



COVID-19 Pandemic: Revisiting the Enforcement of Socioeconomic Rights in Nigeria and other Jurisdictions

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ABSTRACT

There is no doubt that the corona virus (COVID-19) pandemic cast aspersion on how the world has handled health rights, a subset of socioeconomic rights. The emergence of Covid-19 presents the world ample opportunity to gauge or evaluate her strengths and weaknesses in the defence of human rights generally and socio-economic rights in particular. What is clear is that developed countries have handled the pandemic better than those of the third world in all fronts including ameliorating the supposed hardships attendant to the pandemic. Another revelation is the confirmation of the fact that second generation rights are not a priority amongst countries of the third world. In the case of Nigeria, the non-justiciability of socioeconomic rights simply adds salt to the existing injury. The time, for Nigeria, to declare a 'state of emergency' on socio-economic rights is now, there is no justifiable excuse whatsoever to the un-enforceability of socio-economic rights.

Keywords: Socioeconomic rights, Corona virus, ECOWAS, Nigeria

1) INTRODUCTION

The Corona virus pandemic otherwise known as COVID-19 has tested the depth of our fidelity to human rights across the globe.² Since the adoption of the Universal Declaration of Human Rights in 1948 and the International Covenant on Human and Political Rights as well as the International Covenant on Economic and Social Cultural Right in 1966, no global issue has tested our commitment to the preservation of international human rights like the COVID-19. Several countries particularly across Europe and North America which championed the adoption and the universalization of human rights were among the first to clamp down on regional and global human rights. Most of these countries took examples from countries in South East Asia (known for their hesitation towards international human rights) to lock down cities without complying with the rule of law, even when there was opportunity to do so. However, while the restriction of movements across the globe could be justified based on the need to stem the tide of transmission of the virus, there is no explanation yet for the violation of the second-generation rights across many countries particularly in the third world during the pandemic. One of the major fallouts of the pandemic is the confirmation of the fact that second generation rights are not prioritized by countries across the third world. In several countries across the world, businesses were shut to prevent the community transmission of the virus. The consequence of such closures was that in several western countries, the States introduced stimulus packages to protect and provide for the unemployed and those who may lose their source of livelihood during the period.

The United States, Canada and the United Kingdom provided mouth-watering packages and payments for workers to assist them sustain their families during the pandemic. Health workers were provided with special packages to aid their operations while the health care system was funded massively and provided

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² Ezekiel J, *et.al.*: "Fair Allocation of Scarce Resources in the Time of COVID-19" ; The New England Journal of Medicine (2020) 1; Kai Kupferschmidt and Jon Cohen: "Race to Find COVID-19 Treatment Accelerates"; 367 Science Magazine; (2020); www.sciencemag.org downloaded April 8, 2020

equipment to ensure that patients received the best treatment at no cost. Furthermore, sequel to the fact that schools were shut across these countries, class activities moved to the internet and students and pupils did not lose a lot of school time as a result of the pandemic. Several businesses particularly small ones were promised stimulus packages while several banks (particularly in Italy) were directed to provide interest free loans to companies to enable them quickly return to business and kick-start the economy. All these were done to ensure that the socio-economic rights of the people were protected as the government sought ways to end the pandemic.

The story, however, in the third world countries is not the same. Apart from the fact that countries in Africa and other third world nations initially lacked the capacity to provide quality healthcare for their people, they followed the example of the West to lockdown their cities without provisions for the socio-economic protection of their people. Thus, markets were closed in several countries without a food bank provided for the people, offices were ordered to be closed without an arrangement on how to pay the workers, particularly those who depend on a daily wage. In fact, most of the countries across Africa did not have isolation centers at the time the first index case was reported. Therefore, suspected cases were left in make-shift apartments thus, making it possible for others who might have contracted the virus to refuse to show up for testing. It took several months for most of the countries in the third world to set up test centers and begin aggressive testing of suspected COVID-19 cases.

In the places where schools were closed, there was no arrangement to set up alternative classes online for the students like their counterparts in the West. Therefore, the right to food, right to health, right to education and right to housing of various people across the third world countries were blatantly violated without a foreseeable remedy. Indeed, the spiral effect of these violations is that unemployment will increase in the medium term as the absence of a loss of revenue and the absence of a stimulus package have forced several corporations to shed manpower due to lack of capacity to pay. Thus, several persons risk the danger of losing their right to work without any form of palliative by the state. This paper acknowledges the fact that most countries are grappling with the financial burden of fighting the virus, however, this cannot in anyway divest or remove the responsibility of the States to comply with their regional and international human rights obligations to ensure the welfare of the people.

Indeed, a study of the human rights profile of the countries in the second category indicates, quite unfortunately that these countries, pre-COVID, did not accord primacy to socio economic rights. A study of the budgetary expenditure of these countries on health, education and housing shows the serial neglect of these critical sectors.

In Nigeria for instance, education budget has remained abysmally low at almost 5% a far cry from the UNESCO recommendation of 25%. Even at that, most of the funds are not released, or when they are released, they find their way into private pockets without any check by the government. On health, the only social health package existing in Nigeria which is the Nigeria Health Insurance Scheme serves less than 5% of the entire population of 200 million. Most of the poorest people in the country do not have access to health facilities in their communities. The middle class with some access to health facilities are burdened with the high cost of paying for treatments, drug shortages and negligence of unregulated health workers. For the upper class in Nigerian, they access health care outside the country thus abandoning the poor to their fate. The Social investment scheme launched by the present government have become a cesspool of corruption and incapable of drawing Nigerians out of poverty. The excuse of a lack of resources can no longer fly in the face of massive state corruption that fritters away the commonwealth of the people in Nigeria.

