

THE ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN AFRICA: THE NIGERIAN EXPERIENCE

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ABSTRACT

The debates on socio-economic rights have now shifted from desirability to problems of enforcement. This does not indicate that socio-economic rights have gained universality such that all countries in Africa embrace and enforce them. There are few countries such as South Africa where these rights have not only been constitutionalized, but have been duly enforced. Nigeria has them under the non-justiciable directive principles of state policy. However, the fact today is that there are cultural and other impediments to the effective and efficient enforcement of such rights. Thus, the main objective of this paper is to identify some of these impediments and to proffer solutions.

The paper depends largely on perception of the nature of socio-economic rights arguing that such rights depend squarely on the state of economy of the state and the effective and efficient management of the economic resources. The paper finds that unlike the traditional, first generation rights, the enforcement of socio-economic rights puts huge financial claims on the state and also involves legislative appropriation without which the executive cannot effectively enforce such rights even where the judiciary orders enforcement of the rights in deserving situations. The paper observes that the enforcement of such rights would also invariably depend on ability and readiness to combat the pervasive corruption in most countries of the continent. Besides, although science and technology in the area of agriculture have rendered suspect the Malthusian theory on population, African nations must control population growth in the continent, and also redirect cultural imperatives that encourage unchecked child rearing, illiteracy and poverty.

1. INTRODUCTION

Socio-economic rights as second-generation rights have a relatively short history in many countries of the World. In fact where they have gained constitutionalization, they either remain problematic or controversial when it comes to enforcement. South Africa has always been a model for constitutionalization and judicialization in Africa; but the story is till far from being satisfactory because of the seeming lack of clear judicial approach to interpretation and enforcement of such rights.¹ Besides, these rights, unlike the traditional rights have far reaching implications on the policy-making competence of the executive branch of the government. Also, the legislative arm is saddled with the problem of allocation of the scarce resources between many contending social and economic sectors of the society. While it may be easy deciding on allocation to certain sectors in general terms, allocation on the basis of socio-economic rights would certainly pose some difficulties. This is consequent upon the fact that such rights placed on the government large demands as a result of several other factors including availability of statistics on the aggregate of those who would reasonably require the enjoyment or benefit of those rights.

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¹ David Landau, *The Reality of Social Rights Enforcement*, 53:1 Harvard International Law Journal 408-411(2012); Linda Stewart, *Adjudicating Socio-Economic Rights Under a Transformative Constitution*, 28:3 Penn State International Law Review, 489-491 (2010).

Aside from this, there would certainly arise the problem of the quantum or quality of such rights to meet the required standard. Ordinarily, a socio-economic right creates some sort of differential values between the rich and the poor. For example, the rich in the society may not need right to health, food and clean water simply because they could provide all these in abundance for themselves. The rich in Nigeria may not in fact need these rights because they have the financial and economic resources to provide most of the essentials of life that they need. Certainly, the poor need them for their sustenance simply because of their financial and economic conditions of life. Therefore, the rich and the political elites in the society may not appreciate the need for enforceability of such rights as the poor people would most certainly demand for the rights.

However, it may be proper to say that rather than being over, the debate on socio-economic rights would for sometimes continue to attract attention not only about its desirability, but also about the justiciability and indeed concerning the judicial approach to enforcement and closely associated with it is the problem of obedience to court ruling on such matters. Nigeria as a developing democracy may not have problems debating the core issues involved in the constitutionalization and justiciability of socio-economic rights, at least for now. This is not because the problems are not staring the people in the face. The problem is rather because the concept is new and until the full realization of its implication, the controversy may not be fully appreciated.

The gross inequality and imbalances in socio-economic benefits would certainly at the end pave way for an enduring debate. There is no gainsaying that poverty and all forms of deprivations are prevalent in Nigeria, but little or no attention has been placed on the need for full constitutionalization and judicialization of socio-economic rights. All Nigeria has experienced for now is the inclusion of socio-economic rights in the fundamental objectives and directive principles of state policy,² that are made non-justiciable unless and until the legislature enacts laws³ for the enforcement of any aspect of the fundamental objectives. It is important to note that the fundamental rights that are enshrined in the constitution⁴ are only civil and political rights, not including socio-economic rights; access to housing, access to food, right to water, right to education, access to health, access to gainful employment, social security and many more. Nigeria is a signatory to African Charter on Human and People' Rights⁵ (ACHPR) (hereafter African Charter) and having domesticated it as African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004 (hereafter Ratification Act) is part of the Nigeria's municipal legislation.⁶ It may be argued therefore that social and economic rights are recognized in the country and Nigeria has obligation both negative and positive⁷ to ensure obedience⁸ to the legitimate requirement of the order of the legislation as may be enforced by the Courts. This is simply because the African Charter provides for socio-economic rights, and the

² Nigerian Constitution 1999, Cap 2 herein after referred to as the constitution.

³ *Id.* s. 6(6) (c)

⁴ *Id.* Cap IV

⁵ One of the obligations of a signatory to any international or regional treaty or convention is faithful obedience and execution of the treaty. See *Abacha v Fawehinmi* (2000)4 S.C. (pt. II), 1; (2000) 6NWLR (pt. 660) 228

⁶ The Charter has been enacted as a municipal law; African Charter on Human and People' Rights (Ratification and Enforcement), Cap. A9, Laws of the Federation, 2004.

⁷ That is to constitutionalize and enforce the contents of the African Charter

⁸ See Ratification Act, s. 1

Ratification Act has neither been inconsistent with the constitution, suspended nor repealed.

The debate in Nigeria could no longer be on desirability or otherwise of the inclusion of socio-economic rights, but on the enforcement of such rights though they are constitutionally non-justiciable, they are provided under the African Charter that is now part of the domestic laws and the provisions relating to socio-economic rights have not been declared as inconsistent with the provisions of the Constitution by any court. However, the fact that the constitution makes the rights non-justiciable, by necessary implication, depicts conflicts between principles of international constitutionalism⁹ and domestic or national constitutionalism.¹⁰ As a member of the African Union, Nigeria has an obligation under the Constitutive Act and the African Charter on Human and Peoples Rights to enforce socio-economic rights that are enshrined in the Charter.¹¹ The obligation imposes on the nations consequent upon legitimate membership is that all member nations must obey and enforce the charter, and that is the constitutionalism for all such agreements must be honored. Although Section 6 of the 1999 Constitution makes such rights non-justiciable, but when read together with the provisions of Section 13 of the same Constitution, it becomes apparent that the intention of the makers of the Constitution is to make justiciability of such rights a matter of contingency and choice of the executive and the legislative arm of the government and recognizing judicial intervention in matters of interpretation.¹²

The paper however examines the jurisprudence of socio-economic rights in Africa in part two and in the third part deals with the status; the negative constitutionalization of the rights in Nigeria pointing in the fourth part of the paper their justiciability in Nigeria under the African Charter and before both the Economic Community of West African States (ECOWAS) and the national courts. While part five of the paper is on some of the identified challenges facing the enforcement of those rights in Nigeria, part six presents the concluding findings and the remedies for removing some of the challenges to ensure effective enforcement of socio-economic rights.

