



## Judicial approach for realisation of economic, social and cultural rights in Africa: Challenges of enforcement in Nigeria

Hanafi A Hammed<sup>1</sup>, Daniel F Atidoga<sup>2</sup>

<sup>1</sup> Associate Professor, Kwara State University, Malete, Nigeria

<sup>2</sup> Associate Professor, DVC Academic, Kogi State University, Anyigba, Nigeria

### Abstract

One of the arguments on the justiciability and enforcement of Economic, Social and Cultural Rights is that, they are nebulous and that their contents are complicated to comprehensively delineate. While Civil and Political Rights provides clear guidance on the requirements for their enforcement, ESCR merely set out aspirational and political goals. The content of ESCR, such as right to health, housing, education and social security lack clear definition and offer no obvious standard by which a state can determine whether an act or omission conforms to the right or diverges from it. Article 2 (1) of International Covenant on Economic, Social and Cultural Rights appreciates the progressive realisation of the rights. However, it makes clear that not every duties arising from the obligations set out in the Covenant is qualified by this idea of progressive realisation because some duties have immediate effect. This paper examines the enforcement and justiciability of ESCR through judicial approach in Africa and challenges on the enforcement of ESCR in Nigeria. This paper reveals that lack of clear specificity on the exact content of ESCR and the legal obligations that stem from them without certainty impede their judicial enforcement. The paper concludes that there is need for equal enforcement of all human rights without discrimination. Also, that the legal and institutional frameworks put in place in African countries to fight corrupt practices and violations of human rights need to be readdressed in order to make African leaders be accountable for their misdeeds.

**Keywords:** human rights, justiciability, enforcement, realisation, good governance, public interest litigation

### Introduction

Human rights are the rights held by all persons by virtue of their common humanity to live a life of freedom and dignity. These rights are universal and everyone without any consideration, in terms of race, religion, nationality, tribe, cultural, social and economic background, bonds respectively. <sup>[1]</sup> These rights can neither be taken away nor given up. At the same time, none of the rights can be suppressed in order to promote another <sup>[2]</sup>.

The United Nations Charter also affirms that, universal respect for and observance of human rights and fundamental freedoms for all without discrimination is momentous. Human rights are divided into three known as 'generations of rights.' The first generation are civil and political rights which are normally described as civil liberties and fundamental rights. They contained package of rights which make human condition tolerable. These include right to life, right to freedom and right to protection from torture, slavery and violence <sup>[3]</sup>. ESC rights are provided for under Articles 20-23 of the United Nations Declaration on Human Rights (UNDH) <sup>[4]</sup> which include rights to education, health care, social security and others which are to be realised through domestic and national efforts in collaboration with international cooperation. The third generation of human rights which are still contested are rooted in the work of the law and development movement which has dominated human rights debates. This generation of rights encompasses rights to peace and security, right to economic autonomy and right to self-development. This paper thus examines the pragmatic nature of economic, social and cultural rights, realisation of ESCR through the judicial

process in Africa and challenges for the enforcement of ESC rights in Nigeria.

### Pragmatic Nature of Economic, Social and Cultural Rights

It is generally believed that economic, social and cultural rights are pragmatic and not capable of immediate realisation and enforcement <sup>[5]</sup>. This notion was supported in the wordings of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which gives reasonable discretion to states in the standard and timing of recognised rights. The gap between the enforcement of economic, social and cultural rights on one hand and civil and political rights on the other hand ensures that the former are treated less serious than the latter <sup>[6]</sup>.

The fundamental rights that are enshrined in the Constitution are only civil and political rights <sup>[7]</sup> not including economic, social and cultural rights; access to house, food, right to clean water, right to education, access to health, access to gainful employment, social security and other provisions of which guarantee peace and security to ensure good governance. It may be argued that ESCR are recognised in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 as Fundamental Objectives and Directives Principles of State Policy and Nigeria has obligation to secure obedience to the legitimate requirement of the order of the legislation as may be enforced by the court. This is because African Charter provides for ESCR and the ratification Act has neither been inconsistent with the Constitution, suspended nor repealed <sup>[8]</sup>.