The story is the same across several countries in Africa. Indeed, out of 54 countries in the continent, Ethiopia is the only country on track to end extreme poverty by 2030.³ Ghana and Mauritania trail behind. Interestingly, countries such as Botswana, South Africa, Rwanda and Nigeria which seem to be advancing

³'Ethiopia's Progress towards Eradicating Poverty': Paper presented at the Inter-Agency Group Meeting on the "Implementation of the Third United Nations Decade for the Eradication of Poverty (2018-2027)" April 18-20, 2018. <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2018/04/Ethiopia%E2%80%99s-Progress-Towards-Eradicating-Poverty.pdf> visited November 7, 2018

economically are very far in the inequality index.⁴ Thus, a small number of the persons backed by state machinery control the wealth of the nations. Apart from Kenya, Ghana and South Africa, enforceability of socio-economic rights such as the rights to adequate healthcare, free and compulsory education, right to housing, and right to food remain mere aspirations in most African states.

Unfortunately, there seems to be little or nothing that the citizens of these countries can do to get their governments to respect, protect and fulfill the socio-economic rights of the people in these countries. The major reason identified by this study is the non-justiciability of socio-economic rights included in the constitutions of some third world countries. Taking Nigeria as a case study, Chapter II of the 1999 Nigeria Constitution (as amended) contains provisions of socioeconomic rights which the citizens are supposed to enjoy as guaranteed by regional and international human rights instruments.⁵ However, the framers of the law placed these provisions as mere directive principles, thus, divesting the courts of any jurisdiction to enforce these provisions.

This paper examines the non-justiciability of socio-economic rights in Nigeria in comparison to what is obtainable in selected countries in the third world jurisdiction and the imperatives of human rights protection in the Post-COVID 19 era. As aforementioned, the pandemic, being the first since the UDHR has informed the urgent need to examine the compliance of states to the protection of socio-economic rights of the people. This paper argues that non-justiciability of socio-economic rights on the ground that state do not have sufficient funds to promote the enjoyment of these rights⁶ can no longer be sustained in the face of the devastation and lack occasioned by the global pandemic vis-a-vis the high level of official corruption and mismanagement of state resources in most countries.

2) The Concept of Socioeconomic Right

Socio-economic rights are designed to protect and promote the welfare of individuals as subjects of a State and as global citizens. International human rights laws enjoin States to take positive measures towards providing *inter alia*, quality healthcare, adequate housing, free and compulsory education for its citizens. These rights have now been codified in regional instruments with almost a universal affirmation of its underlying principles. But, since the adoption of the Universal Declaration on Human Rights (UDHR), and the subsequent adoption of the International Bill of Rights, there has been some controversy regarding the status of the so-called second-generation rights, otherwise known as the socio-economic rights. The controversy stems from its perception as positive rights, resource-intensive, a mere objective of the state, and thus, non-justiciable.

However, it is a settled principle of law that all human rights are indivisible, inter-dependent and of course, inter-related.⁷ Therefore, all rights are designed to be equally respected, protected and promoted irrespective of generation or its categorization.⁸

There are lawyers who believe that socio-economic rights belong to the realm of political party manifestoes and thus, have nothing to do with the Constitution and justiciability.⁹ They contend that a document as serious

⁴F. Alvarado, L. Chancel, T. Piketty, T. Saez, E. Zuckman, E. (eds): *World Inequality Report, 2018*. (World Inequality Lab. 2018)pp. 76-77s

⁵Section 16 (2)(b) of the Nigerian 1999 Constitution provides that: The State shall direct its policy towards ensuring: that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

⁶ W. Ellen., "Aspirational Principles of Enforceable Rights? The Future foe Socio-Economic Rights in National Law; 22 (1) *American University International Law Review* (2006) pp: 35-64; D.M Davis, "The Case against the Inclusion of Socioeconomic Demands in a Bill of Rights Except as Directive Principles; 8 (4) *South African Journal on Human Rights*; (1992) pp. 475-490.

⁷ See the Maastricht Guidelines on Violations of Economic, Social & Cultural Rights, reprinted in 20 *Hum. Rts. Q.* 691-705 (1998); Limburg Principles on the Implementation of the International Convention on Econ. Soc. & Cultural Rights at UN. Doc, E/CN/4/1987/17; Vienna Declaration and Programme of Action (VDPA) 1993 WCHR Vienna 14-25 June, 1993; Committee on the Rights of the Child, General Comment No. 15 on the Rights of the Child to enjoy the Highest Attainable Standard of Health, 62nd session, U.N Doc. CRC/C/GC/15 (2013). Monica Feria Tinta: 'Justiciability of Economic, Social and Cultural Rights in the Inter-American System of Protection of Human Right: Beyond Traditional Paradigms and Notions' 29 *Hum. Rts. Q.* (2007) 431.

⁸ Vienna Declaration and Programme of Action (VDPA) 1993 WCHR Vienna 14-25 June, 1993.

⁹Ozekhome & Kachikwu: 'Extending the Frontiers of Constitutionalism: Should Constitutions Contain Legal Rules *Stricto Sensu*?' 1(1979-1988) 3 *Nig. J.R* 86.

as the Constitution should not contain pious declarations which are ultimately unenforceable.¹⁰ There are others who see the idea of socio-economic rights as a mere pep-talk or in the realm of what Bentham described as *bawling upon paper*.¹¹ In fact, some other writers proposed some sort of selective rejection, thus, accepting the global concept of human rights but insisting on the exclusion of the so-called Second and Third Generation regime of human rights.¹²

However, another school of thought believes that the socio-economic rights should be part of the Constitution just as the civil and political rights. Leading the argument in favour of this school, Nwabueze posited that a Constitution that imposes enforceable restraints upon the state should not jettison its function of affirming the fundamental objectives-which themselves serve to inform and inspire governmental relations along desirable lines.¹³ This paper supports the second view- as it offers more promise for the justiciability and enforcement of socio-economic rights in Nigeria and other third world states. Indeed, placing these rights outside the Constitution would pigeonhole them as mere ‘moral adjurations’; thus, divesting the government of the responsibility to protect these rights.

