

Appraisal Of The Measures For The Realization Of Economic, Social And Cultural Rights In Nigeria

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ABSTRACT

The enforcement of Economic, Social and Cultural (ECOSOC) rights by States is a relevant issue at the International Community. States have relied on the progressive enforcement of these rights by means of the available resources within their territories, and on international assistance depending on the circumstance in fulfilling these rights. The violation of human rights after the second world war prompted the United Nations Charter of 1945 (UN Charter), and subsequently the Universal Declaration on Human Rights 1948 (UDHR) containing the Bill of Rights. In 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) were adopted as ease to states in achieving the protection and promotion of human rights. The Committee on Economic, Social and Cultural Rights was set up in 1985, for monitoring and ensuring the implementation of the provisions of the International Covenant on Economic, Social and Cultural Rights 1966 by state. The Committee enjoins states to use all available means to ensure that the people promote these rights as other human rights cannot be fully enjoyed until the Economic, Social and Cultural Rights are realized. Regionally, treaties have been entered into for the enforcement of these rights, and in the African Region, the African Charter on Human and Peoples' Rights was adopted to strengthen the protection and promotion of all human rights. In Nigeria ECOSOC rights are contained in Chapter II of the 1999 Constitution, and the state has made the Economic, Social and Cultural Rights objectives to be carried out rather than rights to be protected by the state.

Keywords: Cultural Rights, Human Rights, right to housing

INTRODUCTION

A state is required to take measures for the realization of the economic, social and cultural rights within their territories.¹ Nigeria, in taking steps, has employed legislative and administrative measures by enacting laws and developing policies. Despite all these efforts Nigeria still seems to be slow in the realization of these rights. An examination of these measures will reveal that the courts should have no limits in pronouncing on the enforcement of these rights where the government fails or neglects to undertake its obligation.

Right to Housing and Shelter

Housing may be agreed to be one of the element in the hierarchy of human basic needs, the first being the right to food. Housing is important for a healthy living. However states have often argued that lack of capacity and resources hinders the realization of this right. Article 25 of the UDHR² recognizes the right to housing as part of the right to an adequate standard of living article 11 (1) of the ICESCR³ further provides that 'State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself, and his family, including adequate... housing, and to the continuous improvement of living conditions'. General Comment 4 and 7 was developed on this right by the Committee on Economic, Social and Cultural Rights to monitor the implementation of this

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¹ ICESCR 1966, the Preamble.

² UDHR 1948.

³ ICESCR 1966.

right by state.⁴ Yet millions of people have no shelter. However, under international law, failure by a state party to comply with an obligation under a treaty with respect to economic, social and cultural rights is a violation of that treaty.⁵ The fact that these rights are to be realized progressively does not alter the legal obligation of the state to ensure their full enjoyment. States have the responsibility to show that measurable progress is being made towards the realization of these rights and cannot justify any reason for the failures.⁶ Regionally, the African Charter on Human and Peoples' Rights makes no express mention of the right to housing, but it has been interpreted to be interrelated to the right to life and the right to physical and mental health.⁷ In response to the inclusion of this right to constitutions, the South African Constitution expressly provides for the right to adequate housing and prohibits forced eviction.⁸ The State is mandatorily required to take reasonable legislative and other means which includes administrative measures to achieve the progressive realization of this right, and there should be no arbitrary evictions.⁹

The South African Constitution provides arguably the most sophisticated and comprehensive system for the protection of socio-economic rights of all the constitutions in the world today.¹⁰ This could be traced back in no small measure to the fact that one of the most hideous features of apartheid was the systematic violation of the norms of social and economic justice.¹¹ The new South African Constitution of 1996¹² includes a wide range of enforceable economic and social rights, including the rights to food, water, healthcare and housing.¹³ Justice Albie Sachs of the South African Constitutional Court has said:¹⁴

The Bill of Rights is there not simply to protect the vested interests of those that have, but to secure basic dignity for those that have not. The key question then is not whether unelected judges should ever take positions on controversial political questions. It is to define in a principled way the limited and functionally manageable circumstances in which the judicial responsibility for being the ultimate protector of human dignity compels them to enter what might be politically contested terrain.

The South African Constitution includes economic and social rights in sections 26-29, including the right to adequate housing, the right to healthcare services, the right to sufficient food and water, the right of children to basic nutrition, shelter and social services, and the right to basic education.¹⁵ It is worthy of note that a key element of the wording of these provisions is that the state is placed under a duty to take "reasonable" legislative and other measures, within its available resources, to achieve the progressive realization of these rights.¹⁶ The drafters of the South African Constitution intended from the outset that economic and social rights would be enforceable under the Constitution and this may be a giant stride for South Africa. One of the reasons for such inclusion was based on the fact that the enforcement of civil and political rights also involved financial and budgetary implications just as the economic and social rights. However, in enforcing the right to housing as provided in the South

⁴ The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the functions assigned to the United Nations Economic and Social Council in Part IV of the Covenant.

⁵ Masstricht Guidelines on Violations of Economic, Social and Cultural Rights, Masstricht, January 22-26, 1997 <www.umn.edu> accessed 13 May 2019.

⁶ Ibid.

⁷ ACHPR 1981, ss 3, 4, 14 and 16.

⁸ South African Constitution 1996, s 26 (1) – (3).

⁹ Ibid s 26 (3).

¹⁰ C Heyns and D Brand, "Introduction to socio-economic rights in the South African Constitution" <<http://www.satflii.org/za/journations/LDD/1998/9.pdf>> accessed 9 January 2019, I.

¹¹ Ibid

¹² South African Constitution 1996 adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly.

¹³ C O Mahony, 'Constitutional Protection of Economic, Social and Cultural Rights: Ireland and Beyond' available at <<http://www.amnesty.ie/sites/default/files/HRII/cONOR%20Mahony%20Paper.pdf>> accessed 9 January 2016, 2.

¹⁴ Sachs, "The Judicial Enforcement of Socio-Economic Rights" [2003]56 *Current Legal Problems*; 579-587 in *ibid.* 8.

¹⁵ South African Constitution 1996 adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly.

