

RETHINKING THE SOCIO-ECONOMIC RIGHTS ENFORCEMENT IN NIGERIA: LESSONS FROM OTHER JURISDICTIONS

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Abstract

Globally, the hitherto recognition of socio-economic rights as aspirational rights is rapidly experiencing a dramatic reversal in status to a constitutional subject matter deserving enforcement. Various international conventions have been made with the sole aim of pushing it beyond mere aspirations to imperative concerns by political leaders in their policy formulation. Despite this awareness, many countries including Nigeria still battle with the question of justiceability of socio-economic rights. There is therefore, no justification in the deliberate policy by political leaders who continue in decorating socio-economic rights with the status of non-justiciable set of rights notwithstanding the trite position that the enjoyment of civil and political rights is anchored on the realisation of socio-economic rights. Consequently, this paper argues that socio-economic rights form an integral part of the vocabulary of rights despite a conceptual divide between it and the first generation of rights or civil and political rights. The paper recommends the need for socio-economic rights to be prioritized and constitutionalised as a way of extinguishing social disequilibrium in the society.

1.0 Introduction

The significant impact socio-economic rights tend to have in the overall existence of mankind cannot be overstressed. The universal declaration of human rights and other international, regional and national human rights frameworks provide credible reference points to the universality of socio-economic rights. It should be noted that this position have been reiterated and re-echoed at several international conferences/conventions as binding on states despite national and regional particularities and various historical, cultural and religious inclinations.

Interestingly, the majority of the world's democratic constitutions now either include some legally enforceable socio-economic rights or promote the political pursuit of progressive socio-economic objectives through constitutionally recognised directive principles of policy.¹

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¹ I. Ogunniran, 'Enforceability of Socio-Economic Rights: Seeing Nigeria through the Eyes of other Jurisdictions', (2010) 1(1) JILJ <<https://www.ajol.info/index.php/aujjij/article/view>> accessed 2 April 2022

However, some older constitutions have continued to omit socio-economic rights, leaving them to be established, if at all, on a statutory, rather than constitutional basis.²

It is beyond doubt that the promotion and protection of socio-economic rights hampered by some notable militating factors including but not limited to high levels of poverty, high infant mortality rates, unemployment, and corruption, among others. More so, the deliberate left out or marginalisation of socio-economic rights is a further blow to the revolutionised impact associated with the enforceability of socio-economic rights as evidenced in other jurisdictions.

Although, several arguments have been advanced against the necessity for the justiciability of socio-economic rights, seen as mere aspirations or pious wishes whose content and meaning are ill defined, it is imperative to note that socio-economic rights have now been reckoned above justiciability threshold in several countries. This fact became notorious in the debate for an operational protocol to the International Covenant on Economic, Social and Cultural Rights.³

2.0 Conceptual Clarification

Socio-economic rights provide protection for the dignity, freedom and well-being of individuals by guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions, among others.⁴ They are among the three generation based recognised classes of rights in international law. Civil and political rights (first generation), socio-economic rights (second generation), solidarity rights (third generation). Socio-economic rights cannot be assessed in isolation from other forms of rights claims as they form an integral part of the vocabulary of rights despite a conceptual divide between it and the first generation rights or civil and political rights. In the words of Quincy Wright;

Individual rights are in the main correlative or negative duties of the state and social rights are in the main correlative to positive duties of the state. Individual rights require that the state abstain from interference with the free exercise of the individual of his capacities, while social rights require that the state interfere with many things the individual would like to do.....⁵

² *Ibid*

³ *Ibid*

⁴ D. Ahmed and E. Bulmer, 'Social and Economic Rights', (International IDEA) (2014) <<https://www.idea.int/catalogue>> accessed 2 April 2022

⁵ *Ibid*

A careful appraisal of socio-economic rights, makes it evident that not all of these rights can be simply reduced to the exercise of state power and so fall neatly into the category of negative rights.⁶ It follows that as an illustration, the right of every citizen to participate in a free election or the right to a fair trial imposes a positive obligation upon the state to devote sufficient resources to guarantee a free election or to ensure the establishment of independent courts in which the fair trial can be conducted.⁷

Notwithstanding the perception that the enforceability of socio-economic rights is a veritable option in ensuring the sustainability of fundamental interests of individuals, the constitution itself has effectively imposed a bar on the enforceability of the constitutional provisions relating to socio-economic rights. This further gives credence to the aspirational status of socio-economic rights and the constitutional non-justiciability approach.⁸ However, the non-justiciability status of socio-economic rights have continued to evolved through a supportive judicial approach slowly moving away from rejection of socio-economic rights as human rights capable of enforcement, to acceptance largely attributed to Nigeria's ratification of international and regional standards such as the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.

