

PROTECTING THE RIGHTS OF CHILDREN IN NIGERIA: LEGAL FRAMEWORK FOR THE PROGRESSIVE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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ABSTRACT

This article evaluates the legal framework for the progressive realization of the International Covenant on Economic, Social and Cultural Rights (ICESR) provisions on socio-economic human rights of children in Nigeria. It reviews the nature, scope and content of children's rights espoused by the ICESR and then examines how these socio-economic rights of children, both nationals and non-nationals, can be guaranteed and progressively realized within the relevant provisions of Nigerian law and the limited available resources, given that Nigeria is a developing country. The article also discusses how legal barriers posed by the non-justiciability of the socio-economic rights under the fundamental objectives and directive principles of the Nigerian Constitution and other challenges to the full realization of the socio-economic rights can be overcome.

Keywords: Nigeria, children, socio-economic rights, progressive realization, core minimum standard.

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1. INTRODUCTION

Children are the most vulnerable, helpless segment of the society. This is because children need special care and, by their nature, are incapable of providing and helping themselves in certain circumstances. Consequently, without adequate provisions by the government for their wellbeing, children tend to be exposed to diverse problems such as

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early child marriage, street hawking, lack of health care,¹ poor access to quality education for both male and female children, with low enrolment for the girl child, according to the UNICEF report (2002). Another challenge that children face, especially the female child is that the national literacy rate for female education in Nigeria is only 56 per cent compared to 72 per cent for males;² added to this is teenage pregnancy, impacts of war, terrorism and insecurity. A good example is the kidnap of the Chibok school girls by the Boko Haram insurgents in the north-eastern part of Nigeria. Till date, the Chibok girls are yet to be reunited with their parents. This is comparable to what is currently going on in Brussels where due to the vulnerability of children and the inability to give adequate protection to children as a result of the attack on the country, the Prime Minister, Charles Michel, has ordered the immediate closure of schools in the interest of the school children and to keep them away from attacks.³ This indicates the commitment of the government of Brussels to the welfare and security of children.

Every country that has the best interest of children at heart ought to show commitment to their welfare, survival and development. Nigeria is one of the countries that ratified the two major instruments on child's rights.⁴ The first is the United Nations Convention on the Rights of the Child (CRC), 1989, which it ratified in March 1991 with

1 Nigeria is one of the countries with high mortality rate of under-5 (per 1000, live births) < <http://data.worldbank.org/indicator/SH.DYN.MORT> > accessed 23 November, 2015.

2 National Bureau of Statistics, 2006. Though high enrolment is reported, yet the standard of education has remained low with only 47 per cent of children having access to secondary school (69.3 per cent urban and 37.5 per cent rural). UNICEF report, as cited in Oyitso & Olomukoro, "Promoting the Development of Women through Literacy Education in Nigeria, *Journal of Educational and Social Research*, (2014) 4(6), 343.

3 David Chazan in Paris and Gregory Walton and Rory Mulholland in Brussels: Brussels schools and metro ordered to close in wake of Paris attacks, 22 November 2015. < <http://www.telegraph.co.uk/news/worldnews/> > accessed 23 November 2015.

4 The two major instruments are: the United Nations Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49, and the African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

most of the articles incorporated into the Child's Rights Act, 2003;⁵ and the second is the African Charter on the Rights and Welfare of the Child, 1990, ratified in February 2003. The country is, therefore, bound by the provisions in both instruments.

Human rights, as inalienable rights, have undergone remarkable evolution after the adoption of the Universal Declaration on Human Rights (UDHR) in 1948.⁶ This evolution is described in terms of "generations" of rights. The political and civil rights are portrayed as first generation rights, while economic, social and cultural rights are regarded as second generation rights⁷ and collective-developmental human rights as the third generation of rights.⁸

The UDHR 1948, as an important source of human rights, is useful in analysing the socio-economic rights of children, and under this Declaration, the "United Nations has proclaimed that childhood is entitled to special care and assistance."⁹ The UDHR is of two legs: the first is the International Covenant on Civil and Political Rights (ICCPR), while the second is the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁰ both adopted in 1966. The ICESCR provides the primary international legal source of economic, social and cultural rights and article 2(3) of the ICESCR has obligated

5 U. C. Ejie Michael & O. B. Akinola. "Children's Rights and Participation in Schools: Exploring the Awareness Level and Views of Nigerian Primary School Children." *Ylködretim* Online 8.1 (2009), p. 177.