II. SOCIO-ECONOMIC RIGHTS IN AFRICA

Generally, the African Union strongly recognizes the need for Socio-economic rights of the people of Africa. To the Union, the overall development of the continent has intrinsic link with the protection of socio-economic rights. These rights are thus given statutory recognition and made justiciable under the African Charter on Human and Peoples Rights.¹³ This is important because those African Countries that are signatories to the Charter have obligation under international law to obey and

⁹ The conflict is apparent that whereas the Nigerian Constitution by the provisions of Section 12 (1) makes positive move to domesticate the body of the African Charter on Human and Peoples Rights, and has since been passed into law by the Nigerian Legislature, Chapter II of the same constitution prohibits judicialization of the rights.

¹⁰ See the decision of the ECOWAS Court in SERAP v Federal Republic of Nigeria (ECW/CCJ/APP/08/09)

¹¹ See Schedule to the Ratification Act. 2004

¹² Whereas that s. 13 provides that it shall be the duty of all authorities and persons exercising executive, legislative and judicial powers to conform to, observe and apply the provisions of Chapter II of the Constitution, s.6 (6)(6) makes the whole chapter non-justiciable.

¹³ The Preamble to the Charter is a form of agreement between signatories showing a commitment by member states to the charter to uphold the principles and contents of the charter. Once an agreement is entered into and having taking effect becomes binding on the parties thereto and they have obligation not only to obey, but to enforce the charter.

enforce the Charter.¹⁴ However, in Nigeria, the constitution is supreme¹⁵ and any other law that is inconsistent with the provisions of the constitution shall be declared null and void to the extent of its inconsistency.¹⁶ Therefore, unless it can be shown that the socio-economic rights provisions in the African Charter are inconsistent with provisions of the Constitution, the state has obligations under international law to obey and enforce the provisions pursuant to the Ratification Act. Also, the decision of the Supreme Court in *Abacha v Farwehinmi*¹⁷ shows that irrespective of the constitutional order in the country, whether military or democratic, the executive, legislative and judicial authorities in the country have obligations to obey and enforce provisions of the African Charter pursuant to the Ratification Act, unless the provisions have been expressly suspended or repealed by a later statute.¹⁸

SERAP v Nigeria & Ors is another case in point having the same implication as does the earlier one. In this case, the Plaintiff, a civil society organization, in a form of public interest litigation instituted at the ECOWAS Community Court a suit against the President of the Federal Republic of Nigeria and Others.¹⁹ The complaint was based on violation of Socio-economic rights of the people in certain areas of the Niger Delta: “violation of the right to adequate standard of living, including the right to food, to work, to health, to water, to life and human dignity, to a clean and health environment; and to economic and social development.” These rights are not of the category of first generation rights that are guaranteed by chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended).²⁰ In the suit before the ECOWAS Court, the Plaintiff, SERAP, relied principally on, among others, the African Charter on Human and Peoples Rights, the International Covenants on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The reasons for this were obvious; Nigeria is a signatory to the International Instruments (but they have not been domesticated) as well as the Protocol on the Community Court of Justice. The defendants raised preliminary objections on many grounds, most essentially on jurisdiction of the court. The court however held that “it has jurisdiction to adjudicate on the case brought by the Plaintiff against the corporate defendants.” It is important to note that Nigeria is a member nation of the Economic Community of West Africa (ECOWAS) and as such the decision of the court has binding force in the Country. Article 15(4) of the ECOWAS Revised Treaty provides that judgment of the court shall be binding on member states, institutions of the commission, individuals and corporate bodies.

Notwithstanding the provisions for socio-economic rights in the African Charter on Human and Peoples’ Rights, many African countries have not incorporated socio-economic rights in their constitutions. The negativity of such rights is in the fact that they are found in the Directive Principles of State Policy as the situation in Nigeria²¹ and are constitutionally made non-justiciable.²² Within the context of this paper, the justiciability of the rights determines their nature; negative or positive. In other words, the rights are positive as in the case of South Africa where the rights are not only constitutionalized, but also judicialized. It should

¹⁴ The principle of International Law relating thereto is *pacta sunt servanda*

¹⁵ Nigerian Constitution 1999, s. 1(1)

¹⁶ *id.* s. 1(3), see *A.G. v Atiku Abubakar* (2007) 32 NSCQR 1at 85

¹⁷ *Abacha v Farwehinmi* (*supra*) at 27

¹⁸ *id.*

¹⁹ Suit No: ECW/CCJ/APP/08/09

²⁰ Nigerian Constitution 1999, ss. 33-46

²¹ ss. 16-18

²² s. 6 (6) (c)

however be noted that this paper does not suggest that justiciability is all that is required to enhance the positive benefits of those rights. Obedience²³ and enforcement²⁴ of the rights are on one side while the possibility or capabilities to positively enforce them on the other side are perhaps problematic and deserving collective transformation policy agenda in Africa. Jaconelli graphically captured the concern when he drew an important distinction between the enforcement of the traditional, first generation rights and that of Socio-economic rights. He is of the correct views that the traditions, civil/political rights required for "their implementation mere abstention from action on the part of the State, and to the extent they lend themselves more readily to enforcement by the Courts." For the socio-economic rights, he posits, quite rightly too, a minimum level of economic development and administrative machinery for detailed (effective and efficient) running of the services.²⁵

The distinction as identified by Jaconelli and other scholars²⁶ are logically essential in the pursuit of protection of socio-economic rights in Africa. This distinction in categorization of those rights brings to the fore the nature and scope of the two systems of rights. This has far reaching implication on the road towards the protection of both rights. The nature of the traditional civil/political rights would depend largely on the nature of state. A legitimate constitutional regime with strict adherence to constitutionalism would obey the constitutionally guaranteed civil and political rights. The so called revolutionary- military regimes, in most cases, would suspend the bill of rights in the constitution as a preliminary step towards consolidating its extra-constitutional seizure of the state administration. So, in the bid to sustain itself in power freedom of speech, association, movement, election and voting etc. are put aside by way of suspension and modification of the constitution. This is typical of all the military regimes that Nigeria, as a classical example, witnessed in its constitutional history.²⁷ This would not mean that a military regime is not capable of providing for and enforcing socio-economic rights, it all depends on certain constitutional values. In other words, while the protection of civil and political rights that are guaranteed by states in their constitutions place categorically ascertainable demand on the states, socio-economic rights jurisprudence is shrouded in cloudy uncertainties informing varieties of approaches to their protection by the states.

There is no doubt that, as contained in the preamble to the African Charter on Human and Peoples Rights the "satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights." What is in controversy is the means of satisfying the socio-economic rights, and also still uncertain is the judicial approach to adjudication in socio-economic rights matters.²⁸

²³ Obedience is all about either the domestication of the provisions of the Charter as it has been done in Nigeria in compliance with the term of the charter.

²⁴ Enforcement is about putting in place machineries for effective implementation of the terms of the charter.

²⁵ Joseph Jaconelli, *The Protection of Economic and Social Rights*, 3:1 Third World Legal Studies, 87-88 (1984).

²⁶ See for example, DM Chirwa, *An Overview of the Impact of the International Covenant on Economic, Social and Cultural Rights in Africa*. Available at <<http://www.wcl.american.edu/hrbrief/10/1africa.cfm>> accessed on 28 March 2012

²⁷ Nigeria had her first taste of the bitter pile of military in governance in January 1966 with a break in October 1979 and again in 1984 until another break in May, 1999.