¹⁶ Ibid, ss 25, 26, 27, 29.

African Constitution, the courts have been careful to include limitations as in the *Grootboom* case,¹⁷ where the Courts interrupted the scope of the right to adequate housing contained in section 26 in the context of a family who were evicted from a temporary settlement and had no alternative accommodation. The Constitutional Court paid attention to the nature of the State's duty to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of the right. The Court pointed out that a reasonable programme must clearly allocate responsibilities and tasks to the different spheres of government. The programme must also ensure that appropriate financial and human resources are available. The court stressed that the legislature and executive "must, however, ensure that the measures they adopt are reasonable": The court further considered measures a state takes as a yardstick for *reasonableness in their actions*. *Once it is shown that the measures do so, this requirements is met*. In *Grootboom*, the Constitutional Court did not hold that every person must always have access to a house – but it did hold that the failure of the government to devise special emergency provisions designed to provide shelter for people in desperate need failed to meet the reasonableness requirement, and granted a declaratory order stating that the government was required to devise such a programme.¹⁸ In this way, the court gave some teeth and showed its willingness in making orders enforcing the ECOSOC right, but only in very limited and extreme circumstances.

Presently, Kenya having realized that a denial of the basic needs of life of a people is also a deprivation of human dignity, freedom and equality, secured the Bill of rights comprising of all human rights in her new Constitution of 2010.¹⁹ In strengthening the human rights, Kenya moved from being a dualist system of the monist system. International Laws and International Human Rights Laws are now incorporated into their laws rather than transformed, thereby making Kenya bound by any intentional obligation ratified including laws on human rights.²⁰ In strengthening the provisions of the ECOSOC rights and promoting the rights to housing, the Kenyan High Court in the Garissa Case granted an injunction against the state, refusing the state from displacing a community from their land and further awarded damages against the state.²¹

In India, the court emphasized the duty of states to respect, protect and fulfill the right to housing in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*²² held that;

no person has a right to encroach and erect structures or otherwise on footpaths, pavements or public streets, or any other place reserved or earmarked for public purpose, the State has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful.

The above view has been adopted and further improved on in plethora of cases²³ decided by the Indian courts.

States are not required to provide housing for all but undertake to do so by all appropriate means to ensure that everyone has access to affordable housing by making policies and laws with respect to housing for the improvement of the lives of the people. The Nigerian Government aims at ensuring that every person has access to adequate housing, and that every person has a right not to be evicted from his home. The 1999 Constitution creates objectives for the government to which Nigeria presently is struggling to achieve.²⁴

¹⁷ Government of the Republic of South Africa v Grootboom, Case CCT 11/00, October 4, 2000 in O'Mahony C. "Constitutional Protection of Economic, Social and Cultural Rights: Ireland and Beyond" available at <http://www.amnesty.ie/sites/default/files/HRII/Conor%20O'Mahony%20Paper.pdf> accessed 9 January 2019, 11.

¹⁸ Case CCT II/00, October 4, 2000, 66, 99 in O'Mahony C, "Constitutional Protection of Economic, Social and Cultural Rights: Ireland and Beyond" available at <<http://www.amnesty.ie/sites/default/files/HRII/Conor%20O'Mahony%20Paper.pdf>> accessed 9 January 2019, 12.

¹⁹ Kenyan Constitution 2010, Chapter 4.

²⁰ Nicholas Wasonga Orago, 'The 2010 Kenyan Constitution and the Hierarchical place of International Law in the Kenyan Domestic Legal System: A Comparative Perspective [2013]18 (2) *AHRLJ*, 415 – 440.

²¹ Constitutional Petition No.2 of 2011 (Garissa) <www.escri-net.org> accessed 28 September 2019.

²² (1997) 11 SCC 123.

²³ *Paschim Banga Khet Majoor Samity v. State of West Bengal* (1996) 4 SCC 666.

²⁴ 1999 Constitution, ss 13 (2) (b), 16 (2)(d).

Policies On The Right To Housing In Nigeria

From the colonial era to the present, Nigeria has developed beautiful policies on housing in order to ensure housing for all in Nigeria.²⁵ These policies have failed or is being renamed at every change in government (Military or civilian rule), still with the same aim of providing housing and shelter for the people. The level of implementation or effectiveness of the policies seem to be very slow as majority of the population in Nigeria lack housing and shelter. It agreed that these policies are the foundation on which actions are based.²⁶ The State enabled the Federal Mortgage Bank to provide loans for housing, construction and delivery; and the Standard Organization of Nigeria was given the duty of ensuring the delivery of standard materials and buildings.²⁷

However, it is observed that the problems with not realizing the policies lies in implementation, lack of funding, insufficient infrastructural amenities, inadequate research and studies on the formulation and execution of the policies, rural-urban migration and high rate of urbanization, high cost of building materials etc.²⁸ Nigeria in 1991 made the National Housing Policy,²⁹ which empowered the Federal Mortgage Bank to provide loan for housing research, construction and delivery,³⁰ and subsequently, National Economic Empowerment and Development Strategy (NEEDS) policy 2003 - 2007) a response to the development challenges in the Olusegun Obasanjo's civilian administration,³¹ Millennium Development Goals (2015) – the world's commitment to deal with global poverty,³² Federal Mortgage Finance Policy which have further enabled administrative steps towards establishment of Federal Housing Authority. Sale of Federal Government Houses, creation of the Nigerian Building and Research Institute, Standard Organization of Nigeria Real Estate Development Association of Nigeria Building Material Products and Association of Nigeria.³³ These policies are for the improvement of the lives of the people. The provision of section 16 (2)(d) of the 1999 Constitution acts as a reminder to the state, of the need to provide shelter for the people as measure of the performance of government policy especially on the provision of shelter. The government has the responsibility to provide the environment suitable for the realization of the right. Adopting legislative and administrative means as directed by the United Nations to prevent any individual violation of the right to housing but Nigeria is slow in the implementation of her policies. The Constitution gives the legislature the power to enact laws that will aid the economic, social and cultural objectives in the constitutional provision.³⁴

Statutes For The Promotion Of The Right To Housing In Nigeria

Nigeria in fulfilling her international obligation with the purpose of securing the right to housing and shelter enacted national legislation for the promotion and protection of this right which includes; Land Use Act 1978, National Housing Fund Act 1992, Federal Mortgage Bank Act 1993, Federal Housing Authority Act 1973, all geared towards promoting the enjoyment of this right. In as much as this study advocates for the justifiability of this right, the puzzle would be if this enactments have not bettered the life of the people, and then does the enforceability of this right in the constitution make it achievable for the people. At least the government will be held accountable by the courts to ensure the enjoyment of all rights.³⁵

²⁵ National Housing Policy 2012.

