revenue allocation and separation of powers, the unavailability or inadequacy of resources and implementation difficulties – the one point which continues to resonate is that regarding the financial implications of judicial decisions on economic, social and cultural rights. Proponents argue that economic, social and cultural rights involve considerable financial investments over which the judiciary is ill-equipped to adjudicate.

It must be reiterated that these reasons are not cogent enough considering the mandate of the Committee on Economic, Social and Cultural Rights (CESCR) to the state parties with regards to their obligation to ‘move as expeditiously and effectively as possible’ in ensuring (minimum core),¹⁷¹ “every effort has to be made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”¹⁷² Moreover, ‘the prospect of a huge financial outlay to meet the basic needs of citizens should not deter any judge from hearing economic, social and cultural rights cases on their merits.’¹⁷³

The implications of non-justiciability of these rights are not far-fetched: First, there will

¹⁷⁰ n 35 above 197 - 211

¹⁷¹ Also, called core content, minimum core content, minimum core obligations,39 minimum threshold or ‘essential content’, vital minimum, survival kit etc.

¹⁷² Para 9, General Comment 3 on ‘The Nature of States Parties’ Obligations’ (5th session, 1990). See [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument) (accessed 30 October 2016).

¹⁷³ n 35 above 197 - 211

be no public interest litigation to hold government responsible for violation of these rights which should ensure decent living standards for the people and this tantamount to denial of justice to the right-bearers. Secondly, it will promote 'Duty without responsibility,'¹⁷⁴ enthronement of corruption and corrupt practices ravaging the continent, promote lack of political will to guarantee socio-economic rights which leads ultimately to under development. Finally, it amounts to failure of duties provided in the Constitution that the government shall ensure the security and welfare of the people from whom government derive its power, and sovereignty belongs to people.¹⁷⁵ Arguably, litigation may not be the first approach most of the times in resolving socio-economic rights violation but Nigeria as a country which the executive and the legislature have remained adamant and indifference in upholding ESC rights should have a recourse to the judiciary.¹⁷⁶ The desirability of the judiciary intervention, bar association and NGOs is necessary to alleviate the burden upon people occasioned by corrupt leaders through objective interpretation and integrative approach to rights.¹⁷⁷

Although attempt has been made to address non-justiciability of Chapter II of Nigerian Constitution by the judiciary in some decided cases, as Niki Tobi (JSC), observed in the case of *Federal Republic of Nigeria v Aneche & 3 ors*, that:¹⁷⁸

In my view section 6 (6) (c) of the Constitution is neither total nor sacrosanct as the section provides a leeway using the words "except as otherwise provided by this Constitution". This means that if the Constitution otherwise provides in another section, which makes a section or sections of the chapter 11 justiciable, it will be so interpreted by the courts.

Subsequently, the court didn't slack in applying this view in the case of *Bamidele Aturu v*

¹⁷⁴ n 37 above

¹⁷⁵ Section 14 (2) (a) (b) of CFRN 1999

¹⁷⁶ n 37 above

¹⁷⁷ As above

¹⁷⁸ (2004) 1 SCM P. 36 78

Minster of Petroleum resources & ors, where the court observed that:¹⁷⁹

By enacting the Price Control Act and the Petroleum Products, the National Assembly working in tandem with the government has made the Economic Objectives in section 16 (1) (b) of the constitution in chapter 11 justiciable. The enactment is to secure the economic objectives of the state to control the national economy in such a manner as to secure maximum welfare, freedom and happiness of every citizen of Nigeria.

Invariably, Chapter II can be justiciable through the phrase “except as otherwise provided by this Constitution” contained in s. 6 (6) (C) which intended to render chapter two non-justiciable. The next section considers the attitude of the Nigerian judiciary towards interpretation of social rights.

4.3.0 Nigerian judiciary’s activism and attitude towards interpretation of socio-economic rights

The attitude of the judiciary towards interpretation of socio-economic rights is not enthusiastic and objective deriving towards enforcement. Stanley Ibe expressed it thus:¹⁸⁰

Many courts are reluctant to decide on cases arising out of socio-economic rights claims because they believe that these rights relate to questions of social policy which best fall within the power and competence of politicians and policy makers. Because of this judicial reluctance, socio-economic rights are often characterized as non-justiciable.

This position by the courts was concretized in the case of *A. G. Ondo State v A. G. Federation*,¹⁸¹ where the Supreme Court held that questions on the provisions of the

¹⁷⁹ Suit no. FHC/ABJ/CS/591/09.

