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An Examination of the Link Between Economic Development and the Enforcement of Socio-economic Rights in Nigeria

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Abstract

A large number of Africans live under extreme poverty, even though their respective countries have an abundance of natural resources. Nigeria disposes over the resources that could take its people out of poverty and contribute to the full enforcement of socio-economic rights in Africa. This research examines the link between economic development and the enforcement of socio-economic rights in Nigeria. It also focuses on Nigeria's track record regarding the enforcement of socio-economic rights. Although Nigeria does not have a direct constitutional protection of socio-economic rights, its constitution does include certain rights. The research also investigates the fact that Nigerian courts do not have the power to adjudicate on socio-economic rights. Furthermore, the Nigerian economy is evaluated with the observation that the country's level of economic development is hindering the full enforcement of socio-economic rights. It is argued that the solution of Nigeria and Africa's economic problems (which one way or another affects the enforcement of socio-economic rights) is for Nigeria to focus more on intra-African trade, which may yield better results. Nigeria has ratified several treaties which protect socio-economic

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rights (including the African Charter, the International Covenant on Economic, Social and Cultural Rights, amongst others). However, the enforcement of socio-economic rights is still problematic.

1 INTRODUCTION

Socio-economic rights are closely related to development and eradication of poverty.¹ The term “socio-economic rights” encompass economic, social and cultural rights (however, cultural rights are beyond the scope of this research). Economic rights are “essential empowerment rights, they enable individuals to sustain a livelihood and achieve independence.”² Such rights include the right to work, the right to just and favourable conditions of work, the right to form and join trade unions, and the right to social security, including social insurance.

Social rights are “rights whose purpose is to guarantee the basic means of subsistence, survival and development.”³ Such rights include the right to an adequate standard of living, including adequate food, clothing and housing, continuous improvement of living conditions, the right to the highest attainable standard of physical and mental health along with the right to family assistance.

Although Nigeria ratified the 1966 International Covenant on Economic, Social and Cultural Rights,⁴ it has not ratified⁵ the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as OP-ICESCR),⁶ which means that the complaint procedure involving the judiciary is not available for Nigerians. Where domestic remedies have been exhausted regarding socio-economic rights, Nigerians do not have access to remedies provided by OP-ICESCR for violations of the rights enshrined in the ICESCR.⁷

This research is divided into two main segments: first, socio-economic rights enforcement in Nigeria and second, economic development as a factor towards the enforcement of socio-economic rights.

2 SOCIO-ECONOMIC RIGHTS ENFORCEMENT IN NIGERIA

The Constitution of the Federal Republic of Nigeria⁸ is the supreme law of Nigeria.⁹ Nigeria aimed to “provide for a Constitution for the purpose of promoting the good government and

1 Chirwa *et al.* “The Protection of Economic, Social and Cultural Rights in Africa” in Chirwa and Chenwi (eds) *The Protection of Economic, Social and Cultural Rights in Africa: International, Regional and National Perspectives* (2016) 3.

2 Chirwa *et al.* “Direct Protection of Economic, Social and Cultural Rights in International Law” in Chirwa and Chenwi (eds) *The Protection of Economic, Social and Cultural Rights in Africa: International, Regional and National Perspectives* (2016) 42.

3 *Ibid.* 41.

4 International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27) (hereinafter referred to as ICESCR).

5 UN <https://indicators.ohchr.org/> (02-05-2020).

6 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (The General Assembly adopted resolution A/RES/63/117, on 10 December 2008).

7 Viljoen and Orago “An Argument for South Africa’s Accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in the light of its Importance and Implications” 2014 *PELJ* 17.

8 Constitution of the Federal Republic of Nigeria Act 24 of 1999 (hereinafter referred to as the Nigerian Constitution).

9 Constitution of the Federal Republic of Nigeria s 1.

welfare of all persons”¹⁰ in its territory.

Nigeria does not expressly protect socio-economic rights nor does it have socio-economic rights in its Bill of Rights.¹¹ Socio-economic rights are found in the “Fundamental Objectives and Directive Principles of State Policy” (Chapter II) of the Nigerian Constitution, which in fact are just making recommendations to all branches of government,¹² instead of granting it legal obligations.

Some of the socio-economic rights found in the Nigerian Constitution include: the right to suitable and adequate shelter (housing);¹³ adequate medical and health facilities for all;¹⁴ suitable and adequate food;¹⁵ and water;¹⁶ reasonable national minimum living wage; old age care and pensions; unemployment, sick benefits and welfare for the disabled are provided for all citizens (social security);¹⁷ and free education (education).¹⁸ With regard to free education, the government “shall as and when practicable” provide free education.¹⁹

In addition, several international instruments protecting socio-economic rights, both at the global level (UN) and regional level (AU) have been ratified by Nigeria, which include the ICESCR, the African Charter on Human and Peoples Rights (hereinafter referred to as the African Charter),²⁰ and other special treaties.

In 1993, the Nigerian government ratified²¹ the ICESCR to reaffirm its willingness to protect socio-economic rights. The ratification of the ICESCR imposes an obligation on governments to move as expeditiously and effectively as possible towards the goal of realising socio-economic rights,²² a clear sign for Nigeria to follow suit.

Unfortunately, the enforcement of socio-economic rights in Nigeria cannot be imposed through direct judicial action but rather through political action, this in short means that socio-economic rights are not justiciable, that is, grievances pertaining to the implementation of these rights cannot be taken to court.²³ There is a wide gap between the reception and enforcement of socio-economic rights, in relation to civil and political rights. The former are treated less seriously compared to the latter,²⁴ without appreciating the far-reaching implications of socio-economic rights for the lives and livelihood of millions of Africans living in extreme poverty and those who are powerless to hold their governments accountable through the courts.²⁵ The African

10 *Ibid.* preamble.