²⁶ Ibimilua Adewale Festus and Ibitoye Oyewole Amos, 'Housing Policy in Nigeria: An Overview [2012] 5 (2) *American International Journal of Contemporary Research*; 53, 56.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Okonkwo C. Eze, 'National Economic Empowerment Development Strategies (NEEDS) and Labour in Nigeria 2003-2007' [2014] 2(2) *Journal of Good Governance and Sustainable Development in Africa*; I.

³² Lawal Adedoyin Isola and others, 'Towards Achieving Millenium Development Goals (MDG) in Nigeria: Prospect and Challenges; [2012]3 (3) *Journal of Economics and Sustainable Development*, 74.

³³ Ibimilua Adewale Festus and Ibitoye Oyewole Amos, 'Housing Policy in Nigeria: An Overview [2012] 5 (2) *American International Journal of Contemporary Research*; 53, 56.

³⁴ 1999 Constitution, Exclusive Legislative List; Akintunde Otubu, 'Fundamental Right to Property and Right to Housing in Nigeria: A Discourse' www.unilag.edu.ng accessed 24 April 2016.

³⁵ World Bank defines governance as 'the manner in which power is exercised in the management of a country's economic and social resources for development' S T Akindele and O O Ayeni, 'The Nexus of Collaboration Among the

The National Housing Fund Act³⁶ provides:

The aims and objectives of the Fund shall be to –

- a. Facilitate the mobilization of the Fund for the provision of houses for Nigerians at affordable prices;
- b. Ensure the constant supply of loans to Nigerians for the purpose of building, purchasing and improvement of residential houses;
- c. Providing incentives for the capital market to invest in property development
- d. Encourage the development of specific programs that would ensure effective financing of housing development, in particular low cost housing for income workers,
- e. Provide proper policy control over the allocation of resources and funds between the housing sector and other sectors of the Nigerian economy; and
- f. Provide long-term loans to mortgage institutions for on-lending to contributions to the Fund.

The resources for the Fund are gotten from the contributions by Nigerians from both the public and private sectors; investment in the Fund by commercial and merchant banks; investment in the Fund by insurance companies registered under the Insurance Act; financial contributions by the Federal Government for long-term housing loans.³⁷ The State whose duty is to ensure the enjoyment of these rights may have failed to use its available resources in creating awareness on the avenues for promoting this right to enable public or private workers know of the existence or the method of accessing these funds. Adverts, seminar and constant public and private workshop will strengthen the awareness to the people. Furthermore, the Act concentrates on what should be contributed to the fund, however, is rather silent on the penalty for failure of not using the Fund for the required purpose which has encouraged the government in getting away with not fulfilling its obligation. Low cost houses affordable to the poor should be erected by the estate developers to enable the people get access at least to a minimum level of comfort with respect to housing. The anti-corruption agencies if left to act fully independent of the executive arm of government may achieve a giant stride towards checking the financial imbalances in the country. Nigeria should take steps in improving the lives of the people as shelter is very essential to the dignity of the human person and is a sure way to reducing criminality.

Right to Health

This implies that everyone has the right to the highest attainable standard of physical and mental health which covers all medical services, sanitation, adequate food and a good working condition. Health is most basic and an essential asset in human existence.³⁸ The right to health is a fundamental part of human rights and dignity of a person. The World Health Organization defines health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’,³⁹ and the enjoyment of the attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion or political belief, economic, or social condition’.⁴⁰ Article 25 of the UDHR relates the right to health to the right to an adequate standard of living and article 12 of the ICESCR also recognizes the right of everyone to the attainable standard of physical and mental health. Regionally, article 16 of the ACHPR provides that ‘every individual shall have the right to enjoy the best attainable state of physical and mental health’ and ‘state parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure

Horizontal Organs of Government in Nigeria: A Critical Analysis within the Context of Effective Service Delivery and Politics of Hope for Nigeria and Nigerians’ [2012] 12 (11) *Global Journal of Human Social Science*; 64-66.

³⁶ National Housing Fund Act 1992, s 2.

³⁷ Ibid.

³⁸ Office of the United Nations High Commissioner for Human Rights, “Right to Health” <www.ohchr.org. accessed 11 May 2016.

³⁹ Constitution of the world Health Organization 1946, the preamble.

⁴⁰ Office of the United Nations High Commissioner for Human Rights, “Right to Health” <www.ohchr.org. accessed 24 April 2016, I.

that they receive medical attention when they are sick'. Nigeria has committed itself to protecting this right by the government recognizing the need to ensure provision of adequate medical and health facilities for all persons living in Nigeria.⁴¹ The state must take reasonable legislative and other measures within its available resources to achieve the progressive realization of the right of access to health care services. Nigeria presently has taken steps the enacting laws and drawing up policies for the improvement of the physical health of the people but do not seem to be efficient in tackling the deteriorating health conditions of the people.

The determinants of health as stated by the Committee on Economic, Social and Cultural Rights include safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, health working and environmental conditions, health-related education and information, gender equality.⁴² These indicators reflect areas to which when states provides the facilities for the enjoyment, then satisfaction begins to reflect on the lives of the people. States have an obligation to protect and promote human rights which have been guaranteed by international customary laws and international treaties. States must show their willingness to make progress within the available resources. Nigeria has shown her willingness by developing policies for the actualization of the enjoyment of the right to health.