3.0 Notable Legal Framework for the Protection of Socio-Economic Rights

3.1 International Covenant on Social and Cultural Rights (ICESCR), 1966

This covenant was adopted in 1966 and entered into force in 1976. A community reading of articles 6, 7, 9, 11, 12 and 13 provide for the right to work, right to just and favourable working conditions, right to social security, right to adequate standard of living including adequate food, clothing and housing, right to enjoyment of highest attainable standard of physical and mental health and right to education.⁹

It is imperative to note that the ICESCR provisions relating to socio-economic rights have become the justification and the basis by which countries have been able to evolved socio-economic rights in their various legal instruments.

3.2 International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), 1965

The ICERD came into force in 1969 in keeping with the Universal Declaration of Human Rights proclamation that all human beings are born free and equal in dignity and rights and

⁶ *Ibid*

⁷ *Ibid*

⁸ CFRN (1999) s 6(6)(c)

⁹ I. Ogunniran, 'Enforceability of Socio-Economic Rights; Seeing Nigeria through the Eyes of other Jurisdictions', (2010) 1(1) JILJ <<https://www.ajol.info/index.php/aujij/article/view>> accessed 2 April 2022

freedoms, without distinct of any kind, in particular as to race, colour or national origin.¹⁰ Article 2 enjoins states parties to take in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.¹¹ Accordingly, signatory states to ICERD have progressively guaranteed and some cases enforced socio-economic rights as deliberate efforts in the realisation of equal enjoyment of human rights and fundamental liberty.

3.3 Convention on the Right of the Child (CRC), 1989

The Convention on the Right of the Child recognises and protect many of the economic, social and cultural rights in relation to children. Article 13 provides for the right to freedom of expression for the child for purposes of seeking, receiving and imparting information and ideas of all kinds regardless of frontiers, either orally, in writing or in print or through any other media of the child's choice. Article 24 enjoins states parties to recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Article 26 provides for the right of every child to benefit from social society, including social insurance. States parties are also enjoined to take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.¹²

3.4 African Charter on Human and Peoples' Right (ACHPR), 1981

The African Charter on Human and Peoples' Rights is a regional Charter that incorporates range of universally recognised human rights including socio-economic rights. Article 15 provides for the right to work under equitable and satisfactory conditions and be paid equal pay for equal work. Article 16 provides to the effect that every individual shall have the right to enjoy the best attainable state of physical and mental health. Therefore, states parties are obliged to take necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Similarly, Article 17 of the Charter provides for the right to education despite no clarity as regards whether the right to education covers the right to free and compulsory education. Article 18 provides the right for every individual to freely take part in the cultural life of his community.

¹⁰ I. Ogunniran, 'Enforceability of Socio-Economic Rights; Seeing Nigeria through the Eyes of other Jurisdictions', (2010) 1(1) JILJ <<https://www.ajol.info/index.php/naujiij/article/view>> accessed 2 April 2022

¹¹ *Ibid*

¹² Convention on the Right of the Child, <<https://www.unicef.org/child-rights-convention/convention-text>> accessed 15 April 2022 (CFRN), 1999 as amended, Sections 13-18

3.5 Constitution of the Federal Republic of Nigeria (CFRN), 1999 as amended

Chapter two of the Nigerian Constitution is described as Fundamental Objectives and Directive Principles of State Policy. It clearly captured notable socio-economic rights including the right to just and favourable working conditions, right to social security, right to adequate standard of living including adequate food, clothing and housing, right to enjoyment of highest attainable standard of physical and mental health and right to education.¹³ Although these rights are stated to be non-justiciable,¹⁴ an examination of the array of legislations and Nigeria's acceptance and ratification of international and regional legal instruments as regards social and economic rights indicate a sustained progressive legal justification for enforceability.