11 *Ibid.* ch IV.

12 *Ibid.* s 13.

13 *Ibid.* s 16(2)(d).

14 *Ibid.* s 17(3)(d).

15 *Ibid.* s 16(2)(d).

16 *Ibid.* s 20.

17 *Ibid.* s 16(2)(d).

18 *Ibid.* s 18(3).

19 *Ibid.* s 18(3).

20 African Charter on Human and Peoples’ Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

21 United Nations <https://indicators.ohchr.org/> (accessed 04-05-2020).

22 CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art 2, para 1, of the Covenant) Adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights, on 14 December 1990 (Contained in Document E/1991/23) para 9.

23 Constitution of the Federal Republic of Nigeria s 6(6)(c).

24 Ibe “Beyond Justiciability: Realising the Promise of Socio-economic Rights in Nigeria” 2007 *AHRLJ* 226.

25 Ibe “Implementing Economic, Social and Cultural Rights in Nigeria: Challenges and Opportunities” 2010 *AHRLJ* 198.

Charter regards socio-economic rights free of claw-back clauses.²⁶ Claw-back is defined as a clause “that permits, in normal circumstances, breach of an obligation for a specified number of public reasons.”²⁷ Civil and political rights are subject to claw-back clauses.²⁸ This distinction between these two categories of rights has been described as representing “a significantly new and challenging normative framework for the implementation of economic, social and cultural rights.”²⁹

There are arguments that civil and political rights are inter-related with socio-economic rights.³⁰ One of the arguments is that the fulfilment or denial of either civil and political rights or socio-economic rights could have a ripple effect on the enjoyment of other rights.³¹ For example, the right to housing is linked to the right to life, dignity, non-discrimination, freedom of expression, association, participation in public decision-making, privacy, health, work, education and personal security.³²

The socio-economic rights have been elaborated and described as follows:

[e]conomic and social rights are objectives to be achieved progressively. Therefore, a much longer period of time is contemplated for the fulfilment of the objectives. For civil and political rights, states ratifying the Covenant will immediately be subjected to an obligation to give effect to the rights. The enactment of legislation is generally sufficient to effect the enjoyment of civil and political rights, while legislation is not sufficient for the attainment of socio-economic rights. Very much depends on the economic condition of the State. The machinery of complaint, the Committee on Human Rights envisaged for civil and political rights is not a suitable body for dealing with economic and social rights, since they can only be achieved progressively and since the obligation of members with respect to them are not as precise as those for the other set of rights.³³

Julius Kambarage Nyerere, the first and former President of Tanzania observed in his “Stability in Africa,” an address presented at the University of Toronto, Canada in 1969, that both civil and political rights and socio-economic rights should be emphasised, as the emphasis on civil and political rights would be meaningless without for example, the right to life and the right to access medical treatment.³⁴ Further, Justice Bhagwati of the Indian Supreme Court offered similar sentiments as those given by Nyerere.³⁵

The Nigerian courts have constantly referred to section 6(6)(c) of the Nigerian Constitution and it is evident that little effort is made to use other provisions of the Constitution to arrive to a different conclusion, as Indian courts have done. For instance, in India, the court has invoked the constitutional provision of right to life to make justiciable other provisions that

26 Ibe 2007 *AHRLJ* 227.

27 Gittleman “The African Charter on Human and Peoples’ Rights: A Legal Analysis” 1981 *Virginia Journal of International Law* 691.

28 For instance the African Charter art 11 makes provisions for claw-backs.

29 Odinkalu “Implementing Economic, Social and Cultural Rights Under the African Charter on Human and Peoples’ Rights” in Evans and Murray (eds) *The African Charter on Human and Peoples’ Rights – The System in Practice 1986-2000* (2002) 186.

30 United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (art 11 (1) of the Covenant) 13 December 1991 EC/1992/23 para 9.

31 *Ibid.* para 9.

32 United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (art 11 (1) of the Covenant) 13 December 1991 EC/1992/23 para 9.

33 Roosevelt, General Assembly Official Records, 6th Session 1951-2, Plenary Session page 505.

34 Ihonvbere “Underdevelopment and Human Rights in Africa’ in Shepherd and Anikpo (eds) *Emerging Human Rights: The African Political Economy Context* (1990) 56.

35 *Minerva Mills Ltd. and Ors. v Union Of India and Ors* AIR 1980 SC 1789.

were generally seen as non-justiciable. In *Unnikrishnan J.P. v State of Andhra Pradesh*,³⁶ the Indian court invoked the right to life and it stated that every “child/citizen of this country [India] has a right to free education until he completes the age of fourteen years.”

In elaboration of the above, the court held that:

[T]he right to basic education is implied by the fundamental right to life (Article 21) when read in conjunction with the directive principle on education (Article 41). The Court held that the parameters of the right must be understood in the context of the Directive Principles of State Policy, including Article 45 which provides that the state is to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children under the age of 14.³⁷

In Nigerian courts, a similar case was presented in the *Badejo v Federal Ministry of Education*,³⁸ but the approach was very different from that taken by the Indian Court. The Nigerian court did not see a relationship between socio-economic rights and civil and political rights.