²⁸ For example of the discussion on the controversy, see, David Landau, 'The Reality of Social Rights Enforcement' Harvard International Law Journal ((2012) 53(1) 408-411; Linda Stewart. 'Adjudicating

The South African Constitutional Court has remained in the forefront of judicial intervention in socio-economic rights matters, but not even the classical *Grootboom's* has gone without criticism. In the case, the Respondents were evicted from their homes on private land earmarked for formal low-cost housing. They consequently applied to the High Court, pursuant to sections 26 and 28(1) (c) of Constitution of South Africa, for an order directing the government to provide them with basic shelter or housing until they get permanent accommodation. The court found for them irrespective of availability of resources, and "independently of and in addition to the obligation to take reasonable legislative and other measures in term of the Constitution," and also gave ancillary orders to ensure compliance with the orders. The Appellants, dissatisfied with the decision of the High Court appealed to the Constitutional Court of South Africa. The Court however substituted the decision of the High Court and ordered, *inter alia*, "Section 26(2) of the Constitution requires the state to devise and implement within its available resources a comprehensive and coordinated programme progressively to realise the right of access to adequate housing."²⁹

A consideration of the controversies³⁰ surrounding the implementation of socio-economic rights, though crucial for the development of a robust jurisprudence of socio-economic rights, suggests the rights are mere utopian theorizing and sloganeering, making, as argued by Mbazira, judicial review of socio-economic rights difficult than in cases of first generation rights.³¹ This is simply because socio-economic rights involve positive actions by the government unlike the civil and political rights that command restrain and abstaining from doing certain acts that affect or likely to affront the fundamental rights of the people. And as posited by Stewart,³² while analyzing the decision of the African Commission on Human and Peoples' Rights (hereinafter referred to as the "Commission"), there is a need for universal standard in adjudicating socio-economic rights. This becomes expedient if the African Charter must meet its goals. It may be true that implementation of socio-economic rights is better left to the discretion of the administration.³³ Doing that would however foreclose constitutional control in administration and indeed makes the executive arm the almighty decider of the fate of those rights and their contents, and by extension the scope of beneficiaries. The consequence of this is that judicial review of executive and legislative actions becomes irrelevant in this context. The courts may not interfere where socio-economic rights are within the discretionary powers of the state, the Courts would certainly interfere where the law imposes positive obligations, to ensure constitutionalism; ensuring that the obligations invested on each branch is religiously implemented. This position was equally articulated by the Constitutional Court of South Africa in *Minister of Health and others v Treatment Action Campaign*.³⁴

²⁹ Socio-Economic Rights under a Transformative Constitution' Penn State International Law Review (2010) 28(3) 489-491.

³⁰ *Government of the Republic of South Africa v Grootboom* (2000) ZACC 19, Linda Stewart, *supra* note 28 at 492

³¹ *id.*

³² Christopher Mbazira. *Enforcing the Economic, Social and Cultural Rights in the South African Constitution as Justiciable Individual Rights: The Role of Judicial Remedies* (Ph.D. Thesis, University of Western Cape, 2007)

³³ Linda Stewart, *supra* note 28

³⁴ This would mean that the executive arm of the government could determine when to implement or when not to while at the same time determining the contents of the rights.

³⁵ 2002 (5) SA 703 (CC).

However, rather than challenging the right of the courts to adjudicate in socio-economic rights matters, the focus should be on methodology of intervention with the view to giving contexts to the rights and also ensure that the targeted beneficiaries of the rights actually benefit notwithstanding the budgetary or other institutional constraints that may stand in the way between the states and the beneficiaries. In this context, the courts have a duty to ensure the enforcement of and obedience to legal instruments (law) on socio-economic rights, be they municipal, regional or international (those regional or international instruments that have been domesticated and thereby made enforceable in the jurisdiction). The role of the courts whether under the municipal, regional or international legal instruments is one and the same; ensuring rule of law and constitutionalism in socio-economic rights matters. In this situation, there are three contenders on the one hand: the legal instruments, the beneficiaries and the benefactor-state, and on the other hand is the fourth contender; the courts whose role is to enforce the legal instruments. Thus constructing a pyramid of hierarchy places the law first followed by the beneficiaries or the vulnerable, and then followed by the state whose duty it is to obey the law and execute for the enjoyment of the beneficiaries. It is when the state fails to act within the demands of the law that the court is called upon to intervene to ensure compliances.

The roles of the courts whether at the international, national or regional or sub-regional level are the same. The only distinction by way of contrast is issue of territorial jurisdiction, which presupposes that regional or sub-regional or international courts would only be competent in such regional, sub regional or transnational legal regime, and that state courts may have dual competence depending on the state's legal regime. For example, the ECOWAS Court of Justice lacks the competence to adjudicate on matters bothering on the domestic laws of the member states, but a municipal court could adjudicate on matters bothering as usual on domestic and, regional and international laws. For example, Nigerian courts are competent to enforce the African Charter by the African Charter on Human and People Rights (Ratification and Enforcement) Act³⁵ alongside the Nigerian constitution and other municipal laws. The internalization of the African Charter in Nigeria, as in most member states of African Union, on the one hand is obedience to the provision of the Charter, particularly Article 1. The Article places three obligations on member states: first is to recognize the rights, duties and freedoms that are created by the Charter, second, to undertake to adopt legislative or other measures to give effect to the rights, duties and freedoms, and third, to ensure enforcement of the rights. The first obligation is that of obedience to the legal demand of the Charter by giving recognition to the rights, the second and third obligations subsumed in enforcement and the procedural matters pertaining thereto. Again, the obligations presuppose the internalization of international or the regional human rights norms. The following now discusses the internalization as a system of state obedience to the Charter and goes on to examine the enforcement and possibly the inherent or apparent constraints to the effectiveness of the enforcement mechanism.

III. SOCIO-ECONOMIC RIGHTS REGIME IN NIGERIA

³⁵ See s. 1, Ratification Act, Cap. A 9 Laws of Federation of Nigeria, 2004

Nigeria is a developing democracy with a claim to constitutionalism.³⁶ The truth of the matter is that having a constitution is one step of the game, and adhering to the constitution is another step of the game. Talking about socio-economic rights in the country involves, as earlier noted, an examination of the institutional and legal framework put in place for the enjoyment of those rights. As a starting point, the Constitution of the Federal Republic of Nigeria guarantees certain minimum civil and political rights. These rights are regarded as “fundamental” and are: right to life,³⁷ right to dignity of human person,³⁸ right to personal liberty,³⁹ right to fair hearing,⁴⁰ right to private and family life,⁴¹ right to freedom of thought,⁴² right to freedom of expression,⁴³ right to freedom of Assembly and association,⁴⁴ right to freedom of movement,⁴⁵ freedom from discrimination⁴⁶ and right to private property.⁴⁷ These rights are not without some restrictions or qualifications. These rights are distinct from the socio-economic rights.