6 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217A (III) available at <http://www.refworld.org/docid/3ae6b3712c.html>. Accessed 8 June 2015. The UDHR is one of the most important sources of economic, social and cultural rights and has recognized these rights in Article 22, 23, 24, 25, 26, 27 of the Declaration.

7 A. C. Diala "Realising the Right to Adequate Housing in Nigeria" *Madonna University Law Journal*, vol. 1 no. 2,(2012) pp. 155-173, 159.

8 Third generation rights are the newest set of rights to be recognized by the international community. The African Charter provides the rights as follows: the right of all peoples to freely dispose of their wealth and natural resources (Article 21); the right to economic, social, and cultural development (Article 22); and the right to a generally satisfactory environment favourable to their development (Article 24) as expressly stated by Danwood Chirwa in his article "Toward Revitalizing Economic, Social, and Cultural Rights in Africa: Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria." *Hum. Rts. Br.*, 10, 14-36 at p. 15.

9 See the preamble to the UDHR 1948, para 5.

10 The ICESCR was adopted and opened for signature, ratification and accession by the United Nations (UN) General Assembly on 16 December 1966 and entered into force on 3 January 1976.

developing countries to determine to what extent they would guarantee socio-economic rights within the available limited resources to non-nationals. This is done in the expectation that the ICCPR will provide the legal source of civil and political rights, which is considered justiciable rights by countries.

Under the ICESCR, the idea of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights without any constraints.¹¹

As such, the socio-economic rights, as guaranteed in the ICESCR, obliges state parties to ensure the provisions of economic, social and cultural rights to every person in the member countries, most especially children. This is because children form the most vulnerable segment of the population. To guarantee their proper development and growth, therefore, they should enjoy all the basic socio-economic provisions. Thus, it is important for the state to ensure that the core minimum standard for development and survival of children are met by a way of first call.

The African Charter on Human and People's Rights (African Charter)¹² 1981 is another important regional instrument adopted with the intention to protect and promote human rights in the African continent. The African Charter incorporates both the economic, social and cultural rights as well as the civil and political rights.¹³ Hence, the enjoyment of one is based on the other. The African Charter equally imposes obligations on state parties to recognize and take reasonable legislative and other measures within the available resources toward progressive realization of the socio-economic rights.¹⁴ These include the right to health, education, housing as well as appropriate standard

11 See the preamble to the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR). Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27, para. 3.

12 The African Charter was adopted in 1981 in Gambia. See as cited by Ojo, Olusola and Sesay, Amadu, "The OAU and Human Rights Prospects for the 1980s and beyond", *Human Rights Quarterly*, Vol.8, No.1 (Feb., 1986), pp.89-103, at pp.94-96.

13 C.M. Danwood, "Toward Revitalizing Economic, Social, and Cultural Rights in Africa: Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria [2002] *Human Rights Br* 10 pp.14-36.

14 The African Charter 1981, art 1&2, see also the ICESCR 1966, art 11(1).

of living, social security, food/nutrition and access to water, etc.¹⁵

As a party to the ICESCR, Nigeria is under legal obligation, to respect, protect and take steps toward the full realization of the fundamental human rights of children.¹⁶ This paper examines how Nigeria can meet its obligations to children under the international law. It discusses further on how the Nigerian government can adequately guarantee the socio-economic rights of all children in the country as stipulated in article 2(3) without discrimination and overcome current legal barriers to the realization of these rights.

In analysing this discussion, the paper is divided into eight broad sections. Section 1 introduces the issue, section 2 explores the conceptual framework in article 2(3) of the Convention, and section 3 discusses the principle of progressive realisation. Section 4 unpacks the concept of core minimum obligation, section 5 analyses the minimum content of the socio-economic rights for children, while section 6 explores the applicability of article 2(3) to all children in Nigeria. Section 7 elaborates on the legal basis for the extension of socio-economic rights to all children and the potential legal barriers to the realization of the rights, while the last section concludes the paper by recommending practical ways to overcome the barriers.