However, Section 6 (6) (c) of the Constitution seems to

prohibit the courts from entertaining matter arising out of violation of the Chapter but when construed in juxtaposition with the provision of section 13 of the same Constitution, it became clear that the intention of drafters of the Constitution is to make justiciability of such rights as a matter of contingency and choice of the executive and legislative arms of government and recognising judicial intervention in matter of interpretation. Even if one assumes that this is fatal to litigation on economic, social and cultural rights, one needs to look for other means to realise these rights which this paper consider as judicial approach for the realisation of the rights<sup>[9]</sup>.

There is no doubt that the Nigerian Constitution is supreme and any other law that is inconsistent with its provisions shall be null and void to the extent of its inconsistency. However, unless it can be demonstrated that ESCR as provided in Chapter II of the same Constitution are inconsistent with the provision of the Constitution, the state has obligations under the international law to obey and enforce the provisions in accordance to the Ratification Act. It should be stated that ESCR are the only mechanisms to self-defense for the impoverished and marginalized groups. In practice, states have paid little attention to the enforcement and implementation of ESCR and their attendance repercussion on the quality of life and human dignity than other class of rights<sup>[10]</sup>. African states still living in penury of abject poverty, slavery and colonial exploitation because of non-enforcement of ESCR which breeds bad governance. Therefore, even a society that is interested in protecting only civil and political rights should give equal priority to ESCR as a practical solution in accomplishing the former. The absence of the latter commitment deepens a collective feeling of injustice which triggers conflicts. Conventional wisdom and realities dictate that the realisation of the two chapters must be pursued simultaneously because civil and political rights and ESCR are not mutually exclusive categories but indivisible, interrelated and interdependent for human goods which are concealed in the apertures of each other in order to guarantee good life as contained in the preamble of the Constitution. This paper queries, 'of what purpose is the right to fair hearing as contained in the Constitution when proverbial common man cannot fund the process of activating justice through courts'? The majority, comprised of the more vulnerable members of the society cannot but feel that it has been denied an accepted opportunity for the recognition and redress of injustice. Although the non-enforcement of ESCR includes independence of the individual, a concept that is the cornerstone of civil and political rights.

Adequate socio-economic conditions must be provided as prerequisite to personal self-sufficiency as Raz canvases:

A person whose every major decision was coerced, extracted from him by threats of his life or that of his children, has not led an autonomous life. Similar considerations apply to a person who has spent the whole of his life fighting starvation and diseases, and has no opportunity to accomplish anything other than to stay alive....<sup>[11]</sup>

It is obvious that Chapters II and IV of the Constitution form one organic unit to free citizens from unreasonable borders from the State and provide liberty to all. One of the

major issues presented for public debate and voting is whether Chapter II should be made justiciable and enforceable like Chapter IV of the Constitution in the previous attempt to amend the 1999 Constitution. This question will obviously have affirmative answer. Based on this, the draft 1995 Constitution provides a blueprint for legislative action. In that Draft Constitution, some of the respect, protection and fulfilment bound obligations for the realisation of economic, social and cultural rights which are normally banished to Chapter II were moved to Chapter IV. For instance, right to free and compulsory Primary Education<sup>[12]</sup>, right to free adult literacy programmes<sup>[13]</sup>, right to free medical consultation in government health institutions<sup>[14]</sup>, rights to eradicate corrupt practices, abuse of power, protect and preserve public property, and to combat misappropriation and squandering of public funds<sup>[15]</sup>, were made justiciable.

### **Theoretical framework of Economic, Social and Cultural Rights**

These rights are recognised and protected in international and regional instruments. Member states have legal obligation to respect, protect and fulfil the rights and they are expected to take progressive action toward their fulfilment. At the international level, the Universal Declaration on Human Rights recognises few economic, social and cultural rights. ICESCR is the framework for the realisation of these rights. Until recent, ICESCR did not provide access to remedies at the international level for the victims of violations of ESCR. Such Victims had to make recourse to regional and domestic mechanisms. Unlike in the case of ICESCR, state parties to the African Charter assume obligations that have immediate effect. State parties must respect, protect and fulfil all the rights in the Charter, including ESC rights. The obligation to respect, like that arising under ICESCR, means that states must refrain from action or conduct that contravene or are capable of impeding the enjoyment of ESC rights. The obligation to fulfil creates a duty that requires state to take appropriate legislative, administrative, budgetary, judicial and other means toward the full realisation of such rights<sup>[16]</sup>. Importantly, Article 45 of the African Charter makes all rights justiciable before the African Commission on Human and Peoples' Right (African Commission).