In relation to Nigeria and other countries with similar constitutions, similar approach or similar classification of socio-economic rights, the issue at hand is not whether socio-economic rights are second-rated rights. The issue is the fact that governments have continued not to give serious attention to socio-economic rights. This state of affairs is in direct contrast with the governments’ responsibilities to provide the basic necessities to their people.³⁹

2 1 Some Essential Socio-Economic Rights Found in the Nigerian Constitution

Socio-economic rights are understood to be guarantee that each person is afforded conditions under which they can meet the needs required for survival and enjoyment of life.⁴⁰ These rights, such as, the right to housing, food, clean water, social security and the right to education are crucial, especially to those groups of people classified as vulnerable and disadvantaged, as these rights could bridge the equality gap between the rich and the poor.⁴¹

Shehu argues that where a person is denied his right to housing, his health will be in danger and therefore his life is at risk. Shehu also argues that the right to life is related to health and food for, without good health and food, the right to life is threatened.⁴² An attempt to create or open a gap between these categories of rights will make it difficult to interpret the content of the rights.⁴³

2 1 1 The Right to Housing

The right to housing or adequate shelter is universally recognised and it appears in many constitutions in Africa and other parts of the world. It appears in Chapter II of the Nigerian Constitution, which provides that Nigeria shall direct its policy towards ensuring that suitable and adequate shelter is provided for all citizens.⁴⁴ Even though Chapter II of the Nigerian

36 *Unnikrishnan J.P. v State of Andhra Pradesh* (1993) 1 SSC. 645.

37 *Ibid.*

38 *Badejo v Federal Ministry of Education* (1990) 4 NWLR (Pt. 143) 354.

39 Egbewole “Realizing Socio-economic Rights in Nigeria and the Justiciability Question: Lessons From South Africa and India” 2017 *International Journal of Politics and Good Governance* 7.

40 Brand “Introduction to Socio-economic Rights in the South African Constitution’ in Brand and Heyns (eds) *Socio-economic Rights in South Africa* (2005) 1.

41 Shehu ‘The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience 2013 *Journal of Sustainable Development Law and Policy* 102.

42 *Ibid.* 108.

43 *Ibid.*

44 Constitution of the Federal Republic of Nigeria s 16(2)(d).

Constitution is not justiciable,⁴⁵ it is still important to evaluate what the government has done to enforce this right.

The UN Global Shelter Strategy has defined adequate shelter as encompassing more than just the roof over one's head.⁴⁶ Adequate shelter includes adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities.⁴⁷

Further, all of this must be at a reasonable cost.⁴⁸ In clarifying this definition, the CESCR has added the elements of legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility to essential services, and cultural adequacy to this definition of housing.⁴⁹

Adequate shelter must not only be seen as a shelter that protects human beings but as providing psychological stability, affording personal space (personal space which is important for reproduction and upbringing of children and privacy amongst others).⁵⁰ Unfortunately, the state of housing in Nigeria is woefully inadequate as attested to by a study that reported that of Nigeria's estimated 140 million people (in 2011), 16 million were landless, inadequately housed, or living in slums.⁵¹ This must be understood in the context of estimates from the UN which indicate that three billion people across the world will be living in slums or ghettos in 2050.⁵² A large number of these will be in Nigeria.

The notion of adequate shelters could be problematic as it includes the popular assumption that houses or adequate shelters should be provided by the government.⁵³ This belief that the government must be responsible, may account for the fact that between 1973 and 2006, the Federal Housing Authority of Nigeria built only 30 000 housing units in the entire country.⁵⁴ At that time, Nigeria's housing deficit was over 17 million.⁵⁵

Another problem plaguing Nigeria's housing crisis is a non-functional mortgage system. Reports state that "the contribution of mortgage financing to Nigeria's GDP is close to negligible, with real estate contributing less than 5% and mortgage loans and advances at 0.5% of GDP."⁵⁶ This problem manifests in the difficulties that individuals face when attempting to obtain loans. A pressing issue is that private firms that do business in real estate development are hindered by insufficient funds, high interest rates and a lack of adequate legislation to regulate the planning and construction of houses.⁵⁷ These difficulties could be addressed by appropriate legislation

45 *Ibid.* s 6(6)(c).

46 United Nations Centre for Human Settlements Global Shelter Strategy for the Year 2000 13.

47 *Ibid.*

48 *Ibid.*

49 United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (art 11 (1) of the Covenant) 13 December 1991 EC/1992/23 para 8.

50 Diala "Realising the Right to Adequate Housing in Nigeria" 2012 *Madonna University LJ* 1.

51 Centre on Housing Rights and Evictions, Geneva Community Guide to Asserting and Defending Housing Rights in Nigeria (2011) 4.

52 UN-Habitat "A Safe City is a Just City" 2007 World Habitat Day https://issuu.com/unhabitat/docs/2944_alt (accessed 19-05-2020).

53 Diala 2012 *Madonna University LJ* 12.

54 Akeju "Challenges to Providing Affordable Housing in Nigeria" (October 17–9, 2007) Paper Presented at the 2nd Emerging Urban Africa International Conference on Housing Finance in Nigeria, Shehu Yar' Adua Centre Abuja 1.

55 Onoji "The Nigeria Housing Deficit: Which Way Forward?" <http://primeraal.com/news/the-nigeria-housing-deficit-which-way-forward/> (accessed 19-05-2020).

56 *Ibid.*

57 Diala 2012 *Madonna University LJ* 13.

for the banking, construction and town planning sectors of the economy. Such a measure could include the enactment of a condominium law, which entails common interest housing and/or real property ownership, or other similar arrangements with a common facilities area that is controlled by a joint-ownership association.⁵⁸ Nigeria can learn from other countries where such arrangements have been effective.⁵⁹

Another problem that exacerbates the housing crisis is the budget allocations for housing. For the 2020 financial year, the government allocated nearly 344 billion Nigerian Naira (NGN) to the Federal Ministry of Works and Housing,⁶⁰ while close to 975 billion NGN was allocated to the Ministry of Defence in the same period.⁶¹ This raises questions as to the priorities of the government when it comes to providing adequate housing for citizens.

2 1 2 The Right to Health

Nigeria's Constitution provides that "[t]he State shall direct its policy towards ensuring that... there are adequate medical and health facilities for all persons."⁶² The right to health appears in many international treaties to which Nigeria is a party to, the said treaties include the ICESCR, CERD, CEDAW and CRC, all these treaties include provisions that protect the right to health.