2. CONCEPTUAL FRAMEWORK IN ARTICLE 2(3): NON-NATIONALS AND UNACCOMPANIED CHILDREN

All children are accorded international human right protection whether they are nationals of a particular country or not. *Non-Nationals*, according to the English dictionary, mean non-citizens or non-subjects of a country. *Unaccompanied children* are young ones who fall into one or the other in a broad range of categories: they are children separated from their parents, or orphans, children seeking asylum, children in trafficking, abandoned children, children with disabilities, or separated migrant children.¹⁷

15 The ICESCR 1966, art 11(1).

16 UNHR, Key concepts on ESCRs – What are the obligations of States on economic, social and cultural Rights <<http://www.ohchr.org/EN/Issues/ESCR/Pages/WhataretheobligationsofStatesonESCR.aspx>> accessed 23 November 2015.

17 UNICEF definition of unaccompanied children < www.unicef.org/graca/alone.htm> accessed on the 22nd April 2013.

Hence, accessibility of socio-economic provision should be towards all children in a country irrespective of their status or the conditions in which they find themselves.¹⁸ This is because children, in most cases, are incapable of determining where to be or where to grow up; it is therefore obligatory on state parties to accept all children in their country as equal to their nationals and avoid discrimination of any kind, as provided in article 23(1) ACRWC, 1990. The article thus provides:

States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

Article 2, the CRC likewise provides: “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

Therefore, all state members are to provide adequate socio-economic rights for all children in their countries given that children are vulnerable and, if abandoned, they are most likely to be killed, tortured, raped, robbed and recruited as child soldiers.¹⁹ Thus no child should be deprived of socio-economic their rights merely by virtue of their status as a non-national in the country. It, therefore, becomes imperative for all state parties to fulfil this obligation towards all children in their state.

18 The African Charter 1981, art 2.

19 Impact of armed conflict on children (UNICEF document) <<http://www.unicef.org/graca/alone.htm>> accessed on 22 April 2013.

3. ARTICLE 2 (PRINCIPLE OF PROGRESSIVE REALIZATION)

Article 2²⁰ of the ICESCR is of great importance in understanding the Covenant and describes the nature of the general legal obligations undertaken by states parties to the Covenant.²¹

In imposing obligation on state parties, Article 2(1) provides as follows:

Each state party to the present Covenant undertakes to take steps, individually or through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieve (sic) progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The Committee notes that the phrase “*to the maximum of its available resources*” was intended by the drafters of the Covenant to mean both the available limited resources existing within a state and those available from the international community through international cooperation and assistance.²²

Therefore, for a “*state party to be able to attribute its failure to meet at least its minimum core obligation to a lack of available resources it*

20 Article 2 of the ICESCR provides: “(1) Each State Party to the present Covenant undertakes to take steps, individually or through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieve (sic) progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. (2) The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status. 3) Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

21 Committee on the Economic, Social and Cultural Rights (hereafter CESCR), GC No 3, (1990) HR1/GEN/1 rev8.para.1

22 Adedokun Ogunfolu “Can Socioeconomic Rights Make the Nigerian State More Accountable?” (Third World Approaches to International Law Conference Capitalism and the Common Good, *TWAIL Working Paper* No. 1, 2011).

must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”²³

Aligning with the above obligation article 22 of the UDHR thus provides:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

As such it is expected that every member state will take step towards realizing the enjoyment of socio-economic rights. To “*take step*” in this context simply means, state parties must take step to act, while the full realization of the relevant rights may be achieved progressively.²⁴

While the Covenant mandates progressive realization of these rights, it also acknowledges the constraints or challenges developing countries may face in realizing these rights due to the limited available resources. However, the Covenant imposes various obligations that are of immediate effect on member states.²⁵ This is interpreted by the committee on economic, social and cultural rights (CESCR) as imposing minimum core obligations on state parties in providing minimum essential levels of each of the rights.²⁶ The next section discusses the core minimum obligation expected of every state party to take step to achieve progressively.

4. CONCEPT OF “CORE MINIMUM OBLIGATION”

Unfortunately, core minimum obligation was not defined in the ICESCR. However, the CESCR in its general comment 3, confirms that state parties have a “minimum core obligation” to ensure the satisfaction of

23 Para. 10, reproduced in Eide, Asbjørn; Krause, Catharina and Rosas, Allan, *Economic, Social and Cultural Rights*, second (ed) (Dordrecht: Martinus Nijhoff Publishers, 2001) 618-621, 620.