3) Status of the Enforcement of Socio-Economic Rights in Nigeria and Selected Jurisdictions

Nigeria:

Section 6 (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the extent of powers granted to the judiciary. Subsection (6)(c) of that law restrains the judiciary from entertaining questions on whether any person or authority or as to whether any law or judicial decision is in conformity with the socio-economic rights therein referred to as the Fundamental Objectives and Directive Principles of State Policy and contained in Chapter II of the Constitution. This section clearly foists a situation where a democratic state restrains her citizens from seeking for the protection against abuse and enforcing the provision of socio-economic rights.

Chapter II of the 1999 Nigeria Constitution (as amended) contain provisions of socio-economic rights which the citizens are supposed to enjoy as guaranteed by regional and international human rights instruments.¹⁴ However, the framers of the law placed these provisions as mere directive principles, thus, divesting the courts of any jurisdiction to enforce these provisions. The age-long argument is that the state does not have sufficient funds to promote the enjoyment of these rights.¹⁵ The state posits that economic and fiscal imperatives make it difficult for them to allow the enforcement of socio-economic rights. This argument is fluid when considered from the high level of official corruption and mismanagement of state resources in Nigeria.

Tracing the background to the idea of socio-economic justice, *Maurice believes* that the foundation was laid through the welfare demands that fashioned out the Universal Declaration on Human Rights (UDHR) and the subsequent adoption of the International Covenant on Economic Social and Cultural Rights (ICESCR).¹⁶ There is a concurrence of opinion among majority of the authors that the struggle for the enjoyment of rights to education, housing, adequate standard of living and quality (basic) healthcare are valid human rights.¹⁷ This is irrespective of the limits of non-justiciability placed on these aforementioned

¹⁰ Ibid

¹¹ Jeremy Bentham: *Critical Assessments, Volume 3*. Bhiku C. Oarekh (eds) (Taylor and Francis online) 701

¹² Thomas W. Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (London: Polity Press, 2002)

¹³ B. O Nwabueze . “Fundamental Objectives and Directive Principles of State Policy: Its Nature and Functions, in Ofonogoro, et.al. op cit: p. 49

¹⁴ Section 16 (2)(b) of the Nigerian 1999 Constitution provides that: The State shall direct its policy towards ensuring: that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

¹⁵ W. Ellen., “ Aspirational Principles of Enforceable Rights? The Future foe Socio-Economic Rights in National Law; 22 (1) *American University International Law Review* (2006) pp: 35-64. D.M Davis; “The Case against the Inclusion of Socioeconomic Demands in a Bill of Rights Except as Directive Principles; 8 (4) *South African Journal on Human Rights*; (1992) pp. 475-490.

¹⁶ Cranston Maurice, “What are Human Rights?” (1973) London: Bidley Head; Sadurski Wojcieck, *Rights before Courts: A Study of Constitutional Courts in Post-Communist States of Central and Eastern Europe*: Netherlands: (Springer 2008)

¹⁷ Langford Malcolm, Porter Bruce, Brown Rebecca and Ross Juliera, “The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary” (2016); Pretoria University Law Press.

rights. Applying this to the local context, *Alabi* and *Ako* believe that socio-economic justice in the Nigerian parlance refers to economic quality, health care and security.¹⁸ In Nigeria, socio-economic rights, particularly the right to education,¹⁹ healthcare,²⁰ employment,²¹ shelter,²² and water protection are not justiciable.

Ironically, the Nigerian Constitution prohibits the exploitation of natural resources for reasons other than for the good of the community.²³ Section 6 of the Constitution of Nigeria (1999) grants judicial powers on an independent and impartial court of law with the same document, providing that the integrity of the courts shall be maintained for the good of the people.²⁴ However, these laudable provisions are challenged by a section of the same Constitution which provides that all the declarations outlined shall not be enforceable within any court of law in Nigeria.²⁵ The limitations on enforcement of those provisions have denied Nigerians the opportunity to enforce their socio-economic rights. Thus, when the government fails to provide a safe environment or prevent degradation of existing environment, the Court would decline to intervene because of the constitutional barricade provided in Section 6 (6) (c). Indeed, the Nigerian state is not working for its huge population.²⁶

Uganda:

The current Ugandan Constitution contains a Bill of Rights in Chapter IV.²⁷ Majority of rights in the Ugandan Constitution are taken from the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The constitution gave scant attention to Socio economic rights; this is despite Uganda's accession to the International Covenant on Socioeconomic and Cultural Rights. The few socioeconomic rights contained in the Ugandan constitution are the right to education,²⁸ the right to a decent environment,²⁹ right to work.³⁰

A section in the constitution tagged, the national objectives which comes at 'preamble' section of the constitution contains several socioeconomic rights.³¹ A study of some cases from Ugandan courts

¹⁸ Joshua Alabi, 'The Dynamics of Oil and Fiscal Federalism: Challenges to Governance and Development in Nigeria' *University of Leeds* (2010); Rhuks Ako, "Environmental Justice in Developing Countries: Perspectives from Africa and Asia-Pacific (2013); New York: Rutledge

¹⁹ Section 18 of the Nigerian 1999 Constitution (as amended)