¹⁸⁰ n 33 above 230

¹⁸¹ (2002)9 NWLR (pt 772)222

Chapter II of the Nigerian Constitution are declaratory and mere Constitutional policy meant for governance which cannot be enforced by legal process; until the National Assembly enacts laws specifically for their enforcement in accordance with the provision of item 60 (a) of the Exclusive List, as was done in respect of section 15(5) of the CFRN 1999 which provides that “The state shall abolish all corrupt practices and abuse of power.”¹⁸² Based on section 15(5) under Chapter II of the Constitution, two national agencies were created to fight corruption namely: Independent Corrupt Practices Commission (ICPC), established on 29 September 2000 to prosecute corrupt government officials; and Economic and Financial Crimes Commission (EFCC), established in 2003 to prosecute advance fee fraud (419 Fraud) and money laundry offenders. There were cases that have been prosecuted by these agencies successfully and numerous losses as result of no case submission and or inability to adduce sufficient evidence to convict an offender. The case of former Inspector-General of Police (Mr. Tafa Balogun) in 2005 over his business interest in some companies worth N17.7 billion in Abuja and Lagos was a landmark prosecution by the EFCC.¹⁸³ The accused pleaded guilty before the High Court of Abuja and entered plea bargaining in respect of the properties and money laundered. He was sentenced to six months imprisonment and his properties involved in the criminal activities were confiscated with a fine of N500, 000. 00 for each of the eight count charges totaling N4. Million. This was a high-profile conviction in the battle against anti-graft.¹⁸⁴ From the foregoing, these agencies are not enforcing socio-economic rights.

To a major extent, the unwillingness and lack of competence of the courts to decide on questions and violations of these rights, impacts negatively on litigants and as well affects their claims.¹⁸⁵ The case of *Archbishop Anthony Okogie and Others v The Attorney-*

¹⁸² Section 15(5) of the CFRN 1999

¹⁸³ G Orji & L Okenwa, ‘Corruption: Balogun pleads guilty, jailed six months.’ See also <http://nm.onlinenigeria.com/templates/?a=6126> (accessed 20 March 2017).

¹⁸⁴ As above

¹⁸⁵ See Economic, social and cultural rights — Handbook for national human rights institutions, publication of the Office of the United Nations High Commissioner for Human Rights http://www.ohchr.org/english/about/publications/docs/train/2_e.pdf (accessed 1 November 2016).

General of Lagos State,¹⁸⁶ illustrates this point; where the Nigeria's Appeal Court on the merit of this case held per, Mamman Nasir J that no courts 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'.¹⁸⁷ He further clarified that the duty of the judiciary is 'limited to interpreting the general provisions of the Constitution or any other statute in such a way that the provisions of the chapter are observed'.¹⁸⁸ Also, it has been argued from two sides, that the courts lack the capability to adjudicate on socio-economic rights, since they are not well-informed on the methods of enforcement;¹⁸⁹ and they are not well equipped to ensure the oversight of the methods of enforcement of their pronouncements as these set of rights were provided under fundamental directive principles of state policy which is programmatic and futuristic goals.¹⁹⁰

However, the judiciary in the case of *Gani Fawehinmi v The State (1990)* departed from this status-quo or changed their attitude in order to secure right to health by granting bail to a criminal suspect on health grounds.¹⁹¹ Although, bail is exclusively civil and political right, and part of the right to personal liberty, but the court engaged liberal interpretation to guarantee socio-economic rights which is a welcomed development in dispensing justice, just as their Indian counterpart.

Also, the Court in Nigeria has liberalized access to courts for violations of socio-economic

¹⁸⁶ (1981) 2 NCLR 350.

¹⁸⁷ As above

¹⁸⁸ As above

¹⁸⁹ Y Ghai & J Cottrell (eds) 'Economic, social and cultural rights in practice — The role of judges in implementing economic, social and cultural rights' (2004) 23, citing P Hunt 'Introduction' in *Reclaiming social rights: International and comparative perspectives* (1996) 24.

¹⁹⁰ n 2 above 230

¹⁹¹ Courts are enjoined to grant bail in special circumstances, including cases where refusal of the application will put the applicant's health in serious jeopardy. See e.g. the case of *Fawehinmi v The State* (1990) 1 NWLR Part 127. In *Mohammed Abacha v State* (2002) 5 NWLR Part 761 638 653 para E, Ayoola J confirmed that '[w]hatever the stage at which bail is sought by an accused person, ill-health of the accused is a consideration weighty enough to be reckoned as special circumstance'

rights by ensuring that any domesticated international treaties on socio-economic rights into the internal law without specific procedural provisions could be enforced by relying on the Fundamental Rights Enforcement Procedure Rules made pursuant to chapter IV of the 1999 Constitution.¹⁹²

It can be said generally that the attitude of the judiciary in Nigerian jurisdiction to embrace activism in constructive interpretation of socio-economic rights is not encouraging on the aggregate.