24 CESCR, GC No 3, (1990) HR1/GEN/1 rev 8. Para. 2.

25 Ibid. Para 1.

26 CESCR, GC No 3, para.10.

at the very least, minimum essential levels of each of the rights enunciated in the Covenant.²⁷ As such, where there is a lack of resources, state parties should strive to satisfy minimum core obligations such as housing, water, food, education, security, and health of its citizens. Therefore, any member country in which any significant number of individuals is deprived of essential foodstuffs, essential primary health care, basic shelter and housing, basic forms of education, is *prima facie* failing to discharge its core minimum obligations.²⁸ To this end, the Covenant must be read in such a way as to establish the minimum core obligation of all state parties, if not, it would be largely deprived of its *raison d'être* (reason for its existence). The *raison d'être*, is to establish clear obligations for states parties in respect of the full realization of the rights in question. Thus, it imposes an obligation on state parties to move as expeditiously and effectively as possible towards the realization of the essential obligations.²⁹ The direct application of this principle was laid in the popular case of the Social and Economic Rights & the Centre for Economic and Social Rights (SERAC) v Nigeria³⁰ where the African Commission found Nigeria to be in violation of the rights to housing and food through pollution.³¹ These were the rights to life, environment, disposal of wealth and natural resources as well as the implicit rights to food and shelter.³² In this case, the African Commission appeared to use the language of the “minimum core obligations” concept when defining the duties of the state implicit in the rights to food and shelter.³³ The judgement in this case is credited to addressing the enforcement of economic, social and cultural rights of the people.

27 Ibid.

28 Diala (no 7).

29 See CESCR GC, No 3, (1990) HR1/GEN/1 rev 8. Para. 9.

30 See (2001) AHRLR at 60.

31 It alleged that the Nigerian military leadership, the Nigerian National Petroleum Corporation (NNPC) in a joint venture with Shell Petroleum Development Corporation (SPDC) while carrying out oil drilling in the Niger Delta area of Nigeria had violated numerous provisions of the Banjul Charter.

32 CESCR GC, No 3 (1990) HR1/GEN/1 rev 8 (no 21) Para. 1-9.

33 It stated that “the minimum core of the right to food requires that the Nigerian government should not destroy or contaminate food sources”. It stated similarly that the minimum obligation embodied in the right to shelter obliged the Nigerian government “not to destroy the houses of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes.

Regrettably, however, these socio-economic rights are still acknowledged in Nigeria as the “fundamental objectives and directive principles of state policy.” Consequently, the rights are not enforceable. The implication is more adverse on children who need all these socio-economic resources for their proper growth and development.

5. MINIMUM CONTENT OF THE SOCIO-ECONOMIC RIGHTS OF CHILDREN

The child, according to the CRC, is portrayed as a subject of rights,³⁴ unfortunately, not all countries accord children or treat children as right holders. Accordingly, children’s socio-economic rights are often trampled upon. To this end, the Covenant obliges state parties to provide socio-economic rights for its citizens (especially children), though it explicitly recognizes that lack of resources may affect the full implementation of the rights, yet, taking steps to achieve these rights for children has become obligatory. Hence, for developing countries like Nigeria whose available economic resources and financial strength is limited, the CESCR has stated that the lack of availability of resources could constitute an acceptable ground for exonerating such state party from liability. Nevertheless, for failing to progressively protect the socio-economic rights of children, responsibility lies on the state to prove to have used the available resources optimally to meet the basic needs of their people as a matter of priority.³⁵

As part of the responsibility of the state to guarantee and take steps in realizing socio-economic rights of children, the state should make information available to all children in its country through education, public sensitization and other means to create awareness that children are right holders and can enforce their rights.

For example, sec. 13 of the Child’s Rights Act, 2003, provides for the child’s right to health and healthcare services and imposes the duty on all levels of government and relevant bodies responsible for the healthcare and welfare of a child to provide healthcare facilities to children. It further states that every child is entitled to enjoy the best attainable state of physical, mental and spiritual health. This information

34 M. Ensalaco & L. C. Majka, eds, 2005, *Children’s Human Rights: Progress and Challenges for Children Worldwide*, New York: Rowman & Littlefield Publishers.

35 CESCR GC No 3, (1990), para. 10.

is germane in accessing child's right to health and should be made available to all children in the country through education and public awareness.

6. ON THE APPLICABILITY OF ARTICLE 2(3) TO CHILDREN IN NIGERIA

Owing to the vulnerability and immaturity of children, socio-economic rights such as the right to health, education, social security, electricity, housing, food and water should be extended to all children in Nigeria as a matter of priority and without discrimination.