4.0 Socio-Economic Rights: Beyond the Justiciability Quagmire

It is beyond controversy that globally, most democratic constitutions have found a way to reinstate and enabled legally enforceable socio-economic rights by expressly providing for socio-economic rights as constitutionally recognised directive principles of state policy. However, some still choose to have socio-economic rights exist in statutory form rather than give it constitutional flavour. It is pertinent to note that many 19th century reformers have held the view that civil and political rights, without improvements in social and economic conditions, offered little hope to ordinary people whose lives may be blunted by long working hours, low pay, harassment of union executive officials, dangerous working conditions, vulnerability to arbitrary dismissal and cyclical or chronic unemployment, slum housing and a lack of access to education and healthcare.¹⁵

It is to be observed that the effective enjoyment of civil and political rights is premised on the realisation of socio-economic rights. It is also trite that an individual needs certain resources so as to maximise the right to exercise civil and political liberty. Socio-economic rights therefore protects some key elements of human freedom and well-being including; the point that human beings ought to be treated with equal worth/importance and this can be demonstrated by recognition and enforcement of socio-economic rights.

As part of the progressive attempts aimed at displacing the hitherto non-justiciability status of socio-economic rights, the Nigerian government in the recent past have introduced programmes with legislative backing such as National Economic Empowerments Strategy (NEEDS), State Economic Empowerment Strategy (SEEDS) and National Social Investments Programmes (NSIP) in order to ensure the enforceability of socio-economic rights by individuals or group as a cause of action before the courts thereby activate a potential measure of enforcement or provision of remedies.¹⁶

¹³ (n12)

¹⁴ CFRN, 1999 Section 6(6)(c)

¹⁵ D. Ahmed and E. Bulmer, 'Social and Economic Rights (International IDEA) 2014, <<https://www.idea.int/catalogues>> accessed 10 April 2022

¹⁶ Ogunniran, (n9)

It is pertinent to observe that, whereas Section 13 of the Constitution makes it the duty and responsibility of the judiciary amongst other organs of the government to conform to and apply the provisions of Chapter II, Section 6(6)(c) of the same Constitution makes it clear that no Court has jurisdiction to pronounce any decision as to whether any organ of the government has acted or is acting in conformity with the Fundamental Objectives and Directive Principle of State Policy. It is beyond doubt that Section 13 has not rendered Chapter II of the Constitution enforceable. However, the Supreme Court gave a glimpse of hope as regards the enforceability of socio-economic rights when it held in the case of *Attorney-General of Ondo State v Attorney-General of the Federation & 35 Ors*¹⁷ that Courts cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws for their enforcement. Therefore, the enactment of legislations such as the Universal Basic Education Act,¹⁸ National Health Insurance Scheme,¹⁹ The Pension Reform Act,²⁰ and the Independent Corrupt Practices Act,²¹ among others are all legislative efforts aimed at giving enforceability status to socio-economic rights including free, compulsory and basic education to every child of primary and junior school age (educational objectives), free health care services from hospitals registered for such purposes (social objectives) securing future benefits for the working population (economic objectives), abolishing all forms of corrupt practices (political objectives).

5.0 Justiciability of Socio-Economic Rights: Lessons from Other Jurisdictions

5.1 Australia

The amendment of the Australian Constitution by referendum in 1946 empowered the Federal Parliament to enact law and provide for child endowment, medical and dental services benefits to students and family allowances, unemployment, widows' pension, maternity allowance among other benefits. This also signaled the beginning of an unequivocal and unprecedented power to legislate in these areas including the political expectation that the availability of such services are legitimate role expected of the government.

Despite being signatory to international treaties as regards the protection of socio-economic rights, Australia is faced with shortfalls in the realities of socio-economic rights enforcement. This is because, socio-economic rights is seen as polycentric problem deserving no constitutional status, therefore courts cannot adequately rule on them. Also, socio-economic

¹⁷ (2002) 9 NWLR (Pt. 772) 222

¹⁸ UBE Act, 2004

¹⁹ NHIS Act, 1999

²⁰ No. 2, 2004

²¹ ICPC Act, 2000

rights require expenditure which must be budgeted for in contradistinction to the civil and political rights relatively free in their enforcement.²²

It is clear from the above that socio-economic rights are not firmly entrenched in the Australian Constitution. Therefore, the judiciary lacks the power to adjudicate on such issues as delving into the province of socio-economic rights could be regarded as displaying judicial activism thereby dictate the direction the law should take outside of parliamentary intendment.