4.3.1 Integrative approach: Linking civil and political rights to socio-economic rights through judicial creativity

It has been declared in so many international fora, that rights are complimentary and indivisible. Indivisibility has evolved since it was first used in a human rights context in 1950, during the time that the Third Committee of the General Assembly of the U. N was debating on how to rework the Universal Declaration of Human Rights (Universal Declaration) into a binding treaty form. During the debate, Argentina implored the committee 'Not to attempt to divide the indivisible.' From then, the term indivisible was coined, it implied that socio-economic rights should be treated on the same footing as civil and political rights.¹⁹³

From the points adduced in the preceding subheading, the case of *Gani Fawehinmi v. The state* is a classic example of integrative approach, but the courts are not obliged to adopt this approach into the interpretation of ESC rights violations in Nigeria.

The reason for the lack of integrative approach to the interpretation of social rights is traceable to Nigeria judiciary's attitude of demarcating/sustaining the dichotomy between CPR and ESCR, based on the argument that civil and political rights are rendered in clear justiciable language which encourages judicial activism whereas socio-economic rights

¹⁹² See judgment of O Achike J in *Abacha v Fawehinmi* (n 58 above) 20. See also *Oshevire v British Caledonian Airways* (1990) 7 NWLR Part 163 489 and *Ibidapo v Lufthansa Airlines* (1997) 4 NWLR Part 498 124.

¹⁹³ n 30 above 1

are goals/political policies for governance which is futuristic, and to be realized according to maximum available resources.

Another germane point is that the courts have paid deaf ears to the plight of the deprived/underprivileged in the society who are enmeshed in the violations of their social rights by corrupt politicians/leaders, who always rely on the non-justiciability provisions of Chapter II of the Nigerian Constitution to escape accountability in the office and after (duty without accountability which has enthroned corruption on the highest level). This practice is the opposite in Indian jurisdiction where the Supreme Court in several cases has extended right to life to include socio-economic rights to protect and promote the rights of indigent people where government has not fulfilled their obligation to guarantee them: An example of this assertion is the case of *Olga Tellis & two Others v. Bombay Municipal Corp. & Others* 2007.¹⁹⁴ The court held *inter alia* that the rights to livelihood is a necessary component of the right to life because, if it is not treated as such, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. The court further held that an equally important facet of that right, is the right to livelihood because no person can live without the means of living, that is, means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life is to deprive him of his means of livelihood to the point of abrogation. Denial of means of livelihood explains the massive migration from rural population to big cities due to no means of living in rural area. The motive that forces people to the desertion of their hearths and homes in the villages is the struggle for survival or the struggle for life. So, unimpeachable is the evidence of the nexus between life and the means of livelihood. But reverse is the case in Nigerian jurisdiction that measure more in traditional and formal law practice than becoming activist in protection of the right-bearer from violations and more pragmatic to address the infringement of socio-economic rights. This links the thesis to Indian jurisdiction in

¹⁹⁴ CHR, 236, (Indian Supreme Court Case) SUIT NO 4610-4612/1981.

the next chapter.

4.4.0 The institutional enforcement/implementation of ESC rights in Nigeria

The enforcement of international human rights treaties can only be effective, through its implementation on the domestic level by some established institutions and internal laws of the state parties. These institutions such as human rights commission, public complaints commission, courts and tribunals are the platforms through which international treaties are enforced, because of easy accessibility to the people at national level, particularly with regards to socio-economic rights.¹⁹⁵ In Nigerian jurisdiction, the courts, human rights commission and public complaint commission play a key role in the enforcement/implementation of socio-economic rights.

The discussion above on the court's activism, has given a vivid account of enforcement/implementation of socio-economic rights by the courts. The dissertation will proceed to engage National Human Rights Commission of Nigeria's performance in enforcement of socio-economic rights, and as well consider the public complaint commission.

4.4.1 National Human Rights Commission of Nigeria (NHRCN)

The Commission was established by the military administration in 1995 by Decree 22 with the mandate to monitor and investigate violations and alleged violations of human rights in Nigeria and subsequently make recommendations to the federal government.¹⁹⁶ The NHRCN also has the responsibility to protect and assist the victims of human rights violations to secure remedies or redress appropriate for such violations according to human rights guaranteed in the Constitution of Nigeria. NHRCN was empowered to

¹⁹⁵ M Ssenyonjo, *Economic, social and cultural rights in international law* (2009) 140

¹⁹⁶ n 43 above 198

exercise autonomy and independence from any other organs of the government which could enable it to operate according to the acceptable international practice. Although the Commission has contributed in the awareness and campaign to promote and protect human rights through seminars, workshops and by training NGOs, prison officials, teachers, judges, other relevant government institutions and the society; but not holistically, because they concentrate on civil and political rights (fundamental rights), without paying attention to socio-economic rights.