Article 2 of the CRC provides as follows:³⁶

States parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents or legal guardian's race, colour, sex, language, religion, political or other, national, ethnic or social origin, property, disability, birth or other status.

State parties in aligning themselves with the above provision of the CRC are expected to ensure that the socio-economic rights are extended to all children within their jurisdiction irrespective of any factor. The law prohibits discrimination in relation to economic, social and cultural rights.³⁷ Furthermore, though not legally binding, the CESCR's comment on nationality provides a normative guidance on the scope and content of the right of a child: thus "*all children within a state, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care.*"³⁸ Most importantly, the Convention expects all member states to consider first all children in their countries, in the utilization of the limited available resources of the country.³⁹

The Nigerian government is, therefore, mandated to commit itself to providing the minimum core content of the rights of a child, such as

36 The CRC 1989, art 2(1).

37 Ibid.

38 See GNC No2 on "General measures of Implementation of the Convention on the Rights of the Child" CRC/GC/3002/5, November 2003.

39 Ibid.

free education, no child marriage, free health care, proper feeding, clothing and shelter to all, both to nationals and non-nationals, in the country.

This is to the effect that inadequacy of available resources in a country is not a justification to deprive children of their socio-economic rights.⁴⁰ Thus, states should seek external assistance, if necessary, to ensure adequate welfare for all children in their domain.⁴¹ All children in their domain implies every child, including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking regardless of legal status and documentation.⁴²

A good example is the case between the Socio-Economic Rights and Accountability Project (SERAP) v Nigeria and Universal Basic Education Commission.⁴³ In this case, the Economic Commission of West African States (ECOWAS) Court of Justice found the Nigerian government to be in violation of the child's right to education as enshrined in article 17 of the African Charter on Human and Peoples' Rights, Act⁴⁴ section 15 of the Child's Rights Act, 2003 and section 2 of the 2004 Compulsory Free and Universal Basic Education Act.

The decision of the ECOWAS court is that the Nigerian government should make adequate arrangements for compulsory and free education of every child in Nigeria. Even though Nigeria stated in its argument that education is merely a prerogative of government policy and is under chapter II of the 1999 Constitution, by reason of which it is non-justiciable. The ECOWAS court dismissed the objection that education is merely a prerogative of government⁴⁵ and ordered the Nigerian government to make education available to all children in the country.

40 CESCR/ GC/No 3 /(1990).

41 Ibid.

42 See GC No 3(2004) Committee on the Elimination of all forms of Racial Discrimination on non-citizens.

43 ECW/CCJ/APP/12/7.

44 A protocol to the African Charter on Human and Peoples' Rights- Banjul Charter, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9 (Chapter 10 LFN 1990) (No2 of 1983).

45 ECOWAS Court orders Nigeria to provide free education for every child, Vanguard, Lagos, November 30, 2010, <http://www.vanguardngr.com/2010/11/ecowas-court-orders-nigeria-to-provide-free-education-for-every-child/>

A similar case was decided in South Africa, in the Government of the Republic of South Africa & Ors v Grootboom.⁴⁶ The Constitutional Court held that article 26⁴⁷ obliges the state to devise and implement a coherent, co-ordinated housing programme and that in failing to provide for those in most desperate need (the vulnerable and disadvantaged people which includes unaccompanied children) the government had failed to take reasonable measures to progressively realize the right to housing.

For this reason, it is expected and, indeed, becomes expedient that the Nigerian government in taking measures to progressively realize the children's socio-economic rights would see all children in Nigeria as right holders and thus commit itself to respect their rights irrespective of their nationality or situation and without any discrimination whatsoever.

7. LEGAL BASES FOR, AND BARRIERS TO, CHILDREN'S RIGHTS

7.1 Legal Basis for the Extension of Socio-Economic Rights to All Children

All international human rights instruments now appear to be moving in the direction of imposing an obligation of a "first call for children" in the area of socio-economic rights⁴⁸ due to the danger in neglecting the welfare of children. The ICESCR ratified by 158 countries⁴⁹ is a human rights instrument recognized and protected in International Bills and regional human rights documents. As such, state parties are obligated to recognize the rights, protect and take progressive actions in fulfilling them. Similarly, the UDHR has emphasized in article 1 that:

... all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour,

46 (2001) (1)SA 46 (CC).