Nigeria is also a party to civil and political rights treaties, such as, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that militate against health-related rights. These treaties may suggest the commitment of Nigeria towards the right to health. At the regional (African) level, Nigeria is a party to the African Charter, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

These treaties include provisions that protect the right to health. However, the issue of applicability of these treaties within the domestic framework needs to be highlighted. While Nigeria might be party to all these treaties, only the African Charter has been incorporated into the domestic legal order. This means that only the African Charter has direct application, no other treaty has direct application in Nigeria.⁶³

Nnamuchi submits that:

[P]rior to the economic travails of the mid-1980s, the health sector witnessed robust growth, principally as a result of adequate support by the government, coupled with assistance from bilateral and multilateral partners. Except in rural areas, access to health care was readily available at public hospitals and clinics at no charge or highly subsidized rates.⁶⁴

Currently, the health policy of Nigeria has been incorporated into the National Health Policy and Strategy to Achieve Health for All Nigerians, which was introduced in 1988 and revised in 2004.⁶⁵ This policy, which is founded on equality principles and seeks to improve the health of all Nigerians, adopted the primary health care (hereinafter referred to as PHC) by the World

58 *Ibid.*

59 *Ibid.*

60 *BudgIT 2020 Budget Analysis and Opportunities* (2020) 26.

61 *Ibid.*

62 Constitution of the Federal Republic of Nigeria s 17(3)(d).

63 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Chapter 10, Laws of the Federation of Nigeria 1990 s 1.

64 Nnamuchi "The Right to Health in Nigeria" 2010 *SSRN Electronic Journal* 1.

65 Federal Ministry of Health (FMH), *National Health Policy and Strategy to Achieve Health for all Nigerians* (Lagos, Nigeria: FMH, 1988); *Revised National Health Policy* (Abuja, Nigeria: FMH, 2004).

Health Organisation’s strategy for realising PHC.⁶⁶

In addition, there is a concern that the budgeted figures may not be representative of the actual amount spent on health as a gap continues to exist between the allocated budgets and the actual health expenditure.⁶⁷ Moreover, it is not even clear whether the budgetary allocations were spent on health-related services or wound up in private hands.⁶⁸

2 1 3 The Right to Food, Water and Social Security

These rights will be addressed separately.

a The Right to Food

As with the other rights discussed above, the right to food is covered in the international human right laws such as the UDHR,⁶⁹ the ICESCR,⁷⁰ and the CRC.⁷¹ The Nigerian Constitution, under Chapter II, provides that the State, of Nigeria, shall direct its policy towards ensuring suitable and adequate food is provided for all citizens.⁷²

Food security is ensured when an adequate quantity, quality, variety and nutritious food is always on citizens’ tables.⁷³ Elements of food security are the availability, access and affordability of food.⁷⁴ Further, access to food relates to economic and physical access.

On the 2019 Global Hunger Index, Nigeria ranked 93rd out of 117 countries, with a score of 27.9, meaning that country suffers from acute levels of hunger.⁷⁵ Poverty is linked to malnutrition and hunger is linked to poverty.⁷⁶ Unfortunately, poverty is common in developing countries and Nigeria has been classified as one of the poorest countries, which in fact highlights its failure to achieve its development policy and its national food security.⁷⁷

b The Right to Water

Chapter II of the Nigerian Constitution makes provision for the right to water.⁷⁸ Indirectly, the argument being that there can be no adequate food without potable water. Furthermore, the Nigeria Constitution states that “[t]he State shall protect and improve the environment and

66 Declaration of Alma-Ata, adopted by the International Conference on Primary Health Care, jointly sponsored by WHO and UNICEF in 1978, Principle VII https://www.who.int/publications/almaata_declaration_en.pdf (accessed 19-05-2020).

67 WHO Health Financing and Social Protection <http://www9.who.int/healthsystems/topics/financing/en/> (accessed 19-05-2020).

68 FMH, Health Sector Reform Programme: Strategic Thrusts with a Logical Framework and a Plan of Action 2004 – 2007 (Abuja: FMH, 2004) 12, 20.

69 Universal Declaration of Human Rights art 25.

70 International Covenant on Economic, Social and Cultural Rights art 11.

71 Convention on the Rights of the Child arts 24 and 27.

72 Constitution of the Federal Republic of Nigeria s 16(2)(d).

73 Clover “Food Security in Sub-saharan Africa” 2003 *African Security Review* 7.

74 Ojo and Adebayo “Food Security in Nigeria: An Overview” 2012 *European Journal of Sustainable Development* 205.

75 Global Hunger Index <https://www.globalhungerindex.org/results.html> (accessed 19-05-2020).

76 Metu and Others “Achieving Sustainable Food Security in Nigeria: Challenges and Way Forward” 3rd International Conference on African Development Issues (CU-KADI 2016) 182.

77 *Ibid.*

78 Constitution of the Federal Republic of Nigeria s 16(2)(d).

safeguard the water, air and land, forest and wildlife of Nigeria.”⁷⁹

Langford submits that:

The water issues being faced today are not novel. A cursory glance at water history reveals millennia-old struggles over the ownership of water, the pollution and depletion of water sources, and conflicting water uses. What is new is the scale of the problem.⁸⁰

Langford further submits that access to water, particularly for the poorest of the poor is a challenge.⁸¹

The challenges connected to the availability and access to water are numerous. These challenges include: insufficient and decaying infrastructure for water delivery, particularly in deprived urban areas and rural areas; the insufficient funding and capacity for the maintenance and expansion of water supply systems; the pollution of traditional water sources, particularly from human and animal waste; agricultural run-off and industrial waste; and reduced access to, and depletion of water resources due to drought, population growth, armed conflict; and the dominance of commercial agricultural and industrial activities.⁸²

One of the targets of the UN’s Sustainable Development Goals (SDGs) includes the achievement of universal and equitable access to safe and affordable drinking water for all by 2030.⁸³ This target is twofold, and it can be realised through efforts at the national and international level, if access to water can be viewed from a human rights perspective and be justiciable and not mere goals as some countries may view it. If the right to water is viewed as a human right, particularly in developing countries, this will actually impose some obligations and budgets can be channeled towards the enforcement of this right.