Policies on the Right to Health in Nigeria

Nigeria has developed policies for the realization of the right to health and some states for example Rivers State has taken steps to implementing these policies. The Policies include: Nigerian Health Policy on Primary Health Care, National Strategic Framework for Action, HIS Scheme, and Work-Place Policy on HIV/AIDS. The policies seek to improve the health of Nigerians by devising a sustainable health system that is protective, preventive restorative and rehabilitative. The National Health Policy places priority to the primary health care as the backbone of the Nigerian Health System. The National Health Policy represents the collective will of the government and the people to provide a comprehensive health care system.

Currently Nigeria ranks 197 of the 200 member states partly because of the allocation of five percent of its annual budget to the health sector below the recommendation by the World Health Organization.⁴³ Furthermore, among countries that have made efforts towards promoting health within its jurisdiction, Nigeria ranks 187 of 191 countries.⁴⁴ It is discovered that the deterioration of health in Nigeria was as a result of preventable diseases and majorly poverty; limited capacity for policy/plan/programme formulation, implementation and monitoring; limited primary health care facilities secondary health care facilities are in deplorable conditions, and partnership between the public and private sector are non-existent. Corruption and self-interest has crippled the essence of the Primary Health Scheme. New policies were subsequently introduced to strengthen the health system which includes: Health Strategy of the New Partnership for Africa's Development; Millennium Development Goals; the New Economic Empowerment Development Strategy (NEEDS) aimed at 're-orienting the values of Nigerians, reforming government and institutions, growing the role of private sector, and enshrining a social charter on human development with the people of Nigeria.'⁴⁵

Statutes for the Promotion of the Right to Health in Nigeria

Despite the lingering health situation in Nigeria, national legislations exist in Nigeria for the promotion and protection of the right to health though not treated as a right to be protected but an objective to be realized. Section 24 of Child Rights Act 2003 provides for the protection of the health of the child. This may be difficult to be enjoyed by all states because of Nigeria's system of

⁴¹ 1999 Constitution, s 17 (3)(d).

⁴² Office of the United Nations High Commissioner for Human Rights, Economic, social and Cultural Rights Handbook for National Human Rights Institutions (United Nations New York and Geneva 2005) www.ohchr.org accessed 13 May 2019.

⁴³ Nigeria's Health System Ranks 197 of WHO'S 200 Nations – NHIS <www.vanguardngr.com> accessed 13 May 2019.

⁴⁴ Ajay Tandon and ors, 'Measuring Overall Health System Performance for 191 countries' World Health Organization, *GPE Discussion Paper Series*: No. 30 <www.who.inthealthinfo/paper30> accessed January 18 2018.

⁴⁵ Federal Ministry of Health Abuja, Revised National Health Policy 2004 <www.cheld.org> accessed 25 April 2016, 5.

governance. Only states that have enacted the Child Rights Act as Child Rights Law can be held accountable for their failure.⁴⁶

The ACHPR also provides that every individual should have the best attainable state of physical and mental health and States are required to take measures to protect the health of their people.⁴⁷ Ghana has taken legislative step by enacting the National Health Insurance Scheme Act 2012. The Act established the National Health Insurance Authority and one among other functions of the National Health Insurance Authority provides that the Authority shall ensure equity in health care coverage, access by the poor to health care coverage, and protection of the poor and vulnerable against financial risk.⁴⁸ Similarly, Nigeria has her health insurance scheme called the National Health Insurance Scheme (NHIS). NHIS is a social Health Insurance Programme to improve the health status of Nigerians and the purpose of the NHIS is ‘to strengthen the National public and private health system to enable it deliver effective, efficient, qualitative and affordable health services.’⁴⁹ The NHIS Act was established with the objective to grant everyone access to good health care; prevent financial hardship from huge medical bill; limit increase in cost of huge medical bills and generally ensuring good and efficient health care system.⁵⁰ The health system currently in Nigeria is collapsing to a point where those who can afford medical treatment abroad leave the country, basically may be the state concentrates its effort towards improving immunization in the primary health care and has been slow on other medical concerns. Arguments may emanate as to the practicability of ensuring good health for all, but international community requires the state to provide minimum standard of protection for the people. South Africa presently has made the right to health justifiable though in certain cases the courts are approached to determine if the states have taken reasonable steps in ensuring the promotion and protection of the individual’s right. In the *Soobramoney case*,⁵¹ the court saw the action of the hospital as reasonable when the hospital placed a man suffering from kidney failure on a queue since it lacked adequate medical facilities. Justice Chaskalson stated

[There are] many others who need access to renal dialysis units or to other health services. There are also those who need access to housing, food and water, employment opportunities, and security... The state has to manage its limited resources in order to address all these claims. There will be times when this requires it to adopt a holistic approach to the larger needs of society rather than to focus on the specific needs of particular individuals within society.⁵²

The reasonability of the measures put in place by the hospital was found by the court to be sufficient. The obligation to respect, protect and fulfill the right to health should be a push to the Nigerian Government in ensuring that the legislature by the powers conferred on them make laws that expressly protect this right and persons can be made accountable for failures.⁵³

Right to Food

The right to food evolved at the aftermath of World War II and was initially codified in article 25 of the UDHR. The right to food is referred to as one of the standard for adequate living, article 11 of the ICESCR reaffirms that the right to food is part of the adequate standard of living and is seen as a fundamental right to be free from hunger.⁵⁴ Freedom from discrimination in accessing food is an absolute standard with no exception and universally applied equally to all persons.⁵⁵ States have an

⁴⁶ 1999 Constitution, s 12.

⁴⁷ ACHPR 1981, s 16(1)(2)

⁴⁸ National Health Insurance Scheme Act 2012, s 3 (f)(i-iii).

⁴⁹ A. O. Aderounmu, ‘National Health Insurance Scheme in Nigeria’ www.oauife.edu.ng accessed 25 April 2019.

⁵⁰ National Health Insurance Scheme Decree No.35 of 1999.

⁵¹ Case CCT 32/97, November 27, 199. In O’Mahony C. “Constitutional Protection of Economic, Social and Cultural Rights. Ireland and Beyond” available at <<http://www.amnesty.ie/sites/default/files/HRII/Conor%20Paper.pdf>> accessed 9 January 2019, 12.