The distinction in the context of this paper is for the purposes of consequences of violation of any of the rights and not as a way of creating artificial barrier or dichotomy between the two categories of rights. Some of the civil and political rights have elements of socio-economic right. For example, there cannot be “right to life” without ancillary rights to access to food, clean water and good environment. Also, there cannot be “right to human dignity” without corresponding rights to education and employment. Simply put therefore, any attempt to create any landmark demarcation between the two classes of rights would lead to more difficulty in the judicial construction of the contents of the rights. Economic and social inequality and deprivation as presently prevalent in most African countries, including Nigeria, demand a comprehensive reconstruction of civil and political rights such that in the end there is correlation between the rights. For example, the question must be asked: of what value is right to life without the corresponding rights to food, health, shelter, employment, good environment and water?⁴⁸ Human beings require socio-economic rights for the full fulfillment and enjoyment of the right to life. Thus, the right to life requires both negative and positive state obligations.

³⁶ Since 1979, Nigeria operates constitutional democracy, but it is doubtful if the country has ever since experienced constitutionalism. Constitutionalism is a situation where the operators of the constitution exhibit total commitment to the provisions of the constitution; faithfully executing and implementing the constitution

³⁷ s.33

³⁸ s. 34

³⁹ s. 35

⁴⁰ s.36

⁴¹ s. 37

⁴² s. 38

⁴³ s.39

⁴⁴ s. 40

⁴⁵ s. 41

⁴⁶ s. 42

⁴⁷ s. 43

⁴⁸ Right to life can not be meaningful unless certain things are put in place; there must be good access to medication, etc. There are several links between the rights. Right to freedom of movement is a negative right if all those infrastructures that would enhance the movement are not put in place. See, HP Hestermeyer, *Access to Medication as a Human Right*, Max Planck UNYB, 8, 96, 226-228 (2004); Christopher Mbazira, *Enforcing the Economic, Social and Cultural Rights in the South African Constitution as Justiciable Individual Rights: The Role of Judicial Remedies*, (Ph.D. Thesis, University of Western Cape, (2007)

It is worth noting that the constitutional regime in Nigeria creates artificial dichotomy between civil and political rights (Fundamental Human Rights),⁴⁹ and social, economic and cultural rights, which are accorded negative constitutionalization.⁵⁰ Socio-economic rights are provided for under the Fundamental Objectives and Directive Principles of State Policy.⁵¹ The fundamental objectives are the ideological foundation of governance in Nigeria. The objectives first appeared in the 1979 Constitution of Nigeria, perhaps borrowed from the Indian Constitution. Except for the negative constitutionalization the chapter is an important ideological innovation in Nigerian constitutional democracy. Lack of ideological commitment by political leadership is essentially dangerous to policy formulation. The result is that the essence of governance is lost since there is no clear policy direction to provide the necessary ingredient for effective, efficient and meaningful governance. The desirability of the directive principles, therefore, was a positive step towards achieving the goals of promoting good governance and welfare of the people based on the principles of freedom, equality and justice.⁵²

The provisions dealing with economic matters in the directive principles are not couched in the form of either negative or positive rights. As directive principles, they are in the form of the minimum standard aspiration, which the government must strive to attain:

The State shall direct its policy towards ensuring:

- (a) the promotion of a planned and balanced economic development;
- (b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good; (c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and (d) 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.⁵³

The provisions on social rights are also couched in the same manner of policy statement:

The State shall direct its policy towards ensuring that-

- (a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment; (b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life; (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused; (d) there are adequate medical and health facilities for all persons; (e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever; (f) children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect; (g)

⁴⁹ The dichotomy is simply that the appropriate authorities do not seem to appreciate that without socio-economic rights, the so-called civil and political rights are empty; since they can not be effectively enjoyed by the people without the socio-economic rights as complimentary.

⁵⁰ Nigerian Constitution 1999, ss. 16-18

⁵¹ *id.*

⁵² *id.* Preamble

⁵³ section 16(2)

provision is made for public assistance in deserving cases or other conditions of need; and (h) the evolution and promotion of family life is encouraged.⁵⁴

Notwithstanding the drafting methodology adopted in Section 16, 17 and 18, the principal provision on the directive principles is section 13 of the constitution. The provision places obligations on all authorities and persons, including those exercising executive, legislative and judicial powers:

It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.

Perhaps, realizing that section 13 seems to be in conflict with other provisions of the constitution,⁵⁵ and realizing also the implication of such conflict on the judicial interpretation based on community reading of section 13, 16, 17 and 18, the makers of the constitution found solace in section 6(6)(c) of the constitution ousting the jurisdiction of national courts from adjudicating on any issue or question relating to whether or not any person or authority has conformed to, observed or applied the provisions of the directive principles. This is nothing but the constitution stabbing itself in the back, making the relevant sections non-justifiable.

The non-justiciability of the directive principles and by implication socio-economic rights in Nigeria has since been debated by leading academics,⁵⁶ and the national courts have always remained pessimists in the matter, never ready to take proactive approach to the comprehensive interpretation of the or attempt a reconstruction of the directive principles giving contents to the rights, and behaving true to their positivists' conservatism of not seeing beyond the plain words of the provisions. The courts, relying on provisions of section 6(6) (c) have often held the chapter non-justiciable,⁵⁷ notwithstanding the provision of Section 13 of the Constitution, which is prescriptive in nature. This being the negative status of socio-economic rights under the constitution, the African Charter on Human and Peoples Rights, as shall be see soonest, provides a leeway. Thus, the Charter,⁵⁸ and by implication, the Ratification Act⁵⁹ impose obligations on the state to provide for socio-economic rights, and also vest in the courts the power to ensure state compliance with the Charter. As earlier pointed out, the decision of the Supreme Court in *Abacha v Fawehinmi* (a case on enforcement of fundamental rights) is to the effect that provisions of the African Charter are subject to overriding control of the Constitution.⁶⁰ However, it should be noted that hardly would a country be willing to

⁵⁴ section 17(3)

⁵⁵ *Id. s. 6*

⁵⁶ Henry Alisigwe, *Towards the Justiciability of Chapter Two of the 1999 Constitution*, 3:1 Journal of Public Law and Constitutional Practice, 39-49 (2010); MOA Alabi, 'Fundamental Objectives and Directive Principles of State Policy' *The Jurists*, 77-82 (2006)

⁵⁷ See *Okogie v A.G. (Lagos State)* (1981) 2 NCLR 337, 350; *A.G. (Ondo State) v A.G. (Federation) and Others* (2002) 9 NWLR (pt. 772) 222

⁵⁸ See section 22, African Charter ("All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind...")

⁵⁹ Section 1 of the Act provides that "As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial powers in Nigeria."

⁶⁰ *Abacha v Fawehinmi* (supra) at 21

negate on the regional or international agreement it has adopted because of the implications of such political backsliding.