47 The CSA 1996,s 26.

48 C.M Danwood, Child poverty and children's rights access to food and basic nutrition in South Africa: A contextual, jurisprudential and policy analysis. Community Law Centre; University of Western Cape (2009)12.

49 J Daci "Justiciability of Economic, Social and Cultural Rights. Academicus" International Scientific Journal, (9), 55-68,(2014).

sex, language, religion, political or other opinion, national or social origin, property, birth or other status” and “that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural, economic, political and social rights.⁵⁰

Other international instruments, such as the CRC, Convention on the Elimination of all forms of Racial Discrimination (CERD),⁵¹ Convention on the Rights of Persons with Disabilities (CRPD)⁵² and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁵³ equally recognize and protect many of the economic, social and cultural rights recognized in the ICESCR in relation to children and women. This is because children and women are considered most vulnerable and need adequate protection. In order to safeguard their protection, legal obligation has been laid on member states to put in place measures that will ensure the implementation of the socio-economic rights in order to protect children and women from exploitation and abuse.⁵⁴

However, most Constitutions do not recognize the direct obligations of states in relation to children’s socio-economic rights and, as a result, children are often not the direct beneficiaries of state policies. In fact, some countries do not accord children any right or treat them as right holders; which explains why children’s socio-economic rights are routinely trampled underfoot. This is a letdown and has contributed to exposing many children to abuse and exploitation in a bid to care for themselves and their underprivileged parents.⁵⁵ As such the impact of infringement of these rights on children could be more severe than that on adult and has a longer-term effect on the country. For example,

50 See Annex Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted 18 June, 2008, para 3 <<http://www.ohchr.org>> accessed 2 June 2015.

51 Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19.

52 Adopted by the United Nations General Assembly on 13 December 2006, and opened for signature on 30 March 2007.

53 Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1).

54 See also, CRC 1989, art 4.

55 Danwood (No. 48) 28.

the committee on CRC, in addressing the issue of violence, states that “research shows that children who have not experienced violence and who develop in a healthy manner are less likely to act violently, both in childhood and when they become adult.”⁵⁶ Where a country neglects to provide for the socio-economic rights of children in its jurisdiction, many of the children will pose serious problems to the region, and this could sometimes lead to such a child becoming violent, or exposed to malnutrition, abuse, exploitation, living in the street, prostitution, trafficking, lack of access to education, early marriage, health problems due to lack of safe drinking water and food, forced displacement or eviction, easy abduction (a case study of which is the abduction of the Chibok girls) or being used as child soldier. The list is endless.⁵⁷ It could also lead to violations of other human rights due to the indivisibility, universality and interdependence of human rights as provided for under the UDHR. Worse still, it could lead to loss of life. Recently, news had it that many young children in the Northern Nigeria were being used as suicide bombers by Boko Haram and as sex slaves due to state’s inability to protect the welfare of its young ones.⁵⁸ This violates the child’s human rights and contravenes the best interest theory of the child. Therefore, the Nigerian government needs to conscientiously incorporate the welfare of children as an integral part of their economic and social development plans, as provided for in article 4 of the CRC. By doing this, the Nigerian government would be fulfilling its international obligation towards protecting and promoting children’s socio-economic rights.

7.2 Legal Barriers to the Progressive Realization of the Rights of Children in Nigeria

Obviously, there are some legal barriers to the progressive realization of the right of the Nigerian child. This section will elaborate on some of these barriers and conclude with practical ways to overcome them.

56 See CRC/C/GC/13. Para. 14.

57 AB Munir “Child protection principles and applications” Child Abuse Review Vol 2 (1993), pp. 119.

58 See Magdalena Mis “Boko Haram uses children as human bombs” (2015) <<http://www.news24.com.ng/>> accessed 3 June 2015. See also article 22 of the ACRWC, 1990. This article obligates member state to put in place measures to prevent child from being recruited as child soldier (human bomb as the case maybe).