Fortunately, Nigeria has significant water resources, the only concern is the sequential variation in water availability. The north has a low rainfall of only about 500mm in the north-eastern area, while precipitation south-eastern area measures over 4 000mm.⁸⁴ This high variability of rainfall in time and space is a significant characteristic of the tropical climatic belt, which requires water resources control and management from the Nigerian government.⁸⁵

The numerous water shortages were caused by the recurrent drought and violence.⁸⁶ It is worth noting that access to water supply in Nigeria was at 67 per cent in 2013 and an estimated 63 million people did not have access to improved sources of drinking water.⁸⁷ Nigeria’s water sector must be made sustainable, particularly because operation and maintenance of water resources have been insufficient.⁸⁸

The three tiers of government (Federal, State and Local) have exclusive legislative powers, and

79 *Ibid.* s 20.

80 Langford “The United Nations Concept of Water as a Human Right: A New Paradigm for Old Problems?” 2005 *International Journal of Water Resources Development* 273.

81 *Ibid.* abstract.

82 i. 273.

83 Sustainable Development Goals (SDGs) (2015) Goal 6.

84 Federal Republic of Nigeria National Water Policy, July 2004 3.

85 *Ibid.*

86 Mosbergen “Nigeria’s Water Bill Could Criminalize Water for Millions” March 19 2017 https://www.huffpost.com/entry/lagos-water-crisis-bill-nigeria_n_58c8b63ce4b01c029d7758b7 (accessed 19-05-2020).

87 UN-Water Global Analysis and Assessment of Sanitation and Drinking Water http://www.who.int/water_sanitation_health/monitoring/investments/nigeria-10-nov.pdf?ua=1 (accessed 19-05-2020).

88 Ajai “Law, Water and Sustainable Development: Framework of Nigerian Law” 2012 *Law, Environment and Development Journal* 93.

in addition, concurrent responsibility for water resources. This situation results in conflicts and challenges in relation to the management of the inter-linked river basins.⁸⁹ Fortunately, Nigeria has recognised the right to water as a fundamental human right, as evidenced by the fact that it has voted in favour of the right to safe and clean drinking water as a human right that is essential for the full enjoyment of life and all human rights.⁹⁰

c The Right to Social Security

The right to social security appears in Chapter II of the Nigerian Constitution, which provides that the State, Nigeria, shall direct its policy towards ensuring “reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.”⁹¹

Further, social security is recognised universally as a human right. This is confirmed by the number of international instruments that have affirmed the right as one of the socio-economic rights to which everyone is entitled. Social security was first established as a basic human right in 1944 in the Declaration of Philadelphia of the International Labour Organisation (hereinafter ILO), wherein the International Labour Conference recognised the ILO’s obligation concerning “the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.”⁹²

This Declaration was pivotal to the ILO Income Security Recommendation 67 of 1944, which provides that “social insurance should afford protection, in the contingencies to which they are exposed, to all employed and self-employed persons, together with their dependants”⁹³ and the subsequent drafting of the ILO Social Security (Minimum Standards) Convention 102 of 1952. The right to social security is also recognised in the UDHR;⁹⁴ the ICESCR;⁹⁵ the CEDAW;⁹⁶ and the CRC.⁹⁷

In addition, at the regional level, Africa is served by the African Charter. While not directly providing for the right to social security or to an adequate standard of living as contained in the ICESCR, the African Charter contains specific provisions that have a bearing on social security, namely: the right of the aged and the disabled to special measures of protection in keeping with their physical or moral needs; the right of every individual to enjoy the best attainable state of physical and mental health; and the obligation imposed upon state parties to take the necessary measures to protect the health of their people and to ensure that they receive medical attention where it is required.⁹⁸

Anifalaje sees social security as referring

to the schedule of reliefs, benefits, entitlements and facilities that are accessible to and obtainable by citizens in any given community in terms of the relevant municipal laws, and under the auspices and control of the state. These are usually deployed as viable and formidable palliatives to the endless social and economic risks to which the strong and young,

89 *Ibid.* 93.

90 Recognition of the Human Rights to Water and Sanitation by UN Member States at the International Level: An Overview of Resolutions and Declarations that Recognise the Human Right to Water and Sanitation 84.

91 Constitution of the Federal Republic of Nigeria s 16(2)(d).

92 International Labour Organisation Declaration of Philadelphia para III(f).

93 International Labour Organisation Income Security Recommendation 67 of 1944 para 17.

94 Universal Declaration of Human Rights arts 22, 23 and 25.

95 International Covenant on Economic, Social and Cultural Rights art 9(1).

96 Convention on the Elimination of All Forms of Discrimination against Women arts 11(1)(e) and 14(2)(c).

97 Convention on the Rights of the Child art 26.

98 African Charter on Human and Peoples’ Rights arts 18 and 16.

as well as the feeble and old members of the community are exposed.⁹⁹

Nwabueze defines social security as

the social protection, organised collective protection of the individual against want, poverty, destitution, disease and idleness, which may be thrust upon him by the varied hazards and vicissitudes of social life, notably loss or suspension of income or means of sustenance resulting from sickness, maternity, accident injury, invalidity, old age, death of breadwinner or unemployment.¹⁰⁰