IV. APPLICATION OF ACHPR IN NIGERIAN COURTS

The provisions of this charter are applicable before and enforceable by national courts in Nigeria. This has become possible because the charter has been ratified and domesticated as African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.⁶¹ By this domestication in strict compliance with the provisions of Section 12(1) of the 1999 Constitution: “No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.” The African Charter, by virtue of the Ratification Act, becomes an Act of the Nigerian Parliament, which all authorities including the executive and courts of competent jurisdiction in the country must enforce.⁶² The Act created obligation on all authorities and persons exercising legislative, executive or judicial powers in Nigeria to give full recognition to the provisions of the charter and apply same; thus, making provisions of the charter, including those relating to social and economic rights enforceable in Nigeria, not only by the courts established by⁶³ or under⁶⁴ the constitution, but also by the ECOWAS Community Court⁶⁵ and the African Court of Human Rights. The internalization of the African Charter has filled the gap created by the non-justiciability of chapter II of the Nigerian Constitution. The International Covenants on Social Economic and Cultural Rights (ICSECR) to which Nigeria is a party is also of importance in this respect, but unfortunately it cannot be enforced in Nigeria having not being ratified in conformity with the constitution.⁶⁶ The instrument being in the category of multinational treaty cannot have the force of law in the Federal Republic of Nigeria except to the extent to which such treaty has been enacted into law by the legislature.⁶⁷

The decision of the Supreme Court in *Abacha v Fawehinmi* on the status of the African Charter and any treaty that has been domesticated in the country is very clear. In that case, the Respondent, Chief Gani Fawehinmi was arrested at his residence by men of the State Security Service and the Police on Tuesday, January 30, 1996 without a warrant and was neither informed nor charged with any offence. He was later detained at the Bauchi Prisons.⁶⁸ Consequently, he applied through his Counsel to the Federal High Court, Lagos to enforce his fundamental rights against the arrest and detention pursuant to the Fundamental Rights (Enforcement Procedure) Rules, 1979. Among others, he sought declarations against the Defendants (Appellants in this case) that his arrest from his residence and detention without charge constituted violation of his rights under Sections 31, 32 and 38 of the 1979 Constitution and Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples’ Right (Ratification and Enforcement) Act, Cap. 10, Laws of the Federation

⁶¹ Cap A9 Laws of the Federation, 2004

⁶² *id.* s. 1

⁶³ See Nigerian Constitution 1999, s. 6 (5)

⁶⁴ *id.* s 6 (4) (a)

⁶⁵ *SERAP v Nigeria & Ors* (Suit No: ECW/CCJ/APP/08/09)

⁶⁶ cf (n 57) s. 12 (1) provides that no treaty shall be enforceable in Nigeria except to the extent to which any such treaty has been enacted into law by the National Assembly. AO Sambo and AB Abdulkadir, ‘Socio-Economic Rights for Sustainable Development in Nigeria: Challenges and Prospects’ in *Law and Sustainable Development in Africa*. Egbewole, W.O. et. al. (eds.) 265-266 (Al-Fattah Publications, 2012)

⁶⁷ *id.*

⁶⁸ *Abacha v Fawehinmi* (2000)4 S.C. (pt. II), 1, at 14

of Nigeria, that the arrest and detention were illegal and unconstitutional. The Defendants raised preliminary objection on the grounds of Decree 2, 1984, Decree 107, 1993 and Decree 12, 1994 that the High Court lacked jurisdiction to entertain the matter. The trial Judge sustained the objection and declined jurisdiction on the ground of ouster clause in Decree 2, 1984. Dissatisfied with the decision of the High Court, the Respondent appealed to the Court of Appeal.⁶⁹ The Court of Appeal found that "...by virtue of the provisions of Section 4 of Decree No. 2 of 1984 as amended by Decree No. 12 of 1994, the jurisdiction of the court is ousted to entertain the Appellant's case."⁷⁰ But quite strangely, the Court further found that "... notwithstanding the fact that Cap. 10 was promulgated by the National Assembly in 1983, it is a legislation with international flavor and the ouster clauses contained in Decree No. 107 of 1993 or No. 12 of 1994 cannot affect its operation in Nigeria." Further and quite correctly, the court found that the provisions of the Ratification Act are in a class of their own,

...the Decrees of the Federal Military Government may over-ride other municipal laws, they cannot oust the jurisdiction of the Court whenever properly called upon to do so in relation to matters pertaining to human rights under the African Charter. They are protected by the International Law and the Federal Military Government is not legally permitted to legislate out of its obligations.⁷¹

Again the Respondent was dissatisfied and further appealed to the Supreme Court. Ogundare, JSC, delivering the judgment of the Court held that, most importantly among others:

...Cap 10 remained in full force and effect as it was never at any time altered by the Provisional Ruling Council nor was there any need for its modification to bring it into conformity with the 1979 Constitution (as amended, suspended or modified) or any decree made after the commencement of Decree No. 107 of 1993, that is, after 17th November 1993. Cap. 10 was not inconsistent with any provision of the 1979 Constitution or any such decree."⁷²

It is important to note that by virtue of being a member state of ECOWAS, the ECOWAS's Supplementary Protocol, Article 9(4),⁷³ Nigeria has a duty to honour any human rights treaty (including the African Charter) it has entered into and incorporated as part of its municipal laws. Thus, the ECOWAS Court in SERA v Federal Republic of Nigeria,⁷⁴ the Plaintiff's contentions, included, simply that as a result of oil prospecting in the Niger Delta, the region has suffered for decades from oil spills, which destroy crops and damage the quality and productivity of soil that communities use for farming, and contaminates water that people use for fishing, drinking and other domestic and economic purposes. It was also contended that "... the devastating activities of the oil industries in the Niger Delta continue to damage the health and livelihoods of the people of the area who are denied basic necessities of life such as adequate access to clean water, education, healthcare, food and a clean and healthy environment. The Plaintiff therefore sought declarations, among others:

⁶⁹ *id.*

⁷⁰ *id. at 17*

⁷¹ *id. at 18*

⁷² *id. at 27*

⁷³ Supplementary Protocol A/SP.1/01/05 of 19 January 2005

⁷⁴ ECW/CCJ/APP/08/09

(a) A Declaration that everyone in the Niger Delta is entitled to the internationally recognised human right to an adequate standard of living, including adequate access to food, to healthcare, to clean water, to clean and healthy environment; to social and economic development; and the right to life and human security and dignity.

b) A Declaration that the failure and /or complicity and negligence of the Defendants to effectively and adequately clean up and remediate contaminated land and water; and to address the impact of oil-related pollution and environmental damage on agriculture and fisheries is unlawful and a breach of international human rights obligations and commitments as it violates the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights.⁷⁵

The Defendants objected to the jurisdiction of the ECOWAS Court to entertain the suit. The Court however rejected the objection and found as follows:

... even though ECOWAS may not have adopted a specific instrument recognising human rights, the Court's human rights protection mandate is exercised with regard to all the international instruments, including the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, etc. to which the Member States of ECOWAS are parties... it should also be noted that the sources of Law that the Court takes into consideration in performing its mandate of protecting Human Rights are not the Constitutions of Member States, but rather the international instruments to which these States voluntarily bound themselves at the international level, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights...As held by the jurisprudence of this Court, in the Ruling of 27 October 2009, SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission, once the concerned right for which the protection is sought before the Court is enshrined in an international instrument that is binding on a Member State, the domestic legislation of that State cannot prevail on the international treaty or covenant, even if it is its own Constitution... It is thus evident that the Federal Republic of Nigeria cannot invoke the non-justiciability or enforceability of ICESCR as a means for shirking its responsibility in ensuring protection and guarantee for its citizens within the framework of commitments it has made vis-à-vis the Economic Community of West African.⁷⁶

The ECOWAS Court thus gave judgment in favour of the Plaintiff that as a State Party to the African Charter, the Federal Government is under international obligation to recognise the rights, duties and freedoms enshrined in the Charter and, "to undertake to adopt legislative or other measures to give effect to them...that

⁷⁵ *id.*

⁷⁶ *id.* at 9-11

there has been a failure on the part of the Federal Republic of Nigeria to adopt any of the “other” measures required by the said Article 1 of African Charter to ensure the enjoyment of the right laid down in Article 24 of the same instrument.”⁷⁷

It is important to note the implications of the decisions of this ECOWAS Court and that of the Supreme Court of Nigeria in *Abacha v Fawehinmi* on national and international constitutionalism. As far as the Supreme Court is concerned, contrary to the position held by the ECOWAS Court, the Nigerian Constitution is supreme and its provisions override any treaty. The position of the ECOWAS Court sounds correct because once the state is a party to an agreement at a regional or international level such agreement should reasonably remain binding on the state unless it ceases to be a member state to that agreement. To allow otherwise would mean that nations, against their regional or international obligations, may use domestic constitutional devices to defeat regional or international system.