²⁰ Section 17 (3) (d) *ibid*

²¹ Section 17 (3)

²² Section 16 (2) *ibid*

²³ Constitution of the Federal Republic of Nigeria, Section 17 (2) (c & d)²³ Section 17 (e)

²⁴ The Constitution of the Federal Republic of Nigeria in Section 6 (6) (C) prohibits all Courts established by Nigerian law from entertaining any suit seeking to enforce the provisions of Chapter II of the same law. Chapter II of the Constitution, titled, the Fundamental Objectives and Directive Principles of State Policy contains mostly socio-economic rights as seen in international and regional human rights instruments. Some of the rights include: food, employment, healthcare, health and education; (The Constitution of the Federal Republic of Nigeria, Section 16 (2))

²⁵ According to Nigerian human rights lawyer, Bamidele Aturu, the non-justiciability of socio-economic rights in Nigeria is a class issue. The Nigeria ruling class he said, is not interested in the implementation of the fanciful ideas of social justice embedded in the objectives and directives. Socio-economic rights are usually in contradiction with the objective of the ruling class to accumulate capital and thus, continue their act of corruption. Aturu, B. *Nigerian Labour Movement and the Making of an Authentic Constitutional Framework for the Development of Nigeria* (Lagos: Kola Gbadi Memorial Foundation, 2010) 13.

²⁶ The Constitution of the Republic of Uganda has a commencement date of 8 October, 1995 and can be accessed here: <https://www.wipo.int/edocs/lexdocs/laws/en/ug/ug002en.pdf> retrieved 20/9/19

²⁷ Article 30

²⁸ Article 39

²⁹ Article 40

³⁰ According to the Constitution, this section is to provide guidance in interpreting the constitution and implementing policy decisions of the state. The National Objectives touching on socio-economic rights and stated in the Constitution includes: Protection and Recognition of the Rights of disabled persons, Provision of basic medical services, Promoting proper nutrition across the country, protecting the old and the vulnerable and promoting the right to development

indicates that the justiciability of socioeconomic rights depends on the nature of the judge presiding over complaints.³² Despite the fact that section 137 (1) of the Constitution mandates the judiciary to interpret questions arising from the constitution, it is only the Court of Appeal in Uganda, while sitting as the Constitutional Court that can adjudicate over such matters. Owing to the lack of adequate access to adjudicating authorities, most Ugandans have little or no interest in enforcing their socioeconomic rights through the courts.³³ However, there are other processes for enforcing socioeconomic human rights in Uganda. Such institutions are empowered by the state to receive complaints from individuals and groups, investigate and remediate these violations. The Ugandan Human Rights Commission (UHRC)³⁴ is an example of such institution. The UHRC has the judicial powers and can summon persons to appear before it if necessary, to resolve a particular complaint.³⁵ Some of the decisions from the Commission indicate a pro-poor approach and also vindicate its importance in the promotion and protection of socio-economic rights in Uganda. In *Mpondi v. Chairman Board of Governors of the Ngwana High School*, for example, the Commission held that sending a student home for non-payment of fees violates the right to education enshrined in the constitution.³⁶ The Commission has also held that a person who qualifies for pension can claim it from the government as a right. Thus, refusal to remit pension is a violation of human rights.³⁷ The position of the Commission in this case raised the bar in the protection of socioeconomic rights in Uganda.

Ghana:

The Ghanaian Constitution, like other Constitution in Africa contains the civil and political rights as well as a few socio-economic and cultural rights.³⁸ It is noteworthy, that the socio-economic rights in the Ghanaian constitution are merged with the civil and political rights in the same chapter. Thus, socio-economic rights are easily litigated in Ghana unlike the situation in Namibia, Uganda and Nigeria. Some of the enforceable rights within the constitution include the right to work,³⁹ right to equal educational facilities.⁴⁰ Curiously, the Ghanaian Constitution did not expressly provide for the right to health, but mentions this right as one of the

³² In *Grace v. Mukwano Industries* (Miscellaneous Application No. 909 of 2000), the Constitutional Court held that for anyone to establish a right to a healthy environment, the Environmental Management Authority must be joined in the suit or called as a witness to establish air quality standards. This, with due respect to the court, appears like a ridiculous decision and one that was set out to stymie the operationalization of socioeconomic rights in Uganda. The Court lost a very perfect opportunity to restate the inviolability of the right to education and establish its contours. In *Sharon v. Makerere University* (Constitutional Courts No 1, 2003), some Seven Day Adventists accuses the university of violating their rights by conducting classes on Saturdays, which is their day of worship. The court held that the policy of the university did not prohibit the students from participating in their worship after the classes, and as such, their right to education has not been affected. The court did not go far to define the contents of the right to education. This paper views this omission as a serious injury to the promotion and protection of the right to education in Uganda.

³³ Alison Ayers: 'Demystifying Democratization: the global constitution of (neo) liberal politics in Africa'. (2006) *Third World Quarterly*, Vol. 27 (2), 321-338

³⁴ Section 51 (1) of the Ugandan Constitution enumerates the functions of the Commission; it states that the UHRC shall *inter alia*, investigate complaints which relate to the violation of human rights; recommend effective processes of promoting and protecting human rights, create awareness of the rights in the constitution, encourage citizens to defend the constitution at all times and monitor government's compliance with international treaties and obligations on human rights

³⁵ J.O Kuye, & U Kakumba : 'The Ombudsman Institutions in the procurement of Legal Responsibilities in the Commonwealth'; An Overview of Canada, South Africa and Uganda (2008); *Journal of Public Administration*; Vol. 43 (3) 1.