In the recent, NHRCN has been boosted through the amendment of their Act which provided that: the affairs of the NHRCN must be conducted independently,¹⁹⁷ the Commission's fund should be charged directly from the Consolidated Revenue Fund of the Federation,¹⁹⁸ the Commission should establish Human Rights Fund (HRF)¹⁹⁹ and the award/recommendations of NHRCN should be recognized as the judgement of the high court.²⁰⁰ The attitude of the Commission towards socio-economic rights could be likened to that of the court that relegate social rights to jurisdiction of politicians and the law makers. Abuse of socio-economic rights are not addressed or litigated before the court by the Commission, different cases of social rights violations abound in Nigeria which NHRCN didn't show any interest.

Public Complaint Commission like the Ombudsman (is a commission that receives complaints about corrupt public officer or administrative authority, who pursues remedies for their claims and settlement of the issues raised). They measure more in fundamental rights and not socio-economic rights, aligning to the attitude of the court and Human Rights Commission of Nigeria.

4.4.2 Conclusion

This chapter foregrounds the mini dissertation's topic and x-rays the problem that the

¹⁹⁷ Section 7 of the Amendment act to National Human Rights Commission Act

¹⁹⁸ As above section 10

¹⁹⁹ As above section 12

²⁰⁰ As above section 18

study is addressing by unravelling the attitude of the Nigerian courts to the enforcement of socio-economic rights. The research so far has revealed that the judiciary in Nigeria are reluctant to constructively interpret fundamental right into socio-economic rights, as well as relax *locus standi* to allow public interest litigation, and by so doing, the violation of social rights is not addressed; yet Nigeria is amongst the common law countries in Africa that are parties to ICESCR and ACHPR on socio-economic rights. Lack of implementation of socio-economic rights on domestic level by the statutory institutions has adversely affected the downtrodden, leaving behind corruption and poverty; while the courts are more concerned with the procedural litigation and over lawyering. Let's see the experience of Indian jurisdiction and what to learn.

CHAPTER FIVE

The Experience of India on Socio-economic Rights Implementation and Enforcement mechanism.

5.0 Introduction

This chapter is concentrating on the Indian's experience of implementation and enforcement of socio-economic rights; more especially, the liberal interpretation of socio-economic rights by the judiciary which is greatly enhanced by integrative approach and relaxing locus standi to allow public interest litigation. It will evaluate the courts' creative interpretation of ESC rights in India and the factors that contributed to this landmark success against their Nigerian counterpart who is also a member of Commonwealth that shares constitutional ties with her, especially, 'Directive Principles of State Policy (DPSP). And lastly, the domestic enforcement mechanisms for protection of ESC rights, which includes National Human Rights Commission of India will be considered.

5.1 Socio-economic rights provision under Indian Constitution

The Constitution of India provided for socio-economic rights under Part IV which is a directive principle of state policy, a program of action for the government to pursue and guarantee at the availability of resources. Initially, the Constitution Drafting Committee thought to make all the rights justiciable but this plan did not work out rather the rights were divided into two viz, civil and political rights and ESC rights which is almost *in peri Materia* with CESCR and they thought to make social rights enforceable after a period of time, else they would remain 'No more than a pious wishes'²⁰¹ which is to be pursued.

The Constitution of India 1950 with 450 articles is about the longest Constitution of a country in the world,²⁰² and provides for civil and political rights (fundamental rights) under Part III of the Constitution whereas economic, social and cultural rights are

²⁰¹ n 33 above 226

²⁰² n 68 above cviii

contained in Part IV under the caption 'Directive Principles of State Policy' which implies goals to be pursued. Laws made by the legislature can also be struck down by these courts if found contrary to the provisions of the Constitution. These broad powers of judicial review, combined with far-reaching legislation, have proved critical in the judicial enforcement of ESC rights and it is to this category of rights that this dissertation now turns.

The Constitution provided for socio-economic rights in part IV, articles 37 to 48 viz: Article 37, provides for non-justiciability of the principles laid down in Chapter IV by any court, rather it is the responsibility of the government through law making to apply them.

Article 38, makes it the responsibility of the state to promote the welfare and secure social order in which justice, social, economic and political tolerance shall inform the national life and as well strive to minimize inequalities.

Article 39, provides right to an adequate means of livelihood; ownership and control of the material resources of the community for common good and good working conditions and health for the workers.

Article 41, provides for right to work, education, and public assistance. Article 42 borders on just and humane conditions of work and maternity relief. Article 43 makes provision for living wage for workers and 43 (A), articulates participation of workers in management industries. Article 44, provides for uniform civil code for the citizen; article 45 provides for early childhood care and education. Article 46 provides for promotion of education and economic interest of the minority. Article 47, requires the state to raise the level of nutrition and standard of living and article 48 provided for organization of agriculture and animal husbandry.

In concluding this section, it is submitted that although ESC rights are classified as Directive Principles of State Policy and made expressly non-justiciable under the Indian Constitution, they enjoy a constitutional climate which can be exploited by an adventurous bar and a courageous judiciary for the enforcement of these rights.