Delivery of Economic, Social and Cultural Rights contributes to equitable allocation of public goods and services and to law enforcement to guarantee peace, security and good governance by facilitating accountability for the Commission of international, regional and national crimes as required by the principles of transitional justice<sup>[17]</sup> It is our submission that lack of access to ESCR undermines the realisation of participatory democracy and the achievement of full citizenship for women and children. This may eventually affect peace and security as a result of inherent bad governance.

Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 provides for Fundamental Objectives and Directive Principle of State Policy' and section 13 of the Constitution imposes a 'duty and responsibility' on 'all organs of government, and all authorities and persons exercising legislative, executive and judicial powers to conform to, observe and apply its provisions.' The Chapter is devised to fulfil the promises made in the preamble to the Constitution inter alia to: '*provide for a Constitution for the*

*purpose of promoting the good government and welfare of all persons in our country on the principle of freedom, equality and justice and for the purpose of consolidating the unity of our people.'*

The preamble and Chapter II reflect the high ideals of a liberal democratic polity and therefore, serves as guidelines to action on major policy goals. The rationale for the inclusion of Chapter II in the 1979 and 1999 Constitutions is that government in developing countries like Nigeria have tended to be pre-occupied with proper and prerequisites and have scanty respect for political ideals as to how society can be organised and ruled to the best interests of their citizens. The Constitution Consequently affirmed that sovereignty belongs to the people of Nigeria from whom government through the Constitution derives all its powers and authority. The security and welfare of the people shall be the primary purpose of government and the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution. In addition, sections 16 and 17 which specially deal with economic and social objectives require the state to steer its policy towards ensuring that the economic system is not operated in such that will permit the concentration of wealth and means of production in the hands of few individuals or groups. They aim to ensure that all citizens shall have opportunity for securing adequate means of livelihood as well as adequate opportunity to ensure suitable employment under just and humane conditions; that conditions of work are just and humane and that there are adequate facilities for leisure, social, religious and cultural rights; the health, safety and welfare of all persons in the employment are safeguarded; there are adequate medical and health facilities for all persons; there is equal pay for equal work without discrimination; provision is made for public assistance in deserving cases or other conditions of needs; and the evolution and promotion of family life is encouraged<sup>[18]</sup>. Without education, a person may not have the capacity to understand or enforce most of his rights or be able to enjoy other rights granted under the Covenant. Most importantly, the right to adequate standard of living which include adequate food, clothing and shelter and continuous improvement of living condition and right to enjoyment of highest attainable standard of physical and mental health<sup>[19]</sup>. ESCR has asserted that a minimum core obligation to secure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every state parties in order to realise peace, security and good governance. The state cannot attribute failure to meet its minimum obligation to ensure good governance to lack of resources unless it can justify that every reasonable step has been taken without success to satisfy as a matter of priority, those minimum obligations to its citizens.

A government that is not requires to justify its socio-economic policies and priorities is not likely to develop a consistent policy that encourages wise investments and conserves resources necessary for sustainable development and good governance. Enforcing ESCR can lead to social and political stability.

If the purpose of government is to provide for the welfare and security of all citizens, government is said to have failed in this respect if it commit to enforce only civil and political rights. Such an ostrich-like posture denies the various forms of state abuse against which the citizen must be protected<sup>[20]</sup>. The *de facto* commitments of many West states to welfare ethos, despite their formal rejection to ESCR,

assures a high degree of compliance in protecting the rights of their subjects.

Therefore, ESC rights can be described as those rights that protect the necessities of life or that provide for the foundations of an adequate quality life. The necessities of life include, at minimum, the right to adequate nutrition, housing, health and education. All of these rights provide foundation upon which human development, good governance, peace and security, human freedom and flourish can be achieved<sup>[21]</sup>. A missing point in the contemporary human rights discourse and practice is that the greatest benefit of guaranteeing enforceable right is the assurance it gives to the people that effective mechanisms for adjudicating violations or threatened violations of their rights are available<sup>[22]</sup>. As event in many parts of Africa have shown, the absence of such mechanisms gives the impression that resort to extra-legal means, such as armed rebellion, as the only way to improve one's condition or challenge governmental abuse and neglect. Most current African conflicts, consist of people who are fighting not against themselves but against poverty and government inaction in the face of destitution. This conflict usually due to many years of impoverishing neglect and to the absence of other viable means of compelling meaningful change.