Anifalaje further argues that guaranteeing to everyone the right to social security is essential towards the significant reduction in poverty in society and enhancement of the socio-economic development of a nation.¹⁰¹

Despite Nigeria's protection of this right it remains an illusion to a large majority of Nigerians as social security laws are targeted mostly at workers in the formal sector of the economy, which leads to continuing and worsening poverty due to socio-economic challenges.¹⁰² Even though Nigeria recognises the socio-economic right to social security, its laws are too limited as they only cover employment-related social security.¹⁰³

Recommendations have been made that the Nigerian government should provide vulnerable persons such as the aged, the disabled and the orphaned, including also the self-employed, with a special maintenance allowance at prescribed rates.¹⁰⁴ This is especially relevant considering the fact that the vast majority of the Nigerian population do not have any form of assistance from any quarters, and are more often than not left without any form of a social safety net.¹⁰⁵

It must be noted that the formal sector covered by social assistance schemes represents only about 20 to 25 per cent of the population.¹⁰⁶ This attests to the fact that the general coverage for social security is not in compliance with the classes of employees prescribed, as they constitute not less than 50 per cent of all employees, including their wives and children.¹⁰⁷

d The Right to Education

The Nigerian Constitution makes provision for the right to education and states that:

[g]overnment shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels ... [g]overnment shall strive to eradicate illiteracy; and to this end [g]overnment shall as and when practicable provide (a) free, compulsory and universal primary education; (b) free secondary education; (c) free university education; and (d) free adult literacy programme.¹⁰⁸

Even though Chapter II is not justiciable, Nigeria has, pursuant to the objectives of section 18 of the Constitution enacted the Compulsory, Free and Universal Basic Education Act 2004 (hereinafter referred to as UBE Act).¹⁰⁹ The primary objective of the Act is to provide free,

99 Anifalaje "Implementation of the Right to Social Security in Nigeria" 2017 *AHRLJ* 413.

100 Nwabueze "Social Security in Nigeria" (1989) 10th Anniversary Lecture of the Nigerian Institute of Advanced Legal Studies <http://www.nials-nigeria.org/Editedbookcovers/ssn.pdf> (accessed 16-12-2020).

101 Anifalaje "Implementation of the right to social security in Nigeria" 2001 *AHRLJ* 413.

102 *Ibid.* 414.

103 *Ibid.* 422.

104 Income Security Recommendation para 17.

105 *Ibid.*

106 Social Security (Minimum Standards) Convention 102 of 1952 arts 9, 15 and 27.

107 *Ibid.*

108 Constitution of the Federal Republic of Nigeria s 18(3).

109 Compulsory, Free Universal Basic Education Act 2004, No. A 115.

compulsory and universal basic education for every child of primary and junior secondary school age. Section 2 of the UBE Act provides that “[e]very Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary age.”¹¹⁰

Further, that “[e]very parent shall ensure that his child or ward attends and completes his: (a) primary school education; and (b) junior secondary school education by endeavouring to send the child to primary and junior secondary school.”¹¹¹ It also provides that “[t]he stakeholders in education in a Local Government shall ensure that every parent or person who has the care and custody of a child performs the duty imposed on him under section 2(2) of this Act.”¹¹²

The UBE Act stipulates that “the services provided in public primary and junior secondary schools shall be free of charge.”¹¹³ Providing these services at a fee is a criminal offence in terms of section 3(2) of the Act. In 2003 the Federal Government of Nigeria enacted the Child Rights Act 2003 (hereinafter Child Rights Act). Section 15(1) of the Child Rights Act provides that “every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education.” Further, section 15(2), stipulates that every parent or guardian shall ensure that his child or ward attends and completes primary school education and junior secondary school education.

Nwauzi and George-Ibikiri argue that:

[e]ducation is critical for all round development. It is critical and crucial for economic, social, political and cultural development. It is crucial for building human capabilities and capacities and for opening up opportunities. Education is an enabler to other rights. It is the true essence of human development. Education is not a privilege, it is a right. For the complete and harmonious development of the personality of any child or human-being it is important that he or she be given proper education. Without education no human-being will be in a position to assert his or her rights.¹¹⁴

International and regional legal instruments also make provision for the right to education, and Nigeria has ratified and acceded to some of these instruments. The UDHR, provides that:

[e]veryone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.¹¹⁵

The ICESCR also provides that:

[t]he state parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the

110 Universal Basic Education Act 2004 s 2(1).

111 *Ibid.* s 2(2).

112 *Ibid.* s 2(2).

113 *Ibid.* s 3(1).

114 Nwauzi and George-Ibikiri “The Right to Education in Nigeria: An Appraisal” 2018 *African Journal of Law and Criminology* 12.

115 Universal Declaration of Human Rights art 26(1).

maintenance of peace.¹¹⁶

Similarly, the CRC stipulates that:

[s]tate parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available and available free to all, encourage the development of different forms of secondary education, including general and, vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financing assistance in case of need, make higher education accessible to all on the basis of capacity by every appropriate means, make educational and vocational information and guidance available and accessible to all children, take measures to encourage regular attendance at schools and the reduction of dropout rates.¹¹⁷

Likewise, the African Charter provides for the right to education, and states that “every individual shall have the right to education.”¹¹⁸ It must be pointed out that the African Charter is domesticated in terms of the Nigerian Constitution. Looking at the above, it can be concluded that that Nigerians have a fundamental right to education and this right can be argued that extends until at least junior secondary school.¹¹⁹