5.2 Enforcement mechanism and protection of socio-economic rights in India

The Human Rights Act of 12 October 1993 established an institutional *mechanism* (National Human Rights Commission) for the enforcement and protection of human rights in accordance with the Principles of Paris 1991.²⁰³ The Paris Principles sponsored by UN, outlined set of principles which the national institutions for human rights must be developed.²⁰⁴ Due to hardship and the condition of the underprivileged, some additional commissions were created to address social, economic, and political conditions to increment rights. Subsequently, article 51(c) of Indian Constitution and Human Rights Act 1993 were established to aid promotion and protection of human rights through the establishment of Human Rights Commission in all the states in the country and at the union level.²⁰⁵ There was also a subsequent amendment of the Act in 2006 which enacted several provisions that granted wide powers to the Commission to enable it to operate effectively. The new legislation for the first time brought together Fundamental Rights, Directive Principles, and Fundamental duties under human rights to conform with the international law policy of human rights which was initially demarcated in the Constitution of India, according to section 2(d) of the Act,

*human rights means rights of an individual relating to life, liberty, equality and dignity guaranteed to an individual by constitution and by international covenants that have a binding nature on the states and its various organs.*²⁰⁶

It is evident that before the Act was established the court by way of interpretation of the provisions of the Constitution, engaged the concept of public interest litigation to promote and protect human rights. The Commission was empowered by section 12 of the Act to investigate the abuse and or infringement of human or dereliction by public servants to

²⁰³ T Sastry, *Human rights and duties in India: Law, policy, society and enforcement mechanism* (2014) 42. Also, see <http://www.unipune.ac.in/university-files/pdf/549-law-course-book/22-2-14.pdf>. Accessed 24 November 2016.

²⁰⁴ M Sinha, 'Role of national human rights commission of India in protection human rights. Also <http://www.rwi.lu.se/pdf/seminar/manoj05.pdf>. Accessed 25 November 2016

²⁰⁵ n 112 above 43

²⁰⁶ As above 44

prevent violations of human rights.²⁰⁷ Also the Commissions are charged with the responsibility to review the safeguards provision under the Constitution, Acts of the parliament or any other law enacted to protect and promote human rights with a view of making recommendation on effective measures of implementation.²⁰⁸ Manoj Kumar Sinha, of the Human Rights Commission of India developed a proactive approach in the implementation of ESC rights through delivering annual reports which identifies major areas of hindrance to the enjoyment of these rights by Indian citizens and recommends remedies. The work of the Commission is laudable in ensuring that the compulsory education for all children until they complete fourteen years was adhered to and through their persistent efforts, government amended its service rules to stop the government from employing children. Also, rights to food, water supply, shelter, and rights against bonded labour have been secured through judicial enforcement by the commission and the Supreme Court in certain cases refer to the national human rights commission.

One of such cases is the *National Human Rights Commission v. State of Arunachal Pradesh*.²⁰⁹ Where the Commission filed public interest petition under Article 32 of the Indian Constitution before the Supreme Court of India to protect and secure the right of Chakmas to life, personal liberty and right against persecution. The court ruled inter-alia that the displaced people of Chakmas refugees are entitled to their right to life and personal liberty within the state.²¹⁰ It should be noted that the national human rights Commission of Indian treats all rights (CPR and ESCR) as indivisible, interrelated and interdependent.²¹¹

Apart from juridical enforcement of the violated rights, the Commission synergizes with Non-Governmental Organizations (NGOs) to address the issue of human rights.²¹² Indian national human rights commission has performed well compare to their counterpart in

²⁰⁷ n 113 above

²⁰⁸ As above

²⁰⁹ AIR 1996 SC 1235

²¹⁰ n 113 above

²¹¹ As above

²¹² As above

this study which has been fettered on every side by several factors. At this point, the focus of the dissertation will shift to judicial activism of the Indian courts.

5.3 India judiciary's liberal attitude towards interpretation of socio-economic rights and public interest litigation

The vibrant judicial activism of the Indian court in creative interpretation of socio-economic rights into fundamental rights is at the root of the radical departure from the traditional non-justiciability of Directive Principles of State Policy (DPSP) to liberal interpretation and relaxing of locus standi to enable public interest litigation. This feat was achieved at the time the then Prime minister, Indira Gandhi introduced state of emergency in 1975. As a result of the public reaction to this development, the judiciary/supreme court's attitude was reshaped and invigorated to that of an activist towards justiciability of social rights from 1978, starting with the case of *Maneka Gandhi*,²¹³ by constructively expanding the provision of article 21 on the right to life to extend to social rights provisions.²¹⁴ This same principle was adopted by the Court in the case of *Kesavananda Bharati v State of Kerala*²¹⁵ in ruling that civil and political rights (fundamental rights) and social rights (DPSPs) are complementary. In the same spirit, the court in the case of *Peoples Union for Civil Liberties (PUCL) v Union of India and Others*,²¹⁶ applied the principle to the right to food, to keep the public distribution shops open to ensure regular supplies to avoid hunger and starvation. This principle is in keeping with the right to food provided in article 21 which the court sought to include distribution access to food and to prevent malnutrition especially amongst the children, women and the aged.