Most conflicts in Africa are not caused by ethnic differences as envisaged by some people but they reflect poverty, lack of employments and qualitative education, rich natural resources that tempt and sustain rebels and (ineffective and insensitive) political system....<sup>[23]</sup> Although holistic protection of all right will not prevent every conflict, it will defuse the majority conflicts that are triggered or sustained by those who exploit object socio-conditions.

The intimate relationship between stability and human rights reinforces the necessity of guaranteeing the enforcement of all human rights without exceptions. Because of the fact that various generation of rights are interconnected and operate symbiotically, it logically follows that the full realisation of one set remains dependent on the realisation of others. In a state of instability emanating from denial of basic ESCR, it becomes difficult, if not impossible to accomplish civil and political rights<sup>[24]</sup>. More so, non realisation of ESCR creates insurmountable obstacles to the enjoyment of civil and political rights. People can only get freedom from abuse and exploitation when they have what it takes to assert their rights and free themselves from exploitative rule because the majority of African are illiterates and poor, they lack requisite knowledge and means to assert their rights, then, they cannot enjoy them.

### **Judicial Approach on the Enforcement of ESCR**

The courts have duty to ensure the enforcement of and obedience to legal instruments (law) on economic, social and cultural rights, whether municipal, regional or international that have been domesticated and thereby made enforceable in the jurisdiction. In this respect, the South African Constitutional Court has remained in the forefront of judicial intervention on economic, socio-cultural rights matters, but not even the classical Grootboom's case has gone without criticism. In the case, the Respondents were evicted from their homes on private land earmarked for formal low-cost housing. They consequently applied to the High Court, pursuant to sections 26 and 28(1) (c) of Constitution of South Africa, for an order directing the government to provide them with basic shelter or housing

until they get permanent accommodation. The court found for them irrespective of availability of resources, independently of and in addition to the obligation to take reasonable legislative and other measures in term of the Constitution, also gave ancillary orders to ensure compliance with the orders. The Appellants dissatisfied with the decision of the High Court, appealed to the Constitutional Court of South Africa. The Court however substituted the decision of the High Court and ordered, *inter alia*, Section 26 (2) of the Constitution requires the state to devise and implement within its available resources a comprehensive and coordinated programme progressively to realise the right of access to adequate housing.

The Nigerian court in case of *Abacha v. Fawehinmi*,<sup>[25]</sup> shows that irrespective of the Constitutional order in the country, whether military or democratic, the executive, legislative and judicial authorities in the country have obligation to obey and enforce the provisions of the African Charter pursuant to the Ratification Act, unless the provisions have been repealed or suspended by latter statute. Also in the case of *Registered Trustees of the Social-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria & Universal Basic Education Commission*<sup>[26]</sup> where the plaintiff, a civil society organisation in a form of public interest litigation instituted at the ECOWAS Community Court against the President of Nigeria and others. The complainant was based on violation of socio-economic rights of the people of Ogoniland to adequate standard of living, including the right to food, work, health, water, life and human dignity, clean and health environment and economic and social development.' These rights are not of first generation that are guaranteed under Chapter IV of Constitution. The plaintiff relied on the Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The reason for this is that Nigeria is a signatory to these international instruments (though yet to be domesticated) as well as the Protocol on the Community Court of Justice. The defendant raised preliminary objection on many grounds, particularly, on jurisdiction of the court. The court however held that it has jurisdiction to adjudicate on the case brought before it by the plaintiff against the corporate defendants.

It should be recollected that Nigeria is a member of ECOWAS and as such, the decision of the court has binding force in the state. Article 15 (4) of the ECOWAS Revised Treaty provides that judgments of the court shall be binding on member states, institutions of the Commission, individuals and corporate bodies. Therefore, (ECOWAS) Court of Justice confirmed that the rights guaranteed by the African Charter on Human and Peoples' Rights are justiciable before the court.