5.2 South Africa

The South African Constitution in Chapter 2 provides for an amalgam Bill of Rights, comprising civil and political rights, socio-economic rights and environmental rights. The unique approach of the South African Constitution is that the same Chapter of the Constitution guarantees these rights without any form of discrimination whatsoever. Consequently, the same approach has been adopted by the South African Courts whilst adjudicating on the constitutionality or otherwise of civil and political rights on the one hand and anti-economic, social and cultural rights issues/legislations on the other.²³

In the case of *Despatch Municipality v Sunridge Estate and Development Corporation (Property) Limited*,²⁴ the Court, while determining the constitutionality or otherwise of the Illegal Squatting Act,²⁵ which permitted the demolition of unauthorised buildings or structures without a Court order held that the Act was inconsistent with Section 26(3) of the Constitution which provides that; No one may be evicted from their home or have their home demolished, without an order of the Court made after considering all the relevant circumstance. No legislation may permit arbitrary evictions.²⁶

In another landmark case, the *Grookboom case*.²⁷ The South African constitutional court rejected the argument that the Constitution gave the plaintiffs a right to a minimum care entitlement to shelter. It declared instead that ‘the Constitution’ requires the state to devise and implement within its ‘available resources’ a comprehensive and coordinated programme progressively to realise the right access to adequate housing.²⁸ By the wordings of the South African Constitution construed in *Exparte Chairperson of the Constitutional Assembly; Re Certification of the Constitution of the Republic of South Africa*,²⁹ the Court noted that Section 26 of the Constitution imposed a negative obligation on the state and other persons/authorities

²² L. Jackson, ‘Social Rights as Human Rights: Discussion of the Legal Protection of Socio-Economic Rights in Australia’, (2016) 8(1) *Perth International Law Journal*, 71

²³ (n9)

²⁴ (1997) 8 BCLR 1023

²⁵ (2002) 3 BCLR 277(c)

²⁶ (n9)

²⁷ (2000)

²⁸ D. Ahmed & E. Bulmer, ‘Social and Economic Rights’, (International IDEA) 2014, <<https://www.idea.int/catalogue>> accessed 10 April 2022

²⁹ (1996) 4 SA 46(C.C)

not to impair/restrict the right to adequate housing, but that the conduct of the local authority in the case was a violation of that obligation having regard to the manner in which the eviction was carried out.³⁰ It is therefore worthy of note that the judicial attitude as regards the enforcement of socio-economic rights in South Africa is that of willingness to interpret the law in order to ensure the law enforcement objectives of the legislation.

5.3 Latin America

It has been observed that the wave of democratization in the 1980s and 1990s led to positive development in the justiciability of socio-economic rights in Latin America,³¹ Venezuela, Argentina, Columbia among other Latin American countries present scenarios depicting plethora of courts decisions which upheld the justiciability of socio-economic rights. In the Argentine case of *Defensoria de Menores v Poder Ejecutivo Municipal*³² filed on behalf of the children of a rural colony whose only water source was polluted with hydrocarbons. Affirming the right to water, the Court ordered the state government to provide one hundred litres of water per day to each individual member of the families living in the colony.³³ The Court further ordered that it must be implemented within 48 hours.³⁴

Similarly, the right to health was affirmed in the case of *Viceconti v Ministry of Health & Social Welfare*³⁵ in which the Court stated that the government was legally obligated to provide healthcare when the health of the individual cannot be guaranteed either by themselves or the private sectors.³⁶

In Columbia, the Court have held in *Mora v Bogota District Education Secretary & Ors*³⁷ that if the right to education of a child is affected because of quota restriction within schools near the home, the guarantee of the right is not effective. Accordingly, the Court ordered the government to relocate the girl to a school close to her home.³⁸