Special acknowledgement should be accorded to the new wave of interpretation which

²¹³ A.I.R. 1978 S.C.597.

²¹⁴ The supreme court held in *Francis Coralie Mullin v Union Territory of Delhi* 1981 (1) SCC 608, that the right to life includes the right to live with human dignity and all that goes along with it.

²¹⁵ (1973) 4 SCC 255.

²¹⁶ WP (Civil) No 196/2001

encouraged public interest litigation and juridical creativity in interpretation of social rights in India as well as the challenges that come along with it. The new challenge is that the available remedies, for example injunctions and damages were inadequate to redress the violations of socio-economic rights suffered by the underprivileged in the society. Thus, the court devised new remedies which should be adopted by the state and its authorities to respond to the problems.²¹⁷ Worthy of note is the fascinating development in the Indian judicial activism which rest on the approach towards the right to education. The court was approached in the case of *Unni Krishnan JP v State of Andhra Pradesh*,²¹⁸ to interpret article 45 of Indian Constitution which provided for 'free and compulsory education for all children until they complete the age of 14,'²¹⁹ as government obligation. The court in their liberal and creative interpretation held that the passage forty-four years from the drafting of the Constitution in 1950 has qualified DPSP right into fundamental right. Per the ruling of the court, right to education is an integral part and 'flows from the right to life guaranteed under article 21, and a child (citizen) has a fundamental right to free education up to the age of 14 years'.²²⁰ This judgement influenced the state of India, after nine years during the 93 amendments, the legislation made provision for fundamental right to education for children between the age bracket of 6 to fourteen years in article 21(a).²²¹

The principle of public interest litigation has helped a great deal to litigate violations of the rights of the indigent people who cannot afford the legal fee, the NGOs and other

²¹⁷ Thus, the court in the case of *Bandhua Mukti Morcha v Union of India* AIR 1984 SC 802, made an order giving several instructions for identifying, releasing and rehabilitating bonded labourers, ensuring minimum wages payments, observance of labour laws, providing wholesome drinking water and setting up dust-sucking machines in the stone quarries. The supreme Court also established monitoring agency, whose duty is to check the implementation of those directions.

²¹⁸ (1993) 1 SCC 645.

²¹⁹ The drafters of the Constitution on the right to education wanted the provision to be realized within the period of ten years; so, it is actually standing on a different footing in the study of socio-economic rights in India.

²²⁰ n 125 above

²²¹ S Muralidhar 'Implementation of court orders in the area of economic, social and cultural rights: An overview of the experience of the Indian judiciary' a paper presentation to the First South Asian Regional Judicial Colloquium on Access to Justice, New Delhi, 1-3 November 2002 <http://www.ielrc.org/content/w0202.pdf>. Accessed 16 November 2016.

groups, through the relaxed common law doctrine of locus standi can maintain action on behalf of the less privileged for infringement of their socio-economic rights.

5.4 Evaluation of the two jurisdictions' judicial activisms in enforcing socio-economic rights violation

The outstanding feat achieved in Indian jurisdiction in enforcing social rights could be attributed to several factors as articulated by Muralidhar.²²² The success in adjudication of socio-economic rights jurisprudence in India could be traced to quite a number of developments which are creative interpretation of rights as indivisible, interrelated and interdependent.²²³

(a) the declaration of social rights and fundamental rights as indivisible, interrelated and interdependent in the national level according to international standard of human rights;

(b) "the recognition that the doctrine of substantive due process permeates the entire Part III comprising fundamental rights. Thus, to pass judicial scrutiny, an executive, quasi-judicial or legislative action would have to justify the 'just, fair and reasonable' test;"²²⁴

(c) constructing the content and scope of fundamental rights to life to embrace 'the bare necessities of life such as adequate nutrition, clothing, and shelter and facilities for reading, writing and expressing one's self in diverse forms';²²⁵

(d) engaging the principle of public interest litigation as a device to enable interest groups to achieve social objectives by granting them standing before courts on behalf of those disadvantaged socially and economically; a pragmatic effort in other to relax the procedural common law doctrine of locus standi so that litigants can be free from the stranglehold of traditional formal law;

²²² n 34 above

²²³ The Supreme Court's judgement in *Consumer Education and Research Centre v Union of India* (1995) 3 SCC 42, had occasion to hold, for the first time, that the right to health is an integral fact of a meaningful right to life