Also, in the case of *Archbishop Anthony Okogie & or v. The Attorney General of Lagos State*,<sup>[27]</sup> Court of Appeal of Nigeria was able to examine this interesting subject. By circular dated 26<sup>th</sup> March 1980, the Lagos State government purported to abolish private primary education in the state. The plaintiffs challenged the circular as unconstitutional. Under the relevant provisions of the 1979 Nigerian Constitution, the plaintiffs applied and referred the following question to the Court of Appeal:

Whether or not the provision of educational services by private citizen or organisation comes under the classes of

economic activities outside the major sectors of economy in which every citizen of Nigeria is entitled to engage in and whose right so to do, the state is enjoined to protect within the meaning of section 16 (1) (c) of the Constitution.

In his decision on merit of the case, Mammam Nasar J held that, no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objective and Directive Principles. He also clarified the role of judiciary as 'limited to interpreting the general provisions of the Constitution or any other statutes in such a way that the provisions of the Charter are observed.' These writers may agree with this popular idea that this decision and other like make ESCR non-justiciable. If nothing more is achieved, the fact that the court made pronouncement on the matter demonstrated that judicial action is possible on matters arising out of violations of Charter II. The court further correctly observed that its role should be to interpret the provisions of the Constitution to ensure that the provisions of Chapter II are observed. We would therefore argue that although section 6 (6) (c) provides the basis for arguing against the justiciability of ESCR, it does make an important exception, namely, 'except as otherwise provided by this Constitution.'<sup>[28]</sup> This shows that a provision of the Constitution such as item 60 of the Exclusive Legislative list changes the equation to the extent that the legislature enacts any specific legislation seeking to implement Chapter II. The Nigerian legislature has in fact done so in the case of anti-corruption crusade. In the case of *AG Ondo State v. AG Federation*<sup>[39]</sup> where Nwaifo J made clear the relationship between item 60 (a) and section 15 (5) of the Constitution as follows:

It is quite tenable in my view, to consider item 60 (a) in regard to section 15 (5) of the Constitution<sup>[30]</sup> as having placed directly as a subject in the exclusive legislative list, the abolition of all corrupt practices and abuse of office, in the terms that the item is stated. Under the circumstance, the National Assembly may, in the exercise of the substantive powers given to it by section 4 of the Constitution in relation to item 60 (a), makes all laws which are directed to the end of those powers and which are reasonably incidental to their absolute and entire fulfilment.

With respect to the provisions of African Charter on Human and Peoples' Rights, the Nigerian Supreme Court held in the case of *Ogugu v. State*<sup>[31]</sup> that although the ACHPR has not made any special provision like section 42 of the 1979 Constitution of Nigeria for the enforcement of its human and peoples' rights within a domestic jurisdiction, there is lacuna in our laws for the enforcement of its provisions. It is gratifying to state here that the domestic application of regional and international human rights norms in Nigeria is guided by the provision of section 12 of the Constitution which clearly provides that no treaty between Nigeria and other state shall have the force of law unless it is domesticated into its body of laws. Although in *Abacha v. State*,<sup>[32]</sup> the Supreme Court further held that a domesticated treaty is subordinate to the Nigerian Constitution in the words of Ogundare JSC who delivered the led judgment:

No doubt Cap. 10 (the African Charter on Human and



Peoples' Rights as domesticated by Cap. 10) is a statute with international favour. Being so therefore, I would like that if there is no conflict between it and other statute, its provisions will prevail over those statutes for reason that it is presumed that the legislature does not intend to breach an international obligation. To this extent, I agreed with their lordships of the Court below that the Charter possesses 'a greater vigour and strength' than any other domestic statute. But that is not to say that the Charter is superior to the Constitution as erroneously, with respect, was submitted by learnt counsel for the respondent, nor can its international flavour prevent the National Assembly or Federal Military Government before it (from) remove (sic) it from our domestic laws by simple repealing.<sup>[33]</sup>