⁵² (Kwazulu-Natal), Case 31, *ibid* 12.

⁵³ 1999 Constitution, s 4(2) item 60 A.

⁵⁴ ICESCR 1966, art 11(2).

⁵⁵ *Ibid*, art 2, 11.

international obligation to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating the knowledge of the principles of nutrition by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources'.⁵⁶ States are also required to ensure equitable distribution of food supplies in relation to need.⁵⁷

States has a duty to provide the means of production for the people and those who cannot provide for themselves should be taken care of by the state in order to eradicate hunger.⁵⁸ The African Charter on Human and Peoples Rights does not expressly state the right to food but is implied in its provision as being interrelated to life and dignity. In the case of the *Commission on Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria (SERAC case)* it was stated that the right to food is implicit on the right to life, health and economic, social and cultural development.⁵⁹ In Nigeria there is no express provision on the right to food, rather the Constitution provides that state directs its policies towards ensuring suitable and adequate food. The government recognizes that it must take reasonable legislative and other measures within its available resources to achieve the realization of adequate and suitable food for its citizens by the inclusion of objectives in the constitution.⁶⁰

However, economic, social and cultural rights in India have been defined through judicial interpretation of the right to life,⁶¹ rather than any direct guarantees provided for in the Indian Constitution. The expanded notion of the right to life has enabled the courts, in its public interest litigation jurisdiction, to handle arguments on grounds of justifiability, to its adjudicating the enforceability of economic, social and cultural rights.⁶² Subsequently, rights to work, health, shelter, education, water and food are regularly litigated. With regards to the provision on the right to food' Article 47 of the Indian constitution requires the state to raise the level of nutrition and standard of living of its people. The Supreme Court of India in *Kishen Pattanayak & another v. State of Orissa*⁶³ and *People's Union for Civil Liberties (PUCL) v. Union of India and others* recognized the right to food by virtue of the right to life contained in article 21.⁶⁴ Nigeria can learn from the judicial activism in India and also respect its international obligation of promoting the right to food in Nigeria.

Policies on the Improvement of Food in Nigeria

In the course of the realization of this right in Nigeria, the state aims its policies to: agricultural research and extension services, the creation of infrastructure finance assistance to the farming community, mechanical agricultural production all geared towards the provision of suitable and adequate food. Unfortunately these policies have not yielded the desired results. The recent increase in food prices calls for urgent attention of the government. Food security may be defined as the ability of food-deficit regions, households or countries to reach targeted level of consumption every year. The provisions of food for the people or the avenue by which food can be gotten have been inadequate in Nigeria. The country rely more on imported goods and indigenous participation for increase in food production is not fully harnessed because of non-availability of capital. The legislature has made efforts at ensuring the hygiene of food produced or consumed by the establishment of NAFDA Act 1993, and the agency, SON (Standard Organization of Nigeria) but what Nigeria really need presently is the avenue for holding the government accountable when food is inadequate for the people. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act recognizes the right to food as interdependent on the right to life and dignity and

⁵⁶ ICESCR 1966, art 11(2)(a).

⁵⁷ Ibid, art 11(2)(b).

⁵⁸ Hurst Hannum. 'The Status of the Universal Declaration of human Rights in National and International Law' (1999) 25 *Georgia Journal of International and Comparative law*; 287,317.

⁵⁹ Communication 155/96 (201).

⁶⁰ 1999 Constitution, Chapter II.

⁶¹ Indian Constitution, art 21.

⁶² Communication 155/96 (201) 3.

⁶³ Lidija Knuth and Margaret Vidat, constitutional and Legal Protection of the Right to Food around the World (FAO 2011) 14 cited in Rhuks T. Ako and Damilola S. Lawuyi (eds), *Food and Agricultural Law; Reading on Sustainable Agriculture and Law in Nigeria* www.ssrn.com accessed 27 April 2019.

⁶⁴ Ibid.

therefore the government is bound to respect, protect and fulfill the right to food by reason of these transformation of this Charter into the Nigerian Laws.

Policies for the protection and promotion of the right to food include: World Food Summit Plan of Action contained in the Rome Declaration 1966, the assistance of the United Nations Food and Agriculture Organization Special Programme for Food Security after the World Food Summit in 1996, Universal Basic Education 'Food Scheme' providing food for primary schools in the country, World Bank Institute-Community Empowerment Capacity Enhancement Needs Assessment Initiative 2003. Much has not been done on improving the access to food in Nigeria.

Right to Water

One of the essences of life and human dignity is the provision of water.⁶⁵ The Committee on Economic, Social and Cultural Rights adopted General Comment No. 15 on the recognition of the right to water. In 2002, the Committee further acknowledged that water was an independent right;⁶⁶ and in 2010, an important legal step towards the recognition of the right to water was made by the United Nation General Assembly when it declared that 'the right to safe and clean drinking water and sanitation as a human right is essential for the full enjoyment of life and all human rights'.⁶⁷ The right to life is interrelated and interdependent on the right to water and environment. In India, the courts have expressed the inseparability of the right to life and the right to water in the case of *Attakoya Thangel v. Union of India*, where the Kerale High Court ruled that:

...the administrative agency cannot be permitted to function in this manner as to make inroads into the fundamental human rights under Art 21. The right to life is much more than an animal existence and its attributes are manifolds, as life itself... The right to sweet water and the right to free air, are attributes of the right to life, for these are the basic elements, which sustain life itself.⁶⁸

The right to water is not expressly stated in the 1999 Constitution but can be attributable to the government's duty to protect and improve the environment and safeguard the water, air...⁶⁹ International Instruments to which Nigeria is a party also promotes the respect, protection and fulfillment of the right to water. Article 14 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) provides that 'State Parties shall ... ensure to such women the right ... to enjoy adequate living conditions, particularly in relation to ... water supply'. Article 24 of the Convention on the Right to water can be implied in article 25 of the Universal Declaration of Human Rights (UDHR). The ICESCR contains similar provision to the UDHR. The Committee on Economic, Social and Cultural Rights charged with the responsibility of interpreting and monitoring the International Covenant on Economic, Social and Cultural rights (ICESCR) developed the General Comment No.15 from article 11 and 12 of the ICESCR.