Apparently from the above decisions, the debate is not whether socio-economic rights are available and enforceable in Nigeria. The debate must now focus on construction methodology that would give meaning to the rights, and this can best be made possible by the courts reconstructing the contents of the fundamental rights guaranteed by the constitution. Also, the debate must look at the difficulties and constraints to the institutional and judicial enforcement of the rights. Scholars, particularly of interest in the emerging socio-economic rights jurisprudence in South Africa, have all seemingly agreed that there are difficulties and constraints. Nigeria is not an exception, but it may be too early to focus on difficulties on judicial enforcement, rather the debate should be on those constraints that the states are likely to encounter even in their sincere desire to obey the Charter. These constraints are the principal concern of this paper. I do understand that the paper itself is constrained by space and the fact that the debate on constraints on the state is just emerging and with time would reach the level of creating the necessary awareness and consciousness on the part of both the state and the beneficiaries of those rights. For the rights to be meaningful and capable of enforcement and obedience both the state and the beneficiaries have their contributory roles. The constraints, as shall be seen, are cultural, attitudinal, religious and institutional. All the challenges center on these constraints.

V. CHALLENGES

As it has been observed, the problems of enforcing socio-economic and cultural rights are tripartite. They are partly from the state (Nigeria) whose responsibility it is to give recognition to these rights as not only deserving but necessary for the enjoyment of the civil/political rights. There are links between the first generation and the second-generation rights. The right to human dignity without rights to gainful employment and education is an empty right. So also, the right to medication or health is fundamental for the right to life. It is not only when a life is taken by the use of violent weapon that the right has been denied, an indigent person with terminal disease, but without state health support is like a condemned criminal awaiting only the day of execution of the death sentence. It is also most apparent that the electorate without economic power, hunger stricken and poorly educated is not civically and politically empowered to exercise his right to participate in the democratic and decision making process of his political state.

⁷⁷ *id.* at 26

A. The Challenge of Population Growth

Nigeria is a multicultural nation with many tribes and ethnic groups. There are also many religions⁷⁸, which have strong influence on the followers in their belief system, social perception and essentially their entire ways of life. Cultural practices exert direct and indirect influences on population.⁷⁹ The trend in Nigeria is that of a growing population. In 2006, the National Population Commission conducted national population and housing census between the 21st and 27th March, 2006, followed by post enumeration survey in June, 2006. The census final results show Nigeria's population as 140, 431, 790 million (Male: 71, 345, 488; Female: 69, 086,302). This is against the 88.9 million in 1991.⁸⁰

Population has far-reaching implications for change, development and the quality of life.⁸¹ Invariably, high population exerts pressure on the ecosystem leading to issues around food security, land tenure, water supply, and environmental degradation⁸¹ and also causing dislocations in the health, housing and education sectors. That is, population growth has a direct link with socio-economic rights. The higher the rate of population growth the worst it would be for socio-economic rights demands and enforcement. Conversely, if the rate is low the better for the pursuit of enforcement of socio-economic rights. This is consequent upon the fact that with high population growth there is more fiscal burden on the government to provide social and economic infrastructures.

No doubt, Nigeria is characterized by high fertility,⁸² with an average of six children per woman.⁸³ The implication of this is rapid growth in population, particularly among the non-educated couples. Generally, with about 3.2% population growth rate the country certainly faces critical problems of urbanization, increase in demand for health care services, provision of education, water, food, housing and other essential services having direct bearing on fiscal measures and resource allocation. Thus, the question must be asked; at what rate is the economy growing to accommodate the rapidly growing population? The question must also be asked whether or not the rate of population growth could afford the possibility of socio-economic rights enforcement. Mba indirectly offers an answer in the negative.⁸⁴ Invariably, if the population is growing faster than the economy the result is sure that socio-economic rights demands can hardly be satisfied. Equally important is the implication of imbalance in economic and population growth on government spending; increase in sectoral demand for budgetary allocation, and with increase in population growth without proportional increase in growth in the economy hardly could the government cater for the welfare and security of the citizenry.⁸⁵

⁷⁸ Islam and Christianity are predominant, but there are others with small followership. For an account of this, see Helen Nene Avong. *Perception of and Attitudes towards Nigerian Federal Population Policy, Family Planning Program and Family Planning in Kaduna State, Nigeria*, 4:1 African Journal of Reproductive Health, 67 (2004). According to the Author, Nigeria has about 426 ethnic groups that are principally Muslims and Christians, with about 10% Traditionalists.

⁷⁹ *Id.*

⁸⁰ Population Analytical Report (Nigerian National Population Commission 1991)

⁸¹ AA Peter, 'Population and Human Resources Development in Nigeria' Paper presented to participants on Course 20 at the National Defence College, Abuja on 5th October, 2011.

⁸¹ *Id.*

⁸² O Odumosu, EN Nelson-Twakor and AO Ajala, *Demographic Effects of Regional Differentials in Education Policies in Nigeria* Nigerian Institute of Social and Economic Research (NISER) 4 (2004)

⁸³ *Id.*

⁸⁴ C J, Mba, *Revisiting Aspects of Nigeria's Population Policy*, 17:1 African Population Studies, 23-36 (2002).

⁸⁵ See Section 14 (2) of the Constitution.

Worried by the rapid growth in population the government of General Ibrahim Babangida adopted a National Population Policy aimed at reducing population growth rate by way of voluntary reduction in fertility rate from six children to four per woman. However, Scholars⁸⁶ have expressed doubts as to the success of the targeted reduction in fertility rate. As rightly observed by Omohan and Maliki, population issues cannot be discussed or dealt with in isolation⁸⁷ of socio-cultural and economic condition of the People. Culture plays important and influential role in the life of man. However, there are negative and positive aspects of culture, but certainly the categorization may not be a simple analysis because of the subjective nature of such exercise. An aspect of culture that is unacceptable in a particular community may be acceptable as the norm in another. Notwithstanding, there are cultural practices that are population control friendly and those practices that are inhibitions to such demographic control.