1. Non-justiciability of constitutional provisions as entrenched in chapter II of the CFRN, 1999: The non-justiciability of the chapter is an impediment to the full realization of child's rights as a human person and this appears as a clog to the implementation of the CRC in Nigeria. One wonders how children can enforce their right to health when the Constitution has declared the right unenforceable. Seemingly, lack of enforcement of socio-economic rights, being under chapter II of the 1999 Constitution, has led to the suffering of many children in Nigeria.
2. Lack of proper representations for youths and children in government: One of the cardinal principles in the CRC is the right for the respect of views of the child.⁵⁹ This is to encourage children's participatory rights in government so as to represent their interest well. This is intended by the drafters of the CRC to protect children's rights by setting standards in health care, education, and legal, civil and social services.⁶⁰ This is lacking in the Nigerian governance and is a barrier to the actualization of the socio-economic rights of children in the country.
3. Lack of resources: Even though this can be considered an impediment to the realization of the second leg of the UDHR as enshrined in chapter II of the CFRN, Nigeria being a developing country. However, in the actual fact, Nigeria has no reason to be poor given its vast mineral resources. In addition to its great endowment in oil resources, its solid minerals and some other resources yet to be explored. In a report from Essential Action and Global Exchange, it is stated that "Nigeria is one of the best endowed [countries] in terms of natural resources, yet one of the poorest countries in the world."⁶¹ Unfortunately, corruption, which is a cankerworm, is eating deep into the fabric of the society and has contributed to the inability of the country to meet the demands of its people.

59 About the Convention on the Rights of the Child < http://www.unicef.org/rightsite/237_202.htm > accessed 23 November, 2015.

60 Ibid.

61 Energy, Sustainable. "Oil For Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta." Report from Essential Action and Global Exchange 25, p. 4.

4. Non-Domestication of the Child's Right Act in all the states of the federation: The Child's Rights Act is an important document safeguarding the best interest of the child. It incorporates most provisions of the CRC to harmonize the rights of the child. As at November 2014, only 24 out of the 36 states in the federation have domesticated the Act into their state laws, leaving about 12 states, majorly the Northern states.⁶² Meanwhile, only two States (Lagos and Akwa Ibom) are known to be implementing the laws. This has prevented the enforcement of the provisions of the Act in all the states of the federation, thereby hindering the full realization of the rights of all children in the country.
5. Low level awareness and Illiteracy: Awareness is important to protecting and promoting a child's rights. *Nemo dat quod non habet*, i.e., you cannot give what you do not have. Many people are not aware of these fundamental rights; hence continue to suffer in silence. Sometimes, this is caused by low level awareness and illiteracy. Children need to be educated on their rights as right holders to enforce the rights against the state and abusers.
6. Lack of periodic progress report on the State level of realization of socio-economic rights and follow up: It is one of the mandates of the CRC committee to member states that every state party submit progress report on the level of realization of child's rights in their country periodically. The last report made to the CRC committee on progressive realization of child's right in Nigeria was made in 2010⁶³ and Nigeria has been found to be lacking in the area of follow up on the implementation of the CRC provisions on the Nigerian Child. This is also a barrier.

62 Nnenna Ibeh, Only two Nigerian states implementing Child Rights Act – Minster < <http://www.premiumtimesng.com/news/top-news/171909-two-nigerian-states-implementing-child-rights-act-minster.html> > accessed 23 November 2015. See also UNICEF NIGERIA – FACT SHEET Child rights legislation in Nigeria < http://www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf > accessed 23 November, 2015.

63 A reported submitted by the by State Parties under article 44 of the CRC: Distr. GENERAL CRC/C/NGA/CO/3-4, 11 June 2010.

8. RECOMMENDATIONS AND CONCLUSION

This section examines practical and logistical steps that can help to overcome the above listed barriers toward progressive realization of the socio-economic rights of all children in the Nigeria.

The non-realization of children's rights has contributed immensely to the abuse and suffering of children in Nigeria. Millions of boys and girls have been physically and sexually abused, or economically exploited by either family members or caregivers due to their vulnerability.⁶⁴ Therefore, these rights are particularly important to efforts aimed at combating poverty and promoting a child's development and growth.⁶⁵

Regarding the enforcement of economic, social and cultural rights in the Covenant, the Committee noted that the Covenant does not specify particular means of implementation but that the government should choose an adequate measure in fulfilling the obligation.⁶⁶ A state party is, therefore, expected to ensure the widest possible enjoyment of the relevant rights under the present circumstances.⁶⁷ The Committee also underlines the fact that even in times of severe resource constraints, whether caused by economic recession or by other factors, the vulnerable members of the society (most especially children) should be protected while the country adopts a relatively low-cost targeted programme to address the issue.⁶⁸

Failure to protect the socio-economic rights of children in Nigeria can have serious consequences as already mentioned. It could be said, therefore, that the importance of realizing the socio-economic rights of children in Nigeria cannot be overstated. Consequently, absences of constitutional litigation on children's socio-economic rights, as stated by Danwood Chirwa, in his article,⁶⁹ in general underscore the vulnerability of children and prevent the full enjoyment of these rights. This is to say that the role of the court in the enforcement of children's socio-economic rights is very germane to protecting these rights. The

64 Ibid.

65 MC Danwood, *Towards binding economic, social & cultural rights; Obligations of non-state actors in international and domestic law: A critical survey of emerging norms* (2005) 35.