²²⁴ n 33 above 236

²²⁵ n 128 above

(e) “the expanded notion of the right to life enabled the court, in its public interest litigation authority, to overcome objections on grounds of justiciability to its deciding the enforceability of socio-economic rights.”²²⁶

The performance of Indian jurisdiction is laudable and worthy of emulation by the Nigerian jurisdiction that is stocked in the quagmires of locus standi and over lawyering in adjudication of social rights. Nigerian jurisdiction is bereft of the factors articulated by Muralidhar above as ‘reasonability test’²²⁷ which is at the root of Indian’s success in adjudication of socio-economic rights. The dismal attitude towards justiciability of socio-economic rights could be partly attributed to the provisions of section 6(6)(c) which seemingly ousts courts’ adjudicatory power over chapter 2 of the Nigerian Constitution and the relegation of social rights to political policies, economic goals and social wishes to be attained progressively in the future, depending on the availability of resources.²²⁸ Public interest litigation is yet in the limbo in Nigeria because the doctrine of locus standi is rigidly adhered to by the courts unlike their Indian counterpart who made conscious effort to step down the doctrine of standing to enable public interest litigation to the interested parties/groups. This entails that litigant most not have any direct or sufficient interest in the cause of action brought to the court; it is sufficient that the victim of the violation may be only a disadvantaged person in society who cannot afford legal fee to enforce his/her rights; they need not belong to the group that is litigating on their behalf.²²⁹ In his article, titled ‘Beyond justiciability: Realising the promise of socio-economic rights,’ Stanley Ibe breathed out that:²³⁰

Judicial activism is at the root of public interest litigation and an important aspect of the process of its evolution was the relaxation of the traditional rule of locus

²²⁶ n 33 above 236

²²⁷ n 34 above

²²⁸ Article 2 of CESC 1966

²²⁹ n 33 above 238

²³⁰ As above

standi.

Integrative approach as discussed above under the Indian jurisdiction is not very familiar to Nigerian jurisprudential inquiry into socio-economic rights owing to the attitude of treating fundamental rights separately from social rights: Instead of adopting the global standard of indivisibility, interdependent and interrelatedness of human rights.²³¹

It must be reiterated that section 6(6)(c) of the Constitution of the Federal Republic of Nigeria 1999 is a conspicuous and fundamental point of departure from the precedence of integrative approach established by Indian jurisprudence to ensure that infringements of socio-economic rights are remedied through constructive interpretation of civil and political rights into economic, social and cultural rights. This same legal culture transcends to the liberal attitude of public interest litigation which relaxed locus standi principle in Indian experience, but lacking in Nigerian jurisdiction.

Therefore, a clarion call is extended to Nigerian judges to use their constitutional position to address the societal malady of violations of socio-economic rights and corrupt practices that have denied the poor minimum core²³² as the UN standard that every government should guarantee to its citizen.

This section on the assessment of the two jurisdictions and their legal activism to guarantee socio-economic rights which is the jurisprudential inquiry of this dissertation leads us to the penultimate chapter which considers social rights on international level, including the safeguards of the rights guaranteed in international treaties.

5.5 Conclusion

The vibrant judicial activism of Indian judiciary in enforcing socio-economic rights is at root of creative interpretation of rights to be indivisible, interdependent, and interrelated; thus, the engagement of integrative approach and the relaxation of locus standi to allow for public interest litigation has culminated to realization of social rights by the citizens.

²³¹ n 15 above, para 5

²³² Article 11 of CESCR 1966 which bothers on the most important rights expected of a state party as their obligation to guarantee to its citizen. They are food, clothing, housing and living conditions.

The readiness of the judiciary achieved this feat, by implementing socio-economic rights, as well as the protection of the less privileged from the corrupt leaders who rely on lack of funds to deny the people basic necessities or minimum core for the citizens.

Nigerian judiciary should be challenged by this laudable achievement by the Indian jurisdiction to become activist in implementation of socio-economic rights.

CHAPTER SIX

Summary, General Remarks, Recommendations, and conclusion

6.0 Introduction

This mini dissertation has ventilated its position that socio-economic rights provision under Chapter II of Nigerian Constitution can be justiciable irrespective of the provision in section 6(6) (c) which assumedly rendered provisions of Chapter II on social rights impotent and unenforceable; it was as well discovered that justiciability of socio-economic rights alone cannot adequately redress the violations of these rights, rather it will take wholistic efforts of the stakeholders to achieve this. During the period of teasing out germane points for this jurisprudential thrust to answer the research questions posed by this thesis, it was vividly clear that it will involve holistic efforts of the legislature and statutory institutions like courts, human rights commission, NGOs, and other civil society groups to protect, enforce and implement socio-economic rights. Based on several issues raised and the findings, this chapter is set to opionate requisite ideas and recommendations, that will help ameliorate and upgrade the state of affairs in Nigeria jurisdiction. This sixth chapter will be finalizing the dissertation by summarizing, making general remarks, possible recommendations, and conclusion.