³⁶ In this case, the student was severely punished by teachers in the school leading to a hospitalization. The school did not pick up the hospital bills but instead, refused the student entry into the school until they see an evidence of fee payment. The family of the student refused to pay the fees until the school takes responsibility to sanction the teachers that injured the student. As the school refused to yield, the parents of the student successfully approached the courts to enforce the right to education. See Complaint No. 210 of 1998

³⁷ See *Mutesasira v. Kiwananuka and ors* (Complaint 501 of 2000)

³⁸ Chapter 5 of the Ghanaian Constitution which is entitled 'Fundamental Human Rights and Freedoms' contains what can be termed the substantive rights, as well as the framework for the enforcement of these rights.

³⁹ Article 24

⁴⁰ Article 25. This paper must pause to make a comment on this Article. The provisions mandates the government to ensure availability of free and compulsory basic education for all Ghanaians, as well as the accessibility of secondary schools. It also guarantees the right of individuals to establish private schools under the supervision of the government who has to ensure quality assurance in those establishment. In providing details of the contents of the Right to Education, the Ghanaian constitution appears similar to the Constitution of the two Southern African States earlier compared in this section.

aspirations which the country should aim to achieve.⁴¹ In other to buttress its inclusiveness, the constitution guarantees the right of women,⁴² children ⁴³and disabled persons.⁴⁴ In comparison, the Ghanaian Constitution is quite expansive in the categories and people it protects.⁴⁵ This paper further recommends that Nigeria should adopt this system to include specific classes of people and include more rights which are presently not mentioned in the second chapter of the Nigerian Constitution.

The Courts in Ghana are empowered to receive complaints and decide all matters pertaining to the enforcement of socioeconomic rights as well as civil and political rights. However, an interesting finding from this study shows that issues of socioeconomic rights do not really come before the Ghanaian courts. The Commission on Human Rights and Administrative Justice which is established by Article 216 was granted an autonomous status and given semi judicial powers on all matters relating to human rights enforcement.⁴⁶ This powerful Commission has heard more cases on human rights violation than all the courts in Ghana. It has also made pronouncement on recondite issues that touch on socioeconomic rights.⁴⁷ The question as to whether an employer can flippantly suspend an employee if it was not expressly provided in the employment contract came before it in the popular Labour Case of *Gabor v. Gabor Reinsurance Corporation*.⁴⁸ The Commission held in that case that where it is not expressly stated in the contract, an employer lacks the power to suspend an employee in his establishment.

Ghana is one of the few countries in Africa that provides a quick and easy access to human rights adjudication. The exercise of socioeconomic right is popular in Ghana because, just as in South Africa and Namibia, there is a strong Commission constitutionally empowered to resolve disputes. Such strong institution is necessary in Nigeria to ensure a quick dispensation of justice particularly for the quick enforcement of socioeconomic rights.

South Africa:

The South African Constitution does not make a differentiation between the socioeconomic rights and civil and political rights. Both generations of rights are contained in the same section of the constitution.⁴⁹ This approach is quite commendable as it reinforces the view that socioeconomic rights are not inferior to civil and political rights.⁵⁰ In *Government of the Republic of South Africa v Grootboom*⁵¹ as well as in the *South African Minister of Health and Ors v. Treatment Action Campaign and Ors*⁵² the Constitutional Court was unanimous and explicit when it rejected the argument of the State of South Africa that its inability to implement socioeconomic rights arose from resource constraints. In its judgment, the Court reaffirmed the provisions of General Comment III to the International Covenant on

⁴¹ Article 30 is the only closest provision relating to the right to healthcare in Ghana. The law provides that a person acting on behalf of a sick person must not deny treatment to that person on the grounds of religion or any other belief which are unjustifiable

⁴² Article 27

⁴³ Article 28

⁴⁴ Article 29

⁴⁵ Noteworthy is Article 33 (5) of the Constitution of Ghana which provides that the courts can decide to include matters not hitherto as socioeconomic rights into the Constitution. The only condition is that the right must be one that is inherent in a democracy and intended to sure the freedom and dignity of the people of Ghana,

⁴⁶ The Commission has a mandate of investigating complaints concerning the actions of certain state organs; investigate complaints of human rights violation, corruption and abuse of power, investigate human rights violations by private persons, corporations and institutions, and take necessary correction action to reverse the abuse and compensate the abused.

⁴⁷ S. K. Asibuo, "The Role of Human Rights and Administrative Justice (CHRAJ) in Promoting Public Service Accountability Under Ghana's Fourth Republic (2002); African Administrative Studies, Vol. 58, 3-4

⁴⁸ Landmark Cases of the Commission on Human Rights and Administrative Justice (2002 Annual Report)

⁴⁹ The Constitution of the Republic of South Africa, 1996 as adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf> as retrieved on 19/9/19

⁵⁰ Mirja Trilsch: 'What's the use of socio-economic rights in a constitution? - Taking a look at the South African Experience'; (2009) Law and Politics in Africa, Asia and Latin America; Vol. 42 (4) pp. 552-575

⁵¹ 1998 (1) SA 765 (CC)

⁵² 2002 (5) SA 703 (CC)

Socio Economic and Cultural Rights⁵³ to the effect that the state had not proved it had made every effort to use every resource at its disposal to at least, satisfy the minimum obligations provided for in the ICESCR. In view of the decision of the Constitutional Court in these cases, the justiciability of socioeconomic rights in South Africa as contained in Section 23-27⁵⁴ is now beyond any debate.