General comment 15 states that the 'right to water entitles everyone to sufficient safe, acceptable, physical accessible and affordable water for personal and domestic use'. It further elaborates four dimensions to accessibility:

- i. Physical accessibility, water should be 'within safe physical reach for all section of the population'⁷⁰
- ii. Economic Accessibility; water must be accessible to all⁷¹
- iii. Non-discrimination: based on the principle of equity, water must be available even to the vulnerable in the society⁷²

⁶⁵ Simeon Uchenna Ortuanya, 'Towards the Right to Water and Sanitation as Enforceable Rights in Nigeria' (2014) 17 (2) *The Nigerian Law Journal*; 2.

⁶⁶ Ibid 2.

⁶⁷ Simeon Uchenna Ortuanya, 'Towards the Right to Water and Sanitation as Enforceable Rights in Nigeria' (2014) 17 (2) *The Nigerian Law Journal*; 5.

⁶⁸ Ibid.

⁶⁹ 1999 Constitution, s 20.

⁷⁰ General Comment No. 15, para. 12(c)(i)

⁷¹ Ibid 12 (c)(ii).

- iv. Information accessibility: ‘The rights to seek receive and impact information concerning water issues.’⁷³

The current state of water insecurity in Nigeria calls for international concern as people most especially children die of water related disease. People do not have access to safe drinking water and affordability is very expensive. The challenges for the enjoyment of this right lies in the non-justifiability of economic, social and cultural rights in the constitution, availability of resources not been properly channeled and the separation of power doctrine that limits judicial activism.⁷⁴ Government of Nigeria acknowledging the need for every person to have access to sufficient water, directs its policy on the right to water towards underlining the trusteeship role of the national government, ensure that water as a basic need is a priority right, satisfying the essential needs of individuals for drinking, food preparation and personal hygiene. Sadly, no administrative step has been taken in ensuring safe, sufficient, affordable and accessible drinking water. South Africa and Kenya are among the few countries that recognizes the right to water in their constitution. South Africa has developed a policy on water management and water services, enacted national legislative framework to deal with water management and water services and developed national strategies to implement the legislation.⁷⁵ Nigeria has to step up its available resources for the full enjoyment by developing policies to improve on public facilities that can aid the poor to safe drinking water.

Right to Employment

The Right to work is very essential for human existence as it is the labour of the hands that man finds food to eat and have a good livelihood. Article 23 of the UDHR provide that the right to work, the state should ensure free choice of employment without discrimination with just and favourable remuneration worthy of human dignity and to protect this right by forming unions.⁷⁶ The ICESCR further provides that states should recognized the right to work and should take steps to safeguard this rights.⁷⁷ These steps should include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development.⁷⁸ The Supreme Court in India emphasizing on the right to livelihood stated that an equally important facet of the right to life is the right to livelihood as no person can live without the means of livelihood.⁷⁹ The International Labour Organization’s Declaration⁸⁰ on Fundamental Principles and rights to work’ sets out benchmark for states by stating:

... all Members, even if they have not ratified the Convention in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote, and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are subject to those conventions.

Section 17 (3) of the 1999 Constitution provides that the government directs its policies to ensure that all Nigerians have the opportunity of securing adequate means of livelihood, as well as adequate opportunity to secure suitable employment. Apart from the Constitution in Nigeria, the Trade Union Act⁸¹ and African Charter on Human and People Rights provides for the protection of employment which improves on this right though not properly recognized as rights.

Nigeria through administrative means brought about the Nations Economic Employment and Development Strategy (NEEDS) policy which seeks to facilitate the achievement of national goals

⁷² General Comment No. 15, para 12(c)(iii)

⁷³ 12(c)(iv).

⁷⁴ Ramin Pejan, ‘The Right to Water: The Road to Justifiability’ [2004] 36(5) *The George Washington International Law Review*; 1181, 1183.

⁷⁵ South African Constitution, s 27(I)(b) provides that everyone has the right to have access to sufficient food and water.

⁷⁶ UDHR 1948, art 23 (I)-(4).

⁷⁷ ICESCR 1966, art6 (I).

⁷⁸ ICESCR 1966, art 6(2).

⁷⁹ *Olga Tellis v. Bombay Municipal Corporation* (BMC) 1985 3 SCC 545

⁸⁰ Adopted by the Conference at Geneva on 18 June 1998.

⁸¹ Trade Union Act Cap 437 LFN 1990; Cap T 14 LFN 2004, Trade Union Amendment Act 2005 which amended Trade Union Acts of 1978 and 1996.

like generation of employment and creation of wealth among others and also lay the foundation for sustainable poverty reduction. This policy encourages the need for people to develop their own empowerment activities but this economic policy has suffered a great challenge which is lack of continuation in political leadership. As earlier noted Olusegun Obasanjo led administration developed this economic policy with the intention of saving Nigeria from fluctuating oil prices and global crises.⁸² J A Barniduro describes NEEDS as ‘a comprehensive, homegrown and poverty alleviation programmes’ modeled after the ‘IMF Poverty Reduction and Growth Facility aimed at achieving macroeconomic stability, poverty alleviation, wealth creation and employment generation’.⁸³ Okonkwo views this policy as a continuation of western imperialism and a replacement of the failed Structural Adjustment Programme (SAP) of the military.⁸⁴

Poverty may continue to strive in Nigeria until government addresses the challenges by: implementing the programmes of the Poverty Eradication Project: amending the Constitution for the realization of the economic, social and cultural rights; expand adult basic education and training programmes; create a business climate that recognizes the importance of long-term profitability and thus encourages investment. NEEDS a policy that encouraged privatization of public enterprises which led to downsizing of workers in the public sector infringe the provisions of section 16 (1) (b) and (2) (c) which directs the state to:

Control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity; and that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production in the hands of a few individuals or a group...⁸⁵