Judicial activism at the regional and sub-regional levels to enforce ESC rights, are employed in the African Commission on Human and Peoples' Rights, the Economic Community of West African States (ECOWAS) Court of Justice, and the African Court of Justice. Thus, at its ordinary session held on October 13-27, 2001, the African Commission on Human and Peoples' Rights delivered a landmark decision involving the direct application of a range of ESC rights contained in the African Charter on Human and Peoples' Rights (African Charter). The judgment handed down by the Commission in *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*<sup>[34]</sup> marked the first decision that directly addresses the enforcement of ESC rights since the Commission became operational in November 1987. The significance of this case is that, the Commission clearly drawn out the negative and positive obligations imposed on states by Articles 16, 21, and 24 as well as the implied rights to food and housing/shelter. Furthermore, the Commission stated that governments have a duty to protect their citizens from destructive actions that may be committed by private parties and that this duty calls for positive action on the part of governments. An accompanying progressive aspect of the decision was the Commission's recognition that the rights expressly set out in the Charter are not exhaustive of the rights protected by it. Thus, in another landmark judgment that sustained the application of fundamental human rights to an environmental case, the Federal High Court Benin City of Nigeria in *Jonah Gbemre v Shell PDC Ltd & ors*<sup>[35]</sup> granted leave to the applicant to institute proceedings in a representative capacity for himself and behalf of members of *Iweherekan* Community in the Delta State of Nigeria. The applicant was also granted leave to apply for advisory opinions on the meaning of Community law, the Court is charged with resolving disputes related to the Community's treaty, protocols and conventions. Leave was also granted to the applicant to apply for an order enforcing or securing the enforcement of their fundamental human rights to life and human dignity, as provided by sections 33 (1) and 34 (1) of the 1999 Constitution of Nigeria, and reinforced by Articles 4, 16 and 24 of the African Charter on Human and Peoples' Right. The Court held that these constitutionally guaranteed rights inevitably include the rights to a clean and poison and pollution-free healthy environment. The Judge further declared that the actions of the respondents (Shell PDC and NNPC) in continuing to flare gas in the course of their oil exploration and production activities in the applicant's

Community, constituted a violation of their fundamental rights. Furthermore, the judge ruled that the failure of the companies to carry out an Environmental Impact Assessment (EIA) in the community concerning the effects of their gas flaring activities is a clear violation of EIA Act and has contributed to a further violation of the said environmental rights. The judge restrained the respondents from further gas flaring and required them to take immediate steps to stop the further flaring of gas in the community. That the Attorney General should ensure the speedy amendment, after due consultation with the Federal Executive Council, the Associated Gas Re-Injection Act to be in accordance with Chapter IV of the Constitution on Fundamental Human Rights.

In furtherance to the earlier discussion on international and regional human rights instruments that have recognised the socio-economic rights to citizens and to which have been ratified by Nigeria, the National Assembly has enacted into statutory law, certain provisions of Chapter II of the Constitution such enactments include the Nigeria Education Bank Act; The Child Rights Act, 2003; the Compulsory, Free, Universal and Basic Education Act, 2004; the Independent Corrupt Practices and other Related Offences, 2000; the Freedom of Information Act, 2011; and others. Thus, in the Case of *AG Ondo state v. AG Federation & ors*,<sup>[36]</sup> the Ondo State government challenged the constitutionality of the enactment of the corrupt practices and other related offences under which Independent Corrupt Practices and other Related Offences Commission (ICPC) was established to fight corrupt practices throughout the federation, including the prosecution of alleged offenders. The Supreme Court, per Uwaifo JSC justified the enactment of the Act on the ground of the fundamental Objectives and Directive Principles of State Policy. Similarly, in the case of *AG Lagos State v. AG Federation*,<sup>[37]</sup> the Supreme Court held that the National Assembly was competent to enact the Federal Environmental Protection Agency Act<sup>[38]</sup> for the protection of the environment in the furtherance of Chapter II. These cases represent judicial activism through which ESCR as contained in Chapter II of the Constitution of the Federal republic of Nigeria, 1999 can be justiciable enforced.

## **Challenges toward Enforcing Economic, Social and Cultural Rights**

### **Locus Standi**

Discussion on *locus standi* or right to sue is germane in the framework on the enforcement of ESCR because it is in this quality that will be important for approaching the courts as individual or collective to seeking judicial construction emanating from violations of rights. The two criteria to show sufficient interest by a person who approaches court for audience are whether the party could have been joined as a party to the suit; and whether the party seeking redress will suffer some injury or hardship arising from the litigation. It is therefore only a party in looming peril of any conduct of the adverse party has *locus standi* to commence an action<sup>[39]</sup>. In view of the strict requirements for establishing standing to sue, and the confusing decision of court in the case of *Abraham Adesanya v. President of the Federal Republic of Nigeria*,<sup>[40]</sup> it is difficult if not impossible for non-governmental organisations (NGOs) or other interested persons to sue on behalf of victims of rights violations. *Adesanya's* case sought for determination three

key issues by the Supreme Court. The most important concerns the correct interpretation of the provisions of section 6(6) (b) of the 1979/99 Constitutions provides as follows:

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 person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

In a minority opinion often confused as the majority decision on the matter, Mohammed Bello J expressed the following sentiment:

It seems to me that upon the construction of the subsection, it is only when the civil rights and obligations of the person who invokes the jurisdiction of the court, are in issue for determination that the judicial powers of the court may be invoked. In other words, standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of.