Section 27 of the South African Constitution provides for the right to social security.⁵⁵ This is a pro-poor provision infused to ensure inclusiveness in governance. This provision guarantees government support to the vulnerable and ensures that unlike Nigeria, the incidence of extreme poverty do not gain a foothold in the country. Furthermore, Section 28 of the Constitution provides for the right to basic and on-going education. This provision is broader than what the Nigerian constitution provides for in this regard. The South African Constitution recognizes that government has a duty to support continuous education and by extension, the government has an obligation to stamp out mass illiteracy in the country. It also mandates the government to provide support for functional education beyond the basic level

Another major provision is Section 24 which provides for the right to environment. Shedding light at the extent of this provision, Mubangizi⁵⁶ noted that this section contains two major limbs. Thus, by the language of the section, South Africans are guaranteed the right to an environment that is not harmful to their health and development. Secondly, this section imposes an obligation on the state to prevent all forms of pollution and environmental degradation. It seeks to ensure that government does not allow multinational companies or individuals to destroy the environment and endanger the life of communities.⁵⁷ This collective right seeks to guarantee sustainable development and aligns with the philosophy behind the African Charter on Human and Peoples Rights. Section 25 (5) of the Constitution imposes a positive duty on the government of South Africa to promote equitable access to land.⁵⁸ Thus, the law requires the government to initiate measures to achieve land redistribution among the population. This provision which reflect the history of the country ensures that native South Africans have equal access to land particularly those forcefully taken away during apartheid. The relationship between access to land, land reclamation and economic empowerment cannot be overemphasized. By this act, commercial agriculture has bolstered in the country and of course, South Africa is a net exporter of food and allied products. These are some of the accruing benefits that follow this State protection of the socioeconomic right of a people.

⁵³ General Comment No. 3 of the ICESCR states that: In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations. Source: Office of the High Commissioner for Human Rights: General Comments No. 3: The Nature of States Parties' Obligation; Adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights, (December, 14, 1990) <https://www.refworld.org/pdfid/4538838e10.pdf> retrieved on 19/9/19

⁵⁴ The Socioeconomic Rights in the South African Constitution includes:

- i) The Right to work and fair dealing as a worker (Section 23)
- ii) Right to safe environment (Section 24)
- iii) The right to acquire and own property (section 25). In the Nigerian constitution, this right is included in chapter 4 of the Constitution as a justiciable fundamental right. However, the claw-back clauses attached it waters down the strength of the benefits conferred on Nigerians by that section
- iv) The Right to adequate housing (Section 26)
- v) The right to health, adequate food and water (Section 27)
- vi) The Right to claim and enjoy social security (Section 27)
- vii) The right to basic and continuous education (Section 29)

⁵⁵ Edwell Kaseke: *The role of social security in South Africa* (2010); Journal of International Social Work, Vol. 53 (2) 159-168

⁵⁶ John Mubangizi and Betty Mubangizi : 'Poverty, human rights and socio-economic realities in South Africa'; (2005); Journal of Development Southern Africa; Vol. 22 (2) 277-290.

⁵⁷ In *SERAP v. Government of Nigeria (No 2)* the ECOWAS Court of Justice upbraided the Nigerian government for not doing enough to protect the people of Niger Delta from the environmental degradation occasioned by the uncontrolled activities of the oil majors in the region.

⁵⁸ John Mubangizi: *The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation* (2006) African Journal of Legal Studies; Vol. 2(1) 1-19

More remarkable is the provision of Section 27(1) which provides for access to healthcare, food, water and social security.⁵⁹ The inclusion of these rights in the South African Bill of Rights vindicates the readiness of the government to provide for everyone, an adequate standard of living and thus, improve the quality of life of all citizens.⁶⁰ The provision of free and affordable housing which is guaranteed in Section 26(1)⁶¹ caps the notion that the South African law is all encompassing and should be adopted by other developing countries with a genuine intention to lift their citizens out of poverty and privation.

In terms of implementation, the Constitution mandates the government to respect, protect, promote and fulfill the rights enshrined in it.⁶² Therefore, it imposes a positive and negative obligation on the government to protect these rights from violations and enforce its provisions.

4) The Intervention of Supranational Court in Enforcing Socioeconomic Rights

The intervention of supranational courts, especially that of the Economic Court of Justice (ECOWAS) against the Federal Republic of Nigeria is invaluable. The ECOWAS Court of Justice maintains the position that despite the non-justiciability provision, Nigeria must fulfill her global and regional responsibilities to protect, promote and respect the socio-economic rights of her citizens.

The ECOWAS Court which was created in 1991 but vested with human rights jurisdiction in 2005 have employed progressive techniques to entertain and resolve complaints touching on the abuse or likely abuse of socio-economic rights. This the court has demonstrated in a number of cases involving civil society organizations and the Nigerian Government.

In *SERAP v. Nigeria & Anor* 2010, the Court held inter alia that *every Nigerian child is entitled to free and compulsory basic education*. It dismissed the statement of Nigeria which indicated that the right to education was not justiciable in the country.⁶³ Again, in *SERAP v. Nigeria & 8 Ors* 2012, the court opined that the Nigerian government has a duty to ensure that the activities conducted within the country do not, in any way cause damage to the environment and to the people. Thus, by virtue of Article 1⁶⁴ and 24⁶⁵ of the ACHPR, and the decision of the International Court of Justice in the *Legality of Threat or Use of Nuclear Weapons*, Advisory Opinion,⁶⁶ the omission of the Nigerian government to prevent the brazen

⁵⁹ Nadasen S, *Public Health Law in South Africa* (Butterworths, Durban 2000) Pg 80

⁶⁰ The judiciary in South Africa has been in the forefront towards enforcing these rights. In the *Nevirapine case*, a nongovernmental organization demanded through the courts that government of S. should provide more antiretroviral drugs under the public health system. This it said, has the capacity to reduce mother-to-child HIV transmission and give lifeline to the persons living with HIV. The Court held that the government of South Africa has not done enough to prevent mother-to-child transmission of HIV in contravention of Section 27 (1) and (2) of the Constitution. It ordered the state to provide more medication to reduce the incidence of mother-to-child transmission.