Apart from the public sector, labour in the banking sector also suffered as a lot of people were thrown into the labour market following the merger and acquisition of banks during the needs programmes, the Nigerian markets were also flooded with foreign goods as locally made goods were not attractive to Nigerians at the time maybe due to quality. Presently Nigeria despite these policies is still faced with challenges of high unemployment rate, poverty and high illiteracy rate.⁸⁶

Right to Education

Everyone has the right to good and quality education that respects and promotes the human dignity and development and this is affirmed in various human rights treaties. Article 26 of the UDHR provides that everyone has the right to free and compulsory education.⁸⁷ The ICESCR restates that states should recognize that everyone has a right to education.⁸⁸ Furthermore, article 29 of the United Nations Convention on the Rights of the Child emphasizes the right of children to free and compulsory education. The aim of education is to promote personal development strengthen respect for human rights and fundamental freedom for all. Education is important for the fulfillment of any other human right.⁸⁹ The African Charter on Human and People Rights also promotes this right.⁹⁰

Section 18 of the 1999 Constitution and education provides:

Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels... government shall promote science and technology; government shall strive to eradicate illiteracy and to this end and government shall as and when practicable provide – free,

⁸² E. C. Okonkwo, ‘National Economic Empowerment Development Strategies (NEEDS) and Labour in Nigeria. 2003-2007’ [2014] 2(2) *Journal of Good Governance and Sustainable Development in Africa*, 152.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ 1999 Constitution, chapter II.

⁸⁶ E. C. Okonkwo, ‘National Economic Empowerment Development Strategies (NEEDS) and Labour in Nigeria. 2003-2007’ [2014] 2(2) *Journal of Good Governance and Sustainable Development in Africa*, 152, 156.

⁸⁷ UDHR 1948, sub-s 1-3.

⁸⁸ ICESCR 1966, art 13 (1) – (4).

⁸⁹ United Nations Educational, Scientific and Cultural Organization (UNICEF), ‘A Human Rights-Based Approach to EDUCATION FOR ALL: A Framework for the realization of child’s right to education and rights within education www.unicef.org accessed 5 May 2018, 8.

⁹⁰ ACHPR 1981, art 17.

compulsory and universal primary education, free university education, free adult literacy programs.

However, it is observed that the illiteracy rate in Nigeria is on the increase due to economic hardship as youths and children are forced on the street to earn a means of livelihood, education has become so expensive as privatization of primary, secondary and tertiary institutions is on the increase and public schools are not properly equipped and taken care of: procedure for acquiring admission in tertiary institutions have become very cumbersome and very little has been done on public enlightenment for encouraging people to engage in adult literacy programmes. Nigeria's consciousness towards educational development led to the establishment of the National Policy on Education 1977 to provide functional and continuing education for adults and youths who are illiterate.⁹¹

Nigerian government in working towards the promotion of her educational objectives enacted national legislation which includes: The Compulsory, Free Universal Basic Education Act 2004 and other related Matters (UBE); National Commission for Nomadic Education Act.⁹² Child's Rights Acts 2003; Tertiary Education Trust Fund Act 2011.⁹³

The Federal Government puts the burden on state and local government in ensuring good and qualitative education in Nigeria, and limits itself to rendering assistance when necessary under the Compulsory, Free Universal Basic Education Act 2004.⁹⁴ The Act places a duty on parents to ensure that the child or ward get the compulsory primary and secondary education. The Government further places a responsibility on stakeholders to ensure parents sends their children to school. The Government did not specifically create means in ensuring that parents are actually monitored and children sent to school. A major issue is that public schools are not properly equipped for this purpose by the state and local government. The facilities in these public schools are grossly inadequate. This Act basically places the duty on parents to ensure the children go to school without imposing the responsibility on government in ensuring an enabling environment for learning.

Education is one of the most important instruments for the development of man and transformation of the human society. However, the efficacy of education as an instrument of transformation depends entirely on how the government manages the project meant for the promotion and protection of the right to education.

The acceptability of primary education in Nigeria dates back to the era when the late Obafemi Awolowo launched the free Universal Basic Education in the western region of Nigeria and was later followed by the northern and eastern region which was short lived.⁹⁵ The Universal Basic Education was designed to promote the vision of the National Policy on Education which is development of the individual: the development of the individual into a sound and effective citizen, the full integration of the individual into the community and the provision of equal access to educational opportunities for all citizens at all levels of education both inside and outside the formal school system.⁹⁶ The Universal Basic Education (UBE) is a policy reform measure of the Federal Government of Nigeria, aimed at rectifying distortions in the basic education. The Universal Basic Education Commission in its annual report in 2005 listed the objectives of the Universal Basic Education to include: ensuring unfettered access to 9 years of formal basic education, the provision of free, universal basic education for every Nigerian child of school-going age, reducing drastically the incidence of drop out from the formal school system, through improved relevance, quality and efficiency and ensuring the acquisition of appropriate levels of literacy, numeracy, manipulative, communicative and life skills, as

⁹¹ N H A Nwafor and others, 'Adult Literacy and the Need for Post-Adult Literacy Institution in Nigeria' [2013] 4 (4) *Mediterranean Journal of Social Sciences*; 469, 470.

⁹² National Commission for Nomadic Education Act 1989 <<http://www.lawyard.ng/national-commission-for-nomadic-education-act.pdf>> accessed 5 May 2016.

⁹³ Tertiary Education Trust Fund (Establishment, etc) Act, 2011 repeals the Education Tax Act Cap. E4, laws of the Federation of Nigeria, 2004 and Education Tax Fund Act No. 17 2003 and establishes the Tertiary Education Trust Fund charged with the responsibility for managing, disbursing and monitoring the education tax to public tertiary institutions in Nigeria.

⁹⁴ Compulsory, Free Universal Education Act 2004, s I.

⁹⁵ S O Labo-Poola and others, 'Universal Basic Education in Nigeria: Challenges and the Way Forward' [2009] 4 (6) *Medwell Journals*; 636.