A Thorough appraisal of court decision in *Adesanya's* case shows that the Supreme Court was not unanimous on the real purport of section 6(6) (b) in relation to *locus standi* in Nigeria. While Justices Nnamani and Idigbe subscribed to Justice Bello's opinion that section 6(6) (b) laid down a test for *locus standi*, Justices Sowemimo and Obaseki aligned with Fatayi Williams CJ (then Chief Justice of Nigeria) to the contrary. Regrettably, Justice Uwais who had the casting vote took different view to the effect that the interpretation of section 6(6) (b) depended on the facts and circumstances of each case. This *lacuna* led to such confusion that a few subsequent cases were decided on the basis that Justice Bello's opinion was the majority decision of the Supreme Court. The Court, however, clarified its position on the *Adesanya* case in *Owodunni v Registered Trustees of the Celestial Church and Others* <sup>[41]</sup>. In its lead judgment, Ogundare J confirmed that 'there was no majority opinion in favour of Bello JSC's interpretation of section 6(6) (b) of the Constitution.'

### Corruption among African Leaders

Destiny of a society depends on the quality of its leader. The corruption and ineptitude on certain past and present African leaders have worsened the socio-economic predicament inherited from colonialism in the continent. Some African countries have experienced corrupt governments that exploited their own people as vicious as any outsiders have ever perpetrated. Though corrupt practices is not peculiar to African continent but some African leaders have elevated it to an art of form worthy of its own national museum. Resources that meant for the provision of the needs of the people have been transferred into the private foreign accounts of high-ranking African leaders and officials. Less directly corrupt leaders steal by rejecting policies that would bring development and promote ESCR in favour of policies that bring greater profit to their way through businesses, investments or

unscrupulous cohorts. Those emboldened enough to call for accountability and transparency in the conduct of public affairs are designated as security threats or enemies of the people and become targeted for incarcerated or for elimination.

The cost of corrupt practices has been very enormous that economic, social, cultural and political rights have fallen victims in Africa generally and Nigeria in particular become more impoverished despite the existing abundant natural and human resources in the continent. We are therefore forced to agree with Shehu that all identified modes of corrupt practices that are capable of impeding the enforcement of socio-economic rights are predominant in Africa. The effect of this is that, it will be difficult to enforce those rights even though, there are legal and institutional frameworks to fight the menace on ground <sup>[42]</sup>.

### Population Growth

Nigeria is a multicultural nation with many tribes, ethnic groups and religions, which have strong influence on the followers in their belief system, social perception and essentially, their entire ways of life. Cultural practices exert direct and indirect influences on population <sup>[43]</sup>. Population has far-reaching implications for change, development and the quality of life <sup>[44]</sup>. Invariably, high population exerts pressure on the ecosystem leading to issues around food security, land tenure, water supply, and environmental degradation. It causes dislocations in the health, housing and education sectors. That is, population growth has a direct link with socio-economic rights <sup>[45]</sup>.

Shehu raises question that, at what rate is the economy growing to accommodate the rapidly growing population? He further asked whether or not the rate of population growth could afford the possibility of socio-economic rights enforcement. This questions were indirectly answered in the negative. Consistently, if the population is growing faster than the economy, the consequence is that socio-economic rights demands cannot be met. As a result of rapid growth in population, General Ibrahim Babangida adopted a National Population Policy to reduce population growth rate by way of voluntary reduction in fertility rate from six children to four per woman in 1988. However, Scholars were pessimistic about the success of the exercise because issues on population cannot be discussed in isolation of socio-cultural and economic condition of the People. However, there are negative and positive aspects of culture, but certainly the categorisation may not be a simple analysis because of the subjective nature of such exercise. An aspect of culture that is unacceptable in a particular community may be acceptable as the norm in another.