⁶¹ The South African Court have made a landmark decision with respect to this particular right. In the *Government of the Republic of South Africa v. Grootboom*, a group of South Africans were rendered homeless arising from evictions from their makeshift apartments on a private land which the government took over for low cost housing. They asked the Constitutional Court to compel the government to provide them with alternative housing, basic food and water, healthcare among others. The Constitutional Court while upholding their application held that the state had violated the rights provided for in Section 26 of the Constitution and thus it restrained the government from going ahead with the housing programme.

⁶² Section 36(2) of the SA Constitution provides that the right of the people of the South African shall not be limited except otherwise as provided by law (my paraphrase).

⁶³ According to the court, 'since Nigeria has ratified the African Charter on Human and Peoples Rights and the International Covenant on Economic, Social and Cultural Rights, the country is bound by the provisions therein, and thus, the right to education shall be justiciable in relation to Nigeria'

⁶⁴ It provides that the Member States of the Organization of African Unity (now, African Union) parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

⁶⁵ "All peoples shall have the right to a general satisfactory environment favorable to their development.

⁶⁶ *Legality of the Threat or Use of Nuclear Weapons Advisory Opinion*, I.C.J Reports, 1996, p. 226, International Court of Justice (ICJ), 8 July 1996, full report available at: <https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf> (Accessed November 8, 2018). Relevant facts: By a letter dated 19 December 1994, filed in the Registry of the ICJ on 6 January 1995, the Secretary-General of the United Nations officially communicated to the Registry a decision taken by the General Assembly, by its resolution 49/75 K adopted on 15 December 1994, to submit to the Court for advisory opinion, the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?" The Court used the opportunity to lay emphasis on two cardinal principles: (a) States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets; (b) unnecessary suffering should not be caused to combatants. Summary report available at: <https://www.icj-cij.org/en/case/95> (accessed on November 8, 2018)

destruction of the environment in the Niger Delta or hold the companies accountable is a violation of her obligations under international human rights law⁶⁷.

(5) CONCLUSION

There is no gainsaying that the Covid-19 pandemic will most likely leave long lasting consequences on the progress made globally in alleviating poverty in the last ten years. Of greater concern is the effect of the pandemic on socioeconomic rights of citizens in jurisdictions with weak or no enforcement of such rights.

What is obvious about the Covid-19 pandemic is the exposure of socioeconomic inequalities and gaps in social security. As countries prepare for life post Covid-19, the protection and enforcement of socioeconomic rights must be giving rapt attention with evidence of massive investment in healthcare, social protection and infrastructure amongst others. We note with regret that the public health measures taken by the Nigerian government so far have been desultory and far from encouraging when compared to those of countries like South Africa, Rwanda, Kenya and Ghana with well streamlined socio protection programmes for her people as well as institutions plagued by the Covid-19 pandemic.

It is our argument that Nigeria must, as a matter of urgency, channel its energy to programmes aimed at providing support for the overall welfare of its people including but not limited to provision of food, shelter and healthcare facilities; pecuniary security for its citizens must be guaranteed at all times and not only when faced with particular challenges as the Covid-19 pandemic⁶⁸. Regrettably, maximum enjoyment of socioeconomic rights as aforementioned cannot be realised in a country like Nigeria where enforcement of such rights is absent.

The Constitutional impediment on the enforceability of Social-economic rights in Nigeria is indeed a shame considering the fact that Nigeria is a State Party to almost all the treaties providing socio-economic rights. Indeed, the country prides itself as a responsible member of the international community. This therefore, trumps up the question as to whether commitment to international law by a state translates to fidelity in respecting international human rights.

In its June 25, 2018 online edition, MSN Africa informed the world that the aspiration of the United Nations to end extreme poverty by 2030 (under the SDG's) may not be met, no thanks, in large part to Nigeria.⁶⁹ The designation of Nigeria as the poverty capital of the world- resulting from a decrepit economy, rising debt profile, insecurity across the country calls questions as to how resources are allocated and utilized.⁷⁰ Indeed, Nigeria is an unfortunate example of a malignant socio-economic rights abuse within West Africa. The country which is the hub of trade and commerce, with abundant natural resource reserve has continued to nosedive economically over the past two decades. The rising level of corruption has greatly affected socio-economic rights enforcement. It is a truism that the presence or absence of corruption is a critical determinant to the extent to which socio-economic rights and general development goals are realizable within a particular jurisdiction.⁷¹

Bearing these factors in mind, the ECOWAS Court commendably continues to offer the platform for the enforcement of socio-economic rights in Nigeria. Considering the rising corruption and growing poverty, as well as the large scale devastation and lack occasioned by the Covid-19 pandemic, there is no better time for local courts to hold governments accountable to ensure the welfare of the citizens of Nigeria and West Africa. The courts can leverage on the decisions of the ECOWAS Court or on the gaps created by the Nigerian

⁶⁷ See also the case of *SERAP & 10 Ors v. Nigeria & 4 Ors* where the court, in awarding equitable compensations to victims of arbitrary eviction leading to loss of job or employment, held that the action of the state was a violation of the socioeconomic right to work guaranteed by regional and international human rights instruments

⁶⁸ Oyeniyi Abe, 'Re-Imagining Post Covid-19 Nigeria Through the Lens of Socioeconomic Rights Guarantees' (2020) Centre for Comparative Law in Africa