As already noted, the authorities in Nigeria adopted the National Population Policy in April, 1988. Research has however shown that, while the policy achieved some measure of success in the Southern part of the country, it was unsuccessful in the Northern part.⁸⁸ Although Peter fails to give reasons for failure of the project in the Northern part, it is not unconnected with religion and culture.⁸⁹ As rightly observed by him, the pluralism of the country reflects in the perception of marriage and family planning. The North is predominantly Muslim and since Islam supports early marriage early child rearing is common among the people. Besides, Islam allows polygamy up to a maximum of four wives.⁹⁰ Unfortunately, the national policy on population fails to take cognizance of the limit to the number of wives a man could have in the North. Thus, with the policy of four children per woman, it means an average man in the North could have up to 16 children. This is further complicated by the refusal of women in the North to adopt the use of contraceptives.⁹¹ The argument is that Islam does not permit that form of family control system. Research has shown that whereas between 20-25% of southern women within the child-rearing age embraced the use of contraceptives, only about 2% embraced it in the North.⁹² It has also been shown that even some Christian women still do not embrace the use of contraceptives. According to Avong, the Atyap women, though accepted the need for family planning, yet they argued that “individual couples have

⁸⁶ See generally, CJ Mba, *supra* note 68 ‘Revisiting Aspects of Nigeria’s Population Policy’ African Population Studies (2002) 17(2) 23- 36; Helen Nene Avong, *Perception of and Attitudes towards Nigerian Federal Population Policy, Family Planning Program and Family Planning in Kaduna State, Nigeria*, 4:1 African Journal of Reproductive Health, 74-75 (2004); AA Peter, *Population and Human Resources Development in Nigeria*. Paper presented to participants on Course 20 at the National Defence College, Abuja on 5th October, 2011, 25; CO Odimegwu, *Family Planning Attitude in Nigeria: A Factor Analysis*, 25:2 International Family Planning Perspective, 87-89 (1999).

⁸⁷ Monday Ehikioya Omohan and Agnes Ebi Maliki. *Counseling and Population Control in Nigeria*, 22:2 *Journal of Human Ecology*, 102-103 (2007)

⁸⁸ Helen Nene Avong, *supra* note 72 at 67

⁸⁹ Peter, *supra* note 66 at 10-12

⁹⁰ The Holy Qur'an is the fundamental basis of the Sharia and supplemented by the Sunnah of Prophet Mohammed and the other subsidiary sources of the law. The Qur'an in Chapter 4 verse 3 provides that: “If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, three, or four, but if you fear that you shall not be able to deal justly (with them), then only one.” This is however dependent upon the conditions that the husband must be able to do justice among the wives, and is capable of both social and economic needs of the wives. The Prophet said, reported in (Sahih al-Bukhari), “A man who marries more than one woman and then does not deal justly with them will be resurrected with half his faculties paralysed.”

⁹¹ Peter, *supra* note 66 at 9

⁹² *Id.*

the number of children they could have without imposition from anybody or group.”⁹³ This apparently shows that while government was conscious of the socio-economic implication on the welfare of the citizenry, the people themselves are not ready to support the policy on population control on the ground of religion and culture. It is impossible to enforce, even with positive constitutionalization, socio-economic rights in an atmosphere of uncontrollable population growth.

As opined by Sambo and AbdulKadir,⁹⁴ illiteracy is one of the challenges to enforcement of socio-economic rights in Nigeria. There is an important nexus between rates of birth and level of education. The importance of this is that with high level of education and reduction in the illiteracy level among the women of child-rearing age would stimulate positive response to modern methods of child spacing. Education on its own has a way of moderating culture and attitudinal behavior. Research findings have also shown that with the right education and enlightenment campaign negative cultural values, beliefs and practices which encourage large family size would be a thing of the past since culture changes along changes in the dynamics of the society.

B. The Challenge of Corruption

Corruption is a worldwide phenomenon; hardly is there any nation in the world today without one form of corruption or the other, it all depends on perception or what is regarded as corruption in each society. However, the problem seems endemic in Nigeria and it has defied almost all previous efforts at combating the menace.⁹⁵ It is so pervasive that it becomes arguably very difficult to distinguish between the corrupt and the incorruptible Nigerians, every person is perceived as corrupt. The systemic corruption has attracted the attention of both policy-makers and scholars, indicating concern of all because of the negative effects it has on the image of the country and its social, economic and political development.

The cost of corrupt practices has been very enormous that economic, social and political developments have fallen victims and Nigerians become the more impoverished by the day notwithstanding the abundant natural wealth of the nation.⁹⁶ Corruption, no matter the type, is detrimental to democracy,⁹⁷ and as well

⁹³ Helen Nene Avong, *supra* note 72 at 69

⁹⁴ Sambo and Abdulkadir , *supra* note 60 at 273-274

⁹⁵ See Gbenga Lawal and Ariyo Tobi, *Bureaucratic Corruption, Good Governance and Development: The Challenges and Prospects of Institution Building in Nigeria*, 2:10 Journal of Applied Science Research, 642, 645-647 (2006)

⁹⁶ See generally, NA Goodling, *Nigeria's Crisis of Corruption-Can U.N. Global Programme Hope to resolve this Dilemma?* 36 Vanderbilt Journal of Transnational Law 36, 997, 1002-1004, KI Dandago, *The Constitutional Fight Against Corruption in Nigeria: Is it Enough*, International Journal of Governmental Financial Management, 61 (2008); VE Dike, *Corruption in Nigeria: A New Paradigm for Effective Control* 4-5. Available at <<http://www.africaeconomicanalysis.org/image/Africa-Economic.gif>> accessed 20 January 2012; G Lawal and A Tobi, *supra* note 81. For a comprehensive reading of effect of corruption in Nigeria, see, EA Owolabi, *Corruption and Financial Crimes in Nigeria: Trend and Consequences*. Available at <<http://www.cenbank.org/OUT/.../2007/TRANSPARENCY2007.PDF>> accessed 20 January 2012. According to this writer, “... economic and moral terms, corruption is very costly. It undermines confidence in the government, whose moral authority is diminished. Economically, misallocation of resources is worsened by corruption, and government officials will not press for change in the regulations from which they enrich themselves. In fact, officials may press for more of such regulations and license procedures, hoping for more bribes. Corruption aggravates income inequalities and poverty; those who benefit from bribery, kickbacks and preferential deals are not likely to be among the poorest. Corruption adversely affects economic growth, as it acts as additional tax on enterprises, raises costs and reduces incentives to invest. “Informal payments” on public projects may be many times their actual cost. Corruption imposes a heavy burden on small and medium-sized enterprises, and tends to shift government spending away from socially beneficial

hinders socio-economic rights of individuals.⁹⁸ Resource management and allocation is an important factor in ensuring enforcement of socio-economic rights. Any negative action on the resources has negative impact on socio-economic rights. Corruption, particularly official and bureaucratic is an impediment to effective and efficient management of the nation's resources is thus a challenge to socio-economic rights that must be seriously addressed by all the stakeholders, not only the government.