66 CESCR, GC no 8, 1998, HRI/GEN/1/ pg. 57.

67 CESCR GC no 3, (1990) para.11.

68 Ibid (emphasis mine).

69 Danwood (n 65).

following practical steps are suggested to overcome the barriers and challenges to the implementation of the Convention.

First, Chapter 4 of 1999 Constitution, which provides for fundamental rights, should be amended to include socio-economic rights of children to make it justiciable, as it is provided for in section 28 of the Bill of Rights under the South African Constitution. For instance, in the words of Chief Obafemi Awolowo, “the rights to education and health are among the fundamental rights which each family regarded – and properly so – as inalienable.”⁷⁰ Awolowo further believed that the provision of healthcare and education are key requirements for a developing country to secure economic freedom and become prosperous.⁷¹ So, these rights should not be subject to conditions before their enforcement. They should be regarded as fundamental and, therefore, provided for under chapter IV of the 1999 Constitution. Otherwise, the non-justiciability of the constitutional provisions toward socio-economic rights of all citizens of Nigeria in chapter II will continue to stand as an impediment to the realization of children’s rights.

Similarly, the Nigerian government should ensure effective and efficient legislation that promotes proper representation of youths and children in governance as well as a reliable, independent judicial system that can provide remedies for violations or infringements of these rights. This should be in addition to other measures that can be considered appropriate, such as monitoring measures, administrative, financial, social and educational resources toward the realization of the socio-economic rights of all children in the country.

Regarding the non-justiciability of chapter II of the 1999 Constitution, which deals with the Fundamental Objectives and Directive Principles of State Policy, even though it is non-justiciable, it would be seen as a failure of duty and responsibility on the part of the state party if acts in clear disregard of the rights therein. Therefore, efforts should be made by the lawmakers to make the directive principles or some of them justiciable in order to be enforceable like the other leg of UDHR (the ICCPR).⁷² For emphasis, the International

70 Obafemi Awolowo, *The People’s Republic* (Ibadan: Oxford University Press, 1968), at p. 316.

71 Obafemi Awolowo, *The Path to Economic Freedom in Developing Countries*, a lecture delivered at the University of Lagos, Lagos, Nigeria on 15 March 1968, at 9.

72 Attorney General of Ondo State v Attorney General of the Federation and Attorneys-General of 35 States, (2002), 9 NWLR (pt. 772), 222, at 382.

Commission of Jurists (ICJ) has consistently recognized and advocated that economic, social and cultural rights (ESC rights) should be taken as seriously as civil and political rights.⁷³

Furthermore, Nigerian children should be recognized as right holders and capable of enforcing those rights through child's participation, freedom of expression of their views, right to child autonomy and interdependence through proper education and increasing the level of awareness of the importance of children knowing their rights. This could be done by introducing Child's Rights Education into the school curriculum. Furthermore, the government should fund NGOs that advocate child's education so as to increase the level of awareness and literacy on child's rights.

Lastly, the Nigerian government should learn a lesson from South Africa's progress towards the realization of children's socio-economic rights. An important strength of South African government in this regard is the regular submission of a progress report and this is in accordance with article 4 of the CRC. For instance, South Africa ratified the CRC on 16 June 1995, submitted the first report to the CRC committee on 4 December 1997, and subsequently submitted periodic reports in 2000, 2005, 2010 and the last one in 2014, respectively. This, to me, is a way forward and would enable the committee on the CRC to be able to track progress made in Nigeria in relation to children's socio-economic rights and areas in which Nigerian children may need international assistance.

73 Courts and the Legal Enforcement of Economic, Social and Cultural Rights; Comparative experiences of justiciability. This report was researched and written by Christian Courtis. International Commission of Jurists, 2008.