It has been revealed that the policy achieved some degree of success in the Southern part of the country; it met deadlock in the Northern part. The reasons for its failure in the North was as a result of religious and cultural background. The pluralism of the country reflects in the perception of marriage and family planning. The North is predominantly Muslims and Islam supports early marriage and early child rearing and this is why it is rife among northerners. Islam allows men to marry from one to four wives. Regrettably, the national policy on population did not take into consideration the maximum number of wives that Muslim in the north could have. The implication of policy of four children per woman means an average man in the North could have up to 16 children. This is further complicated by

the refusal of women in the North to adopt the use of contraceptives because Islam prohibits such type of family control system. It is momentous to state that why some women conceded to family planning, they however objected to the government imposition on the number of children to give birth to by individual couples. Therefore, it becomes difficult to enforce with constructive constitutionalisation, economic, social and cultural rights in a society of uncontrollable population growth.

### Debt and Structural Adjustment Policies

Debt burdens are major challenges to meaningful socio-economic development in Nigeria and other developing countries. This contributes to non-enforcement of ESCR. Debt burdens undermine the prospects of the affected countries to provide even the most basic facilities needed to meet ESCR obligations. Debt servicing has had negative impacts on the poor and their children, obliging them to do without food subsidies and health and other services and often pressing them into exploitative working conditions<sup>[46]</sup>. Under the dual burden of debt and evaporating aid, Nigeria in 1990s and many African countries were forced to adopt the structural adjustment policies of IMF and World Bank. These policies appeared to have worsened their economic conditions. These states had to reduce their imports, devalued their currencies, deregulating capital investments, prioritise state public utilities, dismantle social services like health care, education and removal of subsidies on market staples and provide national preferential treatment to foreign investors<sup>[47]</sup>. These provisions are often coupled with a bankruptcy programmes under the supervision of the world Bank with a view to triggering the liquidation of competing national enterprises with the obvious loss of indigenous, control of critical areas of the economy. Adjustment policies culminated into austere measures that unbridle far-reaching pauperisation on the majority of the people and a severe deterioration in the abilities of these countries to uphold ESCR of their people<sup>[48]</sup>. The obvious impact of the policy is to reduce the capacity of the states not to meet their human rights obligations to their citizens. In Africa and other continent, structural adjustment programmes have adverse effects not only on the ESCR but also on the civil and political rights.

Structural adjustment programme promote marginalisation and deprivation of ESCR both worsening conditions and preventing states from recognising or enforcing ESCR. The imposition of structural adjustment programme devalued an ethos of accountability because the programme was persuaded by the external actors who are not responsible to the victims. Despite the policies' track record of dehumanising effects on the population, many African countries are still being forced to accept them as a condition for rescheduling or cancellation of their debts. One is tempted to agree with the suggestion that perpetuating the debts of the developing countries is the result of a deliberate and political decision designed merely to frustrate any attempt by developing countries to achieve economic and social development. The fact that any countries that oppose the proposed measures by the institutions (themselves agents of neo-colonialism) will not get any financial assistance lend credence to the suggestion. Just as debts and structural adjustment policies are vital instruments for sustaining the continued deprivation of ESCR of the peoples, there are growing fears that globalisation further

aggravate human travail, attrition of socio-economic rights and good governance.

### Conclusion

Protecting and enforcing only civil and political rights in a situation of impaired civil and political rights contention motivated by worsening economic, socio-cultural conditions project an image of truncated humanity. It is imperative for equal enforcement of all human rights without discrimination.

It is momentous to ensure that the basic needs of the citizens in Nigeria and other African Countries are provided if it is to be a society based on human dignity, rule of law, equality, freedom and good governance. The judiciary must be proactive in ensuring the enforcement of the rights; the courts must engage in the reconstruction of the contents of the fundamental rights guaranteed by the Nigerian Constitution to embrace ESCR.

Domestic legislature and administrative regulations identifying the right-holder, the duty bearer and the content of the duties will be helpful mechanisms for strengthening the justiciability of ESC rights. There is also space for the application of general constitutional and human rights standard such as non-discrimination, equality, reasonableness and respect for due process to state legislation and practice.

In conclusion, legal and institutional frameworks like Independent Corrupt Practices Commission, Human Rights Commission, Economic Financial Crimes Commission and many other frameworks put in place whether in Nigeria or any other African countries to curb all forms of corrupt practices and human rights violations should be readdressed to guarantee good governance as relate to the enforcement of ESCR.

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