The International Council on Human Rights Policy (ICHRP) has demonstrated how corruption is capable of impacting negatively on the enforcement of socio-economic rights, whether rights to food, through diversion of essential resources from social spending and corrupt practices in relation to the possession and use of land and natural resources.⁹⁹ It affects housing policy of government. According to the ICHR, embezzlement of funds meant for build housing units, or bribery in the selection of contractors, may negatively affect housing programmes and result in construction of substandard housing units,¹⁰⁰ health,¹⁰¹ education¹⁰² and

investments, such as health, education, roads and communications towards unneeded "white elephant" projects, or lower quality infrastructure..." See for a more heart disturbing cost of corruption on Nigeria, Ngozi Okonjo-Iweala, *Corruption: Myths and Realities in a Developing Country Context*. Available at <<http://www.cgdev.org/doc/event%20docs/Ngozi%20Remarks.pdf>> accessed 20 January 2012. According to the author, between "November 1993-June 1998 of Abacha misrule, an estimated US\$3 to US\$5 billion of Nigeria's public assets were looted and sent abroad by Abacha, his family and their associates³. These sums represent a substantial amount of Nigeria's public assets by different measures. For example, the estimated sums represent 2.6% to 4.3% of 2006 GDP and 20.6% to 34.4% of the 2006 federal budget. Another way of viewing this is that at the upper end of the range, the amount stolen is larger than the 2006 education and health federal budgets combined. Using unit cost estimates provided by the World Bank, these amounts could provide anti-retroviral therapy for 2-3 million HIV-AIDS infected persons over a ten-year period, or supply insecticide treated bed nets for over 200 million pregnant women and children. Of the amount stolen over US\$2.2 billion was largely documented by the Central Bank of Nigeria as stolen from it in truckloads of cash in foreign currencies, in traveler's checks and other means. Most of these monies were laundered abroad through a complex network of companies, banks, and shell concerns before finding their way into foreign accounts operated by the Abacha family and their cronies. At the peak of their activities, over 70 companies and more than 32 banks, including some of the world's best known banks, had money laundered through them. The second tale is a subset of the first but involves the inflation of a public health contract. It is another Abacha tale, the main protagonist of which is Mrs. Mariam Abacha. The contract was for Pasteur Merieux vaccines awarded by the then Nigerian Family Support Program—a social program designed to benefit poorer families especially poor women and children in the country – which was headed by Mrs. Mariam Abacha. The contract for a value of US\$111 million was awarded to Morgan Procurement Ltd, a company belonging to the Abacha family. The true value of the vaccines was US\$22.5 million, thereby resulting in an \$US88.5 million profit for the family which was transferred to their various accounts."⁷ Abacha was Nigeria's Military Head of State between the periods under review. The case of James Ibori, the former governor of Delta state of Nigeria is also a clear case of official corruption which denied the people of the state huge fund that could have been channeled toward provisions of infrastructure that are capable of enhancing good governance.

⁹⁷ Goodling, (n 82) 998

⁹⁸ OA Ogundokun, *A Human Rights Approach to Combating Corruption in Africa: Appraising the AU Convention Using Nigeria and South Africa*. (LL.M. Thesis, University of Pretoria, 2005) 1, 11-16

⁹⁹ International Council on Human Rights Policy, *Corruption and Human Rights: Making the Connection*, 49-50 (2009), http://www.ichrp.org/files/reports/40/131_web.pdf

¹⁰⁰ *Id.* at 50-51

¹⁰¹ *Id.* at 51-55; "Corruption can affect the quality of medicines, for example, when regulators are bribed to carry out less rigorous checks or to approve medicines without adequate investigation, or when hospital administrators purchase cheaper, less effective (or even expired) drugs and embezzle the difference in cost. ... Corruption affecting the quality of health services and particularly the quality of medicines is a serious infringement not only of the right to health but also of the right to life. Corrupt practices in the pharmaceutical industry are particularly relevant. Unethical drug promotion

water.¹⁰³ All the identified modes of corrupt practices that are capable of negatively affecting enforcement of socio-economic rights are prevalent in Nigeria, meaning that with the pervasive and endemic corruption in Nigeria hardly could the enforcement of those rights be effective irrespective of any institutional, legal or constitutional framework.

VI. CONCLUSION

It is true that the debate on socio-economic rights must shift from that of desirability to enforcement. Although most countries do not embrace the positive constitutionalization of the rights, they are found in the fundamental objectives of state policy and are made non-justiciable. This does not foreclose their enforcement since they are found in the appropriate international, regional and sub-regional instruments, provided those countries are signatories to any of the instruments and they have been properly domesticated or incorporated into the municipal laws in accordance with their statutes as done with African Charter by Nigerian National Assembly. This is the situation in Nigeria, though the constitution only provides for the rights under the unenforceable fundamental objective and directive principles of state policy, the rights are enforceable under the African Charter to which Nigeria is a signatory and has since domesticated the Charter in legitimate conformity with the national constitution. This would mean that socio-economic rights-based actions could be brought before the Africa Union's and the ECOWAS' courts. This is apart from the national courts; especially the High Courts should be more pro-active when it comes to socio-economic rights cases. However, that alone cannot guarantee enforcement of the rights; addressing the challenges as have been identified above becomes imperative.

can generate conflicts of interest for physicians and ultimately can harm patients' health. If drug marketing by pharmaceutical companies is not well regulated, studies have shown that physicians may prescribe treatments under the influence of marketing inducements that may bring no benefit (and may even be harmful) to patients and the health system. If states do not guard against this kind of abuse, they will violate their duty to protect the right to health."

¹⁰² *Id.* at 55-57; "Most corrupt practices in the education sector infringe one or more elements of the right to education. Corruption may restrict access to education in many ways. Children may be requested to make informal payments for services, for example, or required to pay a bribe on admission, or parents may be asked to pay the teacher fees for additional private lessons (covering material from the core curriculum that should be taught during the school day) or for correcting their child's work. In such cases, access to education is not based on equality but on ability to pay a bribe, which amounts to discrimination and puts vulnerable groups at particular disadvantage because they are least able to pay. All corrupt practices that entail the disbursement of money for primary education violate the right to education, because primary education should be free. Corruption that harms the quality of education affects its acceptability..."

¹⁰³ *Id.* at 57-58; "Corruption will violate the right to water when, for example, companies bribe state water regulators to allow them to draw excessive amounts from rivers and groundwater reservoirs, ultimately denying water access to

neighbouring communities. Corruption also occurs when citizens have to pay bribes in order to be connected to the national water grid, or to avoid drinking unclean water from sources such as rivers or dams. Women tend to use more water because of their roles as caretakers of the home. In poor female-headed households, lack of money to bribe water officials exposes them to unhygienic water sources, increasing their exposure to water-borne diseases. Where women are responsible for providing the household with water, interruptions of the supply due to corruption will mean that women have to walk further to fetch water. Corruption can harm the quality of water as well. If a company bribes a public inspector to overlook the discharge of waste into water resources, water supplies will be polluted and the right of people who depend on that water will be infringed. Again, the right of indigenous and minority populations to water is frequently threatened because many indigenous settlements are located by lakes or rivers..."

The judiciary must be proactive in ensuring the enforcement of the rights; the courts must engage in the reconstruction of the contents of the fundamental rights guaranteed by the Nigerian constitution to embrace socio-economic rights. Besides, since the enforcement of those rights is tripartite in nature, Nigerians themselves must braze-up to assist the government in tackling the challenges; conform to national population policy to reduce fertility rate, embrace western education as a way of moving along modernization without compromising the core cultural values that are population control friendly. Finally, the legal and institutional legal framework, particularly the Independent Corrupt Practices Commission Act and the Economic and Financial Crimes Commission, put in place to combat all form of corruption in the country should be readdressed bearing in mind the cost of the menace on every aspect of governance and more especially on the enforcement of socio-economic rights.