3 ECONOMIC DEVELOPMENT AS A FACTOR IMPACTING THE ENFORCEMENT OF SOCIO-ECONOMIC RIGHTS

Nigeria’s record quarterly GDP growth in the fourth quarter of 2022 was 3.52 (year-on-year) per cent, following a growth of 2.25 per cent in the third quarter of 2022 and 3.98 per cent in the fourth quarter of 2021.¹²⁰ The performance of the GDP in the fourth quarter of 2022 was driven mainly by the Services sector, which recorded a growth of 5.69 per cent and contributed 56.27 per cent to the aggregate GDP.¹²¹ Although the Agriculture sector grew by 2.05 per cent in the reference period, its performance was significantly hampered by severe incidences of flood experienced across the country, accounting for lesser growth relative to the fourth quarter of 2021 which was 3.58 per cent.¹²²

Some scholars have been quick to claim that socio-economic rights are problematic, judging by the notion that they have to be “realised gradually,” that they are of a “more political nature,” that they are “not capable of judicial enforcement” and are therefore incapable of immediate realisation.¹²³ Further, that the states are urged to “progressively realise” these rights.¹²⁴

Even though there are exceptions, for example, the right to free and compulsory primary education and the principle of non-discrimination, these claims are reinforced by the ICERSC, which gives discretion to the states in relation to standard and timing of recognising these socio-

116 International Covenant on Economic, Social and Cultural Rights art 13(1).

117 Convention on the Rights of the Child art 28 (1).

118 African Charter on Human and Peoples’ Rights art 17(1).

119 Nwauzi and George-Ibikiri 2018 *African Journal of Law and Criminology* 17.

120 National Bureau of Statistics *Nigerian Gross Domestic Product Report Q4 2022* (2023) 3.

121 *Ibid.*

122 *Ibid.*

123 Eide “Economic, Social and Cultural Rights as Human Rights” in Eide, Krause and Rosas (eds) *Economic, Social and Cultural Rights: A Textbook* (2001) 3.

124 International Covenant on Economic, Social and Cultural Rights art 2.

economic rights.¹²⁵

Socio-economic rights are said to be lacking universality and are not automatically available, based on the fact that for human beings, their realisation is subject to numerous conditions, which include the realisation of the rights progressively and the availability of resources. It could be argued that socio-economic rights are not always available and enforceable, owing to their costs and the financial constraints they face. For these rights to be enforced, appropriate budgets must be allocated from the available resources.¹²⁶

The ICESCR states that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.¹²⁷

Simply put, a State cannot do more than its resources permit, which is to say that, a State is limited to the resources it has at its disposal.¹²⁸

The CESCR has noted that States cannot neglect their obligations towards the realisation of socio-economic rights.¹²⁹ The CESCR has stressed that although socio-economic rights are generally realised progressively, this must not be an excuse for the State in question to unnecessarily delay the fulfilment of its obligation as it is required to move as “expeditiously and effectively” and make sure that socio-economic rights are realised.¹³⁰

Further the State is expected to comply with its obligations regarding the realisation of these socio-economic rights. This requires the State to take appropriate measures including the adoption of legislative measures. The CESCR has noted that beyond legislation, other reasonable measures include “educational,” “administrative,” “financial,” and “social measures”¹³¹ as well as “judicial” and “other effective remedies” where there has been a violation of socio-economic rights.¹³²

Proponents of the socio-economic rights enforcement argue that socio-economic rights involve huge financial investments over which the judiciary does not have power to adjudicate, which implies that significant financial resources are needed for socio-economic rights to be enforced.¹³³

The CESCR has clarified that it imposes an obligation to “move as expeditiously and effectively as possible” towards achieving a set goal, namely, the full realisation of economic, social and

125 Cottrell and Ghai “The Role of the Courts in Implementing Economic, Social and Cultural rights” in Ghai and Cottrell (eds) *Economic, Social and Cultural Rights in Practice – The Role of Judges in Implementing Economic, social and Cultural Rights* (2004) 61.

126 Isokpan “The Role of the Courts in the Justiciability of Socio-Economic Rights in Nigeria: Lessons from India” 2017 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 103.

127 International Covenant on Economic, Social and Cultural Rights art 2(1).

128 Heyns and Brand “Introduction to Socio-economic Rights in the South African Constitution” 1998 *LDD* 159.

129 CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant) Adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights, on 14 December 1990 (Contained in Document E/1991/23) para 1.

130 *Ibid.* para 2.

131 *Ibid.* para 7.

132 *ibid.* para 5.

133 An-Na’im “To Affirm the Full Human Rights Standing of Economic, Social and Cultural Rights” in Ghai and Cottrell J (eds) *Economic, Social and Cultural Rights in Practice – The Role of Judges in Implementing Economic, Social and Cultural Rights* (2004) 7–16.

cultural rights.¹³⁴ However, the challenge in many African States is a lack of financial resources. As such, the CESCR has further established a minimum core obligation on the basis of which every State Party owes an obligation to “ensure the satisfaction of minimum essential levels of each of the rights.”¹³⁵ State Parties that would seek to rely on the unavailability of resources for not adhering to the “minimum core obligation” must demonstrate that “every effort has been made to use all resources that are at its (their) disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”¹³⁶

Nigeria is a country rich in natural resources, such as petroleum, natural gas, iron ore, lead and zinc.¹³⁷ Therefore, the country needs appropriate measures in place to accelerate its economic development.¹³⁸ These measures are reflected in Nigeria’s Vision 20-20-20 Programme,¹³⁹ with which the country aimed to make itself one of the twenty largest world economies by the year 2020. The seven points in the 20-20-20 Programme are: power and energy; food security and agriculture; wealth creation and employment; mass transportation; land reforms security and functional education.¹⁴⁰

Since Nigeria aimed at becoming a leading economy in Africa by 2020 and being a major player in the world’s economic and political affairs it made this policy its guideline. The focus as found in this programme is that there is a need to speed up economic growth by focusing on vital economic sectors like education, energy, agriculture and manufacture.¹⁴¹