⁶⁹ Yomi Kazeem: 'Nigeria has become the poverty capital of the world: Quartz Online (25/06/2018) <https://www.msn.com/en-xl/africa/top-stories/nigeria-has-become-the-poverty-capital-of-the-world/ar-AAz9Djd> retrieved 11/4/2018

⁷⁰ MSN Africa, in its June 25, 2018 edition starts with the following sentence:

⁷¹ Obiajulu Nnamuchi: 'Kleptocracy and its Many Faces: The Challenges of Justiciability of the Right of Health Care in Nigeria (2008), *Journal of African Law*, Vol. 52 (1) 1-42

Constitution. For instance, section 12 of the Constitution provides that all international instruments domesticated by the National Assembly become part of Nigeria's *corpus juris*. Relying on this, the courts have the opportunity to start with the provisions of African Charter on Human and Peoples Rights which by virtue of its domestication⁷² is part of Nigerian laws.

Furthermore, item 60(a) of the exclusive legislative list within the Constitution empowers the National Assembly to make laws to promote and enforce the observance of the socio-economic rights contained in Chapter II of the Constitution. The implication according to *Nnamuchi*, is that the National Assembly is empowered to unshackle the Courts from the stranglehold of Section 6 (6) (c) which ousted the jurisdiction of the Courts from enforcing socio-economic rights in Nigeria.⁷³ Indeed, the enactment of the National Health Act testifies to the fact that with the political will, socio-economic rights could become justiciable in Nigeria,⁷⁴ despite the non-justiciability provisions in the Constitution.⁷⁵ This position has been successfully tested in Nigerian courts⁷⁶.

There is no doubt that if this tempo is maintained, Nigeria and other countries in the region with such constitutional restrictions would in a short time remove these limitations to herald the full enforcement and enjoyment of socio-economic rights.⁷⁷

The Covid-19 experience in Nigeria provides us ample opportunity to devise mechanisms that will place the advancement of human lives in the front burner. Going forward, Nigeria must treat the actualization of socioeconomic rights as a public health issue which can only be realized when such rights are enforceable. Compliance by the Nigerian people to restrictive guidelines as outlined by the Nigerian Centre for Disease Control (NCDC) will remain low or elusive unless and until the government takes positive steps in guaranteeing social security, right to health and massive investment in the healthcare sector amongst others.

⁷²The Charter has been domesticated via the African Charter on Human and Peoples Rights (Enforcement and Ratification) Act 1983

⁷³O. Nnamuchi: 'Securing the Right to Health in Nigeria under the Framework of the National Health Act', *First Public Lecture of the National Open University of Nigeria*, 16 June, 2017; pp 19

⁷⁴ The National Health Act was passed in 2014; and this became the first time a law would be promulgated to create a Health System that would protect, promote and fulfill the rights of the people of Nigeria to have access to health (see Section 1 (e) of the Act. Basking on the euphoria of this success, the Nigerian Senate invited the public for a public hearing on the Bill to enact the National Health Insurance Commission Act. However, in written memoranda submitted by the Federal Ministry of Justice, the Senate was warned that once the laws become operational, Nigerians would be able to demand their right to health from the government as the law would make the right to health enforceable. Citing the case of *SERAP v. UBEC* (on the right to education), the memoranda asked the Senate to beware in passing the law as it would institutionalize a national health insurance scheme thereby foisting on the government the same results from the *SERAP v. UBEC* case. (Source: Federal Ministry of Justice, "Draft Memorandum to the Senate of the Federal Republic of Nigeria : Committee on Health" (12 March, 2017) 6

⁷⁵ The Nigerian courts have variously held, in supporting this position that where the National Assembly makes an Act in relation to a matter within the non-justiciable sections of the Constitutions, such enactment would activate the section and automatically make it justiciable. See: *Olafisoye v. Federal Republic of Nigeria* (2004) 4 NWLR (Pt. 864) 580. *Attorney General of Ondo State v. Attorney General of the Federation* (2002) 9 NWLR (Pt. 772) 222

⁷⁶ In *LEDAP v Federal Ministry of Education & Anor* Suit No: FHC/ABJ/978/15 (2017) for example, the court, for the first time, relying on the jurisprudence from the ECOWAS court declared that every Nigerian child has a constitutional right to free and compulsory primary education. The court further held that the non-justiciability of the right to education has been superseded by the action of the National Assembly in promulgating the compulsory, free Universal Basic Education Act (2004). Section 18 (3) of the 1999 constitution provides that the government shall strive to eradicate illiteracy, and to this end, government shall and when practicable shall provide (a) free, compulsory and universal primary education (b) free secondary education (c) free university education and (d) free adult literacy education.

⁷⁷ Professor Okafor identified eight conditions which must be fulfilled towards ensuring that the African system realizes its capacity to shape the trans-judicial communications and self-understanding within domestic institutions. The conditions are as follows: a) strong and dynamic activist forces with interest to function at the domestic level; b) constant engagement with the African System and participation in the work of the African Commission (c) a reasonably activist and independent judiciary; (d) some window of political dissent must exist within the country; (e) African Charter must form part of the domestic laws of the country; (f) the African Commission must actively identify the human rights struggle that rage within the country; (g) the African Commission must be seen to be closer to the people and speak the language of human dignity. (h) the African system and the civil society organizations must drive its domestic impact to pay more attention to Economic, Social and Cultural Rights and ensure a conducive atmosphere for the enjoyment of and enforcement of these rights. Obiora Okafor: *The African Human Rights System, Activist Forces and International Institutions*; (Cambridge; CUP 2007) at 270.