6.1 Summary of the study

A lot has been learnt on the two jurisdictions considered in this mini dissertation. The areas of similarity and divergence were examined. Apparently, the two common law countries' Constitution rendered socio-economic rights unenforceable initially, by providing social rights under 'directive principles of state policy,' but the Supreme Court of India became an activist in their creative interpretation of fundamental rights into social rights through integrative approach. Furthermore, India relaxed common law doctrine of locus standi to pave way for public interest litigation which informed the vibrant judicial activism of Indian jurisdiction. Whereas the courts in Nigerian jurisdiction maintain cautious and passive approach to liberal interpretation of socio-economic violations by

relegating ESC rights to the politicians and law makers. These principles of integrative approach and public interest litigation is alien to Nigerian judiciary, as a result the downtrodden are in a pitiable state owing to the wanton abuse of socio-economic rights and corruption which has gained foothold on the system to the point that public officials embezzle funds with impunity because there is no investigation, accountability and prosecution of their corrupt practices while in the office and after.

Enquiry into the national human rights commissions and NGOs of the two jurisdictions revealed that India has the most vibrant protection and enforcement of social rights that is in compliant with international standards; while the Nigeria jurisdiction complacently tilts to the attitude of passivity and carefulness.

From the international enforcement and implementation safeguards through state-party-reporting to enable the Committee on Economic, Social and Cultural Rights to monitor state party obligations, the Indian jurisdiction has done fairly well above Nigerian government's attitude towards compliance with state-party reporting.

6.2 General remarks

Nigeria is the first amongst common law countries and the only west African country to domesticate (through dualism) socio-economic rights in Africa, but their attitude towards enforceability of these rights is poor, which informs the reason many Nigerians are enmeshed in squalor and barely survives on daily bases. It is pertinent to remark that ignorance and poverty is the product of violations of human rights, particularly the rights to education and food.

The vibrant and liberal interpretation of socio-economic rights in Indian jurisdiction and the activist spirit of the supreme court of India is a precedent that Nigeria must adopt or follow to ensure social rights to the indigent citizen. Also, the National Human Rights Commission of Nigeria should be active in litigating violations of socio-economic rights on behalf of the victims.

Another remark is that the principle of *ubi jus ibi remedium* (where there is a wrong, there is remedy) seems not to apply in violations of socio-economic rights which amounts to denial of justice; but in the interest of justice, the judiciary should arise to the occasion to redress the violation.

6.3 Recommendations

Nigeria has domesticated African Charter's provision on socio-economic rights, I therefore, recommend that the judiciary should rely on the Charter to enforce socio-economic rights; as held in the case of *Ogugu v State*²³³ that African Charter:

like all other laws fall within the judicial powers of the courts . . . Thus by virtue of the provisions of sections 6(6)(b), 236 and 230 of the 1979 Constitution, . . . it is apparent that the human and peoples' rights are enforceable by the several high courts depending on the circumstances of each case and in accordance with the rules and practice of each court.

Although the African Charter is superior to other laws but subordinate to the Constitution and has great force and vigour as held in the case of *Abacha v Fawehinmi*.²³⁴ It was held that African charter is not higher in hierarchy to the Constitution as the law in the land and the grund norm. Therefore, the Charter takes cue from the Constitution.

It is expected from the foregoing that the courts should rise to protect and promote socio-economic rights of the underprivileged as the last hope of the populace.

Nigerian should establish more institutional mechanism for protection of social rights and encourage co-operation of these bodies with the National Human Rights Commission to present a united front. Also, the NHRC should engage more actively in public interest litigation to secure redress for infringed socio-economic rights.

²³³ (1994) 9 NWLR Part 366 1.

²³⁴ (1996) 9 NWLR Part 475 710.

Accountability by public officers is desirable after vacating an office in order to curb the menace of corruption and embezzlement of the public fund to enable government to ensure socio-economic rights. Laws should be enacted pursuant to their prosecution which will serve as a deterrent to incumbent officials who want to follow the footsteps of their predecessors in embezzlement. Investigation of Corrupt Practices Commission (ICPC) and Economic and Financial Fraud Commission (EFFC) should be proactive and vibrant in prosecution of corrupt government officials with a view of securing their conviction.

6.4 Conclusion

In conclusion, socio-economic rights can be made justiciable in Nigeria by aligning with the example of Indian judicial activism; other civil society groups should see the challenge posed by violation of social rights as an inhibition to development and best attainable standard of life and adopt an activist approach to guarantee these rights.

The legislature should establish institutions that can investigate to know if the actions of the government officials are in consonance with the provisions of Chapter II of the Nigerian Constitution as provided in item 60 of the Second Schedule of Exclusive Legislative List.

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