Economic development requires policies that will ensure its success. For instance, Nigeria has vast areas of land suitable for agriculture¹⁴² that could be utilised to address food security, as well as employment. Nigeria could focus on agriculture, increase the low productivity of current agricultural companies, engage competition within the agricultural sector, develop domestic policies and increase funding.¹⁴³ It is submitted that this will contribute towards Nigeria’s economic development. Thus, Nigeria must take advantage of its climate and abundant fertile soil that are suitable for agriculture.¹⁴⁴

3 1 Progressive Realisation

The concept of “progressive realisation” can be traced to the distinction between civil and political rights on the one hand, and socio-economic rights on the other. Civil and political rights are considered to be more important than socio-economic rights, and States have repeatedly used the phrases like “available resources” and “progressive realisation” to justify why they

134 CESCR General Comment No. 3: The Nature of States Parties’ Obligations (art 2, para 1, of the Covenant) Adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights, on 14 December 1990 (Contained in Document E/1991/23) para 9.

135 *Ibid.* para 10.

136 *Ibid.*

137 Nigerian Embassy <http://nigerianembassythehague.nl/about-nigeria/natural-resources/> (accessed 15-12-2020).

138 Omorogiuwa, Zivkovic and Ademoh “The Role of Agriculture in the Economic Development of Nigeria” 2014 *European Scientific Journal* 133.

139 Adopted in 2008.

140 Omorogiuwa, Zivkovic and Ademoh 2014 *European Scientific Journal* 133.

141 *Ibid.* 134.

142 World Bank <https://data.worldbank.org/indicator/AG.LND.ARBL.HA?locations=NG> (accessed 15-12-2020).

143 Ayodele “Challenges Facing the Achievement of the Nigeria Vision” 2013 *Global Advanced Research Journal of Social Sciences* 143–157.

144 Omorogiuwa, Zivkovic and Ademoh “The Role of Agriculture in the Economic Development of Nigeria” 2014 *European Scientific Journal* 135.

have failed or fail to implement socio-economic rights.¹⁴⁵

3 2 Maximum Available Resources

The principle of maximum available resources requires States to show that they have used all their available resources towards enforcing socio-economic rights, given current economic conditions, including international aid, when needed.¹⁴⁶ When any “significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education,” this would constitute a violation of socio-economic rights.¹⁴⁷ However, the Nigerian Constitution use terms such as “within the context of the ideals and objectives”,¹⁴⁸ and “when practicable provide.”¹⁴⁹ The concept of “maximum available resources” does not appear in the Nigerian Constitution.

4 CONCLUSION

Unlike other African countries that have justiciable socio-economic rights in place, Nigeria is not doing enough to protect these. The country’s system is failing Nigerians as they do not approach the courts for redress in relation to socio-economic rights enforcement.

Even though Nigeria is known as the “giant of Africa,”¹⁵⁰ not enough financial resources have been directed towards the enforcement of socio-economic rights. This is evident in budget deficits with regard to allocations for the enforcement of socio-economic rights.

It is submitted that one of the solutions to the problems faced by Nigeria and other African countries is that they must make concerted efforts in increasing Africa intra-trade. Treaties must be established that will see African countries in more fair-trade deals among one another. With reference to Nigeria, this will contribute to the growth of the Nigerian economy and the realisation of socio-economic rights. Unfortunately, the Nigerian economy currently relies heavily on its petroleum exports which contribute a significant percentage of the revenue generated by the country each financial year.¹⁵¹

While Nigeria should focus on domestic sectors such as agriculture, to generate revenue towards economic development which will improve socio-economic rights enforcement, the country also needs to make sure that trade relations with other African nations are strengthened for the benefit of Africa as a whole.. For example, it is anticipated that the (African Continental Free Trade Area) (AfCFTA) will serve 1.2 billion Africans with a combined GDP of US\$2.5 trillion, increase intra-African trade by up to 52.3 per cent, increase the real wages for unskilled workers in the agricultural and non-agricultural sectors and expand Africa’s economy to US\$29 trillion by 2050.¹⁵² For Nigeria, the AfCFTA will provide an opportunity to expand market access for

145 Duru “Evolution of Constitutional Guarantee Socio-economic Rights under the Nigerian and South African Constitution” https://www.academia.edu/6792712/EVOLUTION_OF_CONSTITUTIONAL_GUARANTEE_OF_SOCIO-ECONOMIC_RIGHTS_UNDER_THE_NIGERIAN_AND_SOUTH_AFRICAN_CONSTITUTIONS_A_CRITICAL_OVERVIEW (accessed 19-05-2020).

146 Chapman “Violations Approach’ for Monitoring the International Covenant on Economic, Social and Cultural Rights” 1996 *Human Rights Quarterly* 31.

147 International Commission of Jurists (ICJ), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 26 January 1997 <https://www.refworld.org/docid/48abd5730.html> (accessed 19-05-2020).

148 Constitution of the Federal Republic of Nigeria s 16(1).

149 *Ibid.* s 18(3).

150 United for Human Rights <https://www.humanrights.com/newsletter/volume4/issue1/the-giant-of-africa-becomes-a-giant-of-human-rights.html> (accessed 16-05-2020).

151 Tralac <https://www.tralac.org/documents/resources/african-union/2026-fact-sheet-on-the-afcfta-benefits-for-africa-and-nigeria-notn-june-2018-1/file.html> (accessed 14-10-2023).

152 *Ibid.*

Nigeria's exports of goods and services, thereby improving the country's economy.¹⁵³ When this is done, Nigeria can afford the enforcement of socio-economic rights and African intra-trade will be one of the tools to ensure that this comes to fruition.

153 *Ibid.*