⁹⁶ *Ibid.*

well as the ethical, moral and civic values need for laying a solid foundation for lifelong learning.⁹⁷ However, funding and corruption has been hindrance to the progressive realization of the education for all. Machineries are not in place for the protection and promotion of education for all; establishment of Education Trust Fund, establishment of child's Rights Implementation Committees at the Federal level and the State where the law has been passed, Establishment of Compulsory, Free, Universal Basic Education System, Establishment of the State's Primary Education Board (SPEB), Nigerian Universities Commission, National Institute for Educational Planning and Administration, Nigerian Educational Research and Development Council, Local Education Authorities, Education for All, National Mass Education Commission, National Commission for Nomadic Education, Universal Basic Education Board are all policies geared towards the improvement of education.

All these policies put in place have not yielded much because of the limitations placed on the judiciary in aiding the achievement of the full enjoyment of these policies. Some of these policies have not survived over the years due to changes in government and no continuity in administration meaning lack of consistency and sustainability. A lot of Nigerian children have become dropout from school due to the fact that this supposed free education are been paid for by the students though not as tuitions fee but fees attached to other names for the purpose of raising funds to gather resources not adequately provided for by the state and local government. Furthermore, the African Charter transformed into our laws in article 17 provides for the recognition of the right to education but places no penalty for failure.

CONCLUSION

Nigeria has developed good policies touching on all economic, social and cultural rights for the purpose of actually carrying out its constitutional objectives for the improvement of the lives and basic needs of the people, but it is observed that implementation and continuity of these basic needs of the people, but it is observed that implementation and continuity of these programmes due to change in administration have greatly affected the fulfillment of these objectives in Nigeria. The non-recognition of the economic, social and cultural rights as rights in Nigeria to be protected has prevented the people from demanding from government the immediate protection and promotion of the economic, social and cultural life of the people. It is observed that Nigeria has good policies that if properly affected will better the lives of the people and the lack of proper implementation have hindered successes. The people can enjoy the protection and promotion of these rights when these policies succeed and are reflected in the lives of the people.

Furthermore, most of the laws established for the protection and promotion of the economic, social and cultural rights in line with the powers conferred on the legislature focuses more on raising funds for the implementation of these policies rather than directing the state to using its available resources for the promotion of the economic, social and cultural life of the people. Penalties are directed to persons that fail to channel these resources to the fund and silent penalties on the state for the failure of channeling the fund for the required purpose. This calls for the review of the Constitution of Nigeria to reflect in its provisions these basic needs as rights to be protected for the fulfillment of the human person. South Africa after considerations of the implications of including the economic, social and cultural rights in the Bill of rights by the drafters of their constitution,⁹⁸ still took conscious efforts towards the actual inclusion of these rights in their constitution though with some qualifications. The constitutional courts have exercised their powers towards giving life to the constitutional provisions for protection of these rights by considering the reasonableness of the state's action towards the realization of these rights. Kenya however, took a bolder step of not just making these rights justifiable but created access to the full enjoyment of these rights through the courts powers of enforceability. In India, rather than only rely on policies by the government for the enjoyment of these rights, the courts took a leap in continuously relying on the interrelatedness of all human rights to give life to the protection and promotion of the economic, social and cultural life of the people.⁹⁹

⁹⁷ Universal Basic Education Annual Report.

⁹⁸ South African Constitution 1996.

⁹⁹ *Olga Tellis v. Bombay Municipal Corporation (BMC) 1985 3 SCC 545; Municipal Council Ratlam v. Vardhichand and ors case (1997) 11 SCC 123.*

Much have not being done on judicial activism in relation to the economic, social and cultural rights except the bold attempt by the court in *Abacha v. Fawehinmi's* case. The transformation of the African Charter on Human and Peoples' Rights in the Nigerian laws is a sigh of relief for the people as the courts no longer have limitations over the economic, social and cultural rights contained in the Act.¹⁰⁰

Economic, social and cultural rights are as legal in nature as the civil and political rights and their application should be the same, consistent and sustainable. However, Nigeria respects the civil and political rights of the people though violations still occur, but still treats the economic, social and cultural rights as objectives to be realized. Examining the policies above, it is observed that the state is very careful to develop policies that involve financial resources rather the laws for the realization of these rights concentrate more on getting funds for the sustenance of the policies.¹⁰¹ The state in these laws is not mandated with penalties for failure in ensuring the successes of these policies. The National Human and Rights Commission in Nigeria with the mandate of ensuring the fulfillment of all human rights by the United Nations,¹⁰² having made a failed attempt in 1999 at canvassing the change of status of economic, social and cultural rights before the Joint National Assembly and Presidential Committee on the Review of the 1999 Constitution is been slow on its effort in making the state carry out her obligation to the people and the international community.

The United Nations requires the state to give priority to most vulnerable, disadvantaged and consequently people who are list able to achieve these rights. The alarming rate of child trafficking on the Nigerian roads especially at the hours that those same children are supposed to be in the classroom shows the extent to which the policies on education have crippled. No one is or can be held liable for these failures. Home of the elderly depend more on charity than on state to sustain the facilities for the protection and promotion of the living condition of the old. Majority of the youths have taken up arms and gone into the creeks and bushes due to socio-economic life of the people. Nigeria has gotten to a point where objectives to be realized should not be the focus but rather look at the socio-economic rights as right to be protected for continuous existence of the state called Nigeria.

Presently, the laws, policies and mechanism at the national level are important for the enjoyment of all human rights. The International community enjoins states to have all human rights recognized as rights in the national constitutions and legal systems.¹⁰³ The state has the primary duty to ensure the realization of these rights as observed by Eleanor Roosevelt.¹⁰⁴

¹⁰⁰ ACHPR 1981, art 15, 16, 17, 22.

¹⁰¹ See discussions on pages 59 – 83.

¹⁰² United Nations, 'Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions' (No. 12 New York, and Geneva 2005) 31.

¹⁰³ Council of Europe, 'Legal Protection of Human Rights' <www.coe.int> accessed 12 May 2016.

¹⁰⁴ 'Where, after all, do universal human rights begin? In small places close to home – so close and so small that they cannot be seen on any map of the world. Yet they are the world of individual person: the neighborhood he lives in... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere', *ibid*.