In Venezuela, the Supreme Court of Justice decided on the right to education when in the case of *Cruz Bermudez et al v Ministerio de Sanidad y Asistencia Social*³⁹ the Court up turned the decision of Ministry of Health not to provide/supply prescribed anti-retroviral drugs to the petitioners and held to the effect that the failure amounted to a violation of the petitioners' rights to life, health, liberty and security of the person, equality and benefits of science and

³⁰ (n9)

³¹ I. Ogunniran, 'Enforceability of Socio-economic Rights; Seeing Nigeria through the Eyes of other Jurisdictions', (2010) 1(1) JILJ <<https://www.ajol.info/index.php/aujij/article/view>> accessed 2 April 2022

³² Agreement 5, Superior Justice Court, Neugest - March 2nd, 1999

³³ Ogunniran (n31)

³⁴ *Ibid*

³⁵ Porder Judicial de la Nacion, causa no. 31.777/96, of 2nd June, 1998

³⁶ Ogunniran (n31)

³⁷ Columbian Court, Decision T-170/03. 28th February 2003

³⁸ Ogunniran (n31)

³⁹ Case No. 15.789, Decision No. 916. 15th July 1999

technology. Accordingly, the Court ordered the Ministry of Health to provide anti-retroviral medication necessary for treating opportunistic infections and diagnostic-testing free of charge for all Venezuelans.⁴⁰

It is to be noted that the Latin American experience suggests the importance of a proactive judicial culture in securing the enforcement of socio-economic rights. The Columbian judiciary presents a creative and transformational approach in its jurisprudence in ensuring the enforcement of socio-economic rights of her citizens. Curiously, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Canadian Charter of Rights and Freedoms omit socio-economic rights in their various frameworks, however, European Court of Human Rights and the Supreme Court of Canada have applied these instruments in matters such as education, social security and housing including protecting peoples' socio-economic rights, where appropriate anchored on non-discrimination and due process.⁴¹

6.0 Conclusion

Notwithstanding the constitutional law prospects thrown up by the risk of being undermined and chastised by the specificity of socio-economic rights, it is undoubtedly assured that constitutionalising socio-economic rights bring about positive obligations to promote, protect, respect and fulfill rights of the people. International legal frameworks on the protection and enforcement of socio-economic rights have provided the minimum threshold as regards the enforcement. However, several countries have continued to ensure the existence of socio-economic rights as good enough only for aspirational purposes or given the status of non-justiciable rights.

It is equally not in doubt that countries with the toga of liberal democracies have failed to recognise and accord socio-economic rights the status worthy of justiciability as a step in ensuring law enforcement objective of legal framework on socio-economic rights. This position is however different in the case of most developing democracies who have deliberately ensured that the impact of upholding socio-economic rights through a plethora of judicial pronouncements are not curtailed by any form of legislative framework.

It is therefore to be expected that if the human rights of persons must sustainably experience progressive ascendancy, it behoves on the political leaders to deliberately formulate and implement policies that will activate the justiciability status of socio-economic rights of the

⁴⁰ (n31)

⁴¹D. Ahmed & E. Bulmer, 'Social and Economic Rights', (International IDEA) 2014, <<https://www.idea.int>> catalogue> accessed 12 April 2022

people irrespective of creed. This, it is observed will bring to bear the essence of humanity in human rights protection and promotion.

7.0 Recommendations

The paper therefore makes the following recommendations to ensure the justiciability of socio-economic rights to make good their inclusion in the Constitution of the federal Republic of Nigeria 1999, other constitutions of the world and legal documents for the enjoyment of humanity.

1. Socio-economic rights should be included in the Constitution to reflect the resources of the state and the needs of the citizens and the ideals that the state refrains from impeding in public life.
2. Deliberate efforts should be inculcated by the states to give equal force to the enforceability of socio-economic rights as those of democratic rights.
3. There should be a progressive time frame and necessity by international conventions to impress it on state parties for domestic enforcement of socio-economic rights.
4. Constitutionalising socio-economic rights allow a state to be committed to decent society ideals.
5. Priority should be accorded socio-economic rights as a way of extinguishing social inequality.
6. Non-justiceability of socio-economic rights by states should be made a subject of sanction, especially by state parties to international conventions.