

RETHINKING THE NON-JUSTICIABILITY OF ECONOMIC, SOCIAL AND THE RIGHTS AND THE RIGHTS TO DIGNIFIED CONDITIONS OF LIVING IN NIGERIA

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Abstract

This study confronts the argument that economic, social, and cultural rights (ESCRs) lack the criteria for justiciability. In Nigeria, the popular judicial opinion is that Chapter 6(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN, 1999) creates a bar to the enforcement of these rights. Consequent upon this is judicial inertia to ESCRs, and of course, a lack of accountability for breaches. These result in impunities and human rights enigma. My research questions the rationale behind the prioritizing of civil and political rights (CPRs) over ESCRs. What use is the right to life (RTL) in the absence of the necessary conditions of dignified living such as food, shelter, access to good health, environmental safety, and sanitation? Section 46 CFRN, 1999 legitimizes the enforcement of CPRs in Chapter IV, whereas Section 6(6)(c) delegitimizes Chapter II. Unfortunately, the Nigerian courts have largely pushed the boundaries, regardless of Nigeria's treaty obligations. This research seeks a resolution in international law by reasserting the inextricable ties between ESCRs and the CPRs through an expansionist approach. Supported by international best practices, it reaffirms the justiciability of ESCRs separately and within the RTL. So, the study prescribes functional approaches to interpreting ESCRs to enhance accountability. Hence, maintaining a sustainable human right is untenable without treating the generations of human rights equally and ensuring that the survivors of human rights violations get justice. Therefore, this research seeks to reinforce judicial activism and sustain the ESCRs regime, where judicial precedents could viably provoke policy-making and human rights reforms as seen in India and South Africa.

KEYWORDS: NON-JUSTICIABILITY, HUMAN RIGHTS ECONOMIC RIGHTS, SOCIAL RIGHTS AND RIGHTS TO DIGNIFIED CONDITIONS OF LIVING, NIGERIA

1.0 Introduction

Debates on whether or not international human rights are mutually inclusive or separated have dominated the international human rights law (IHRL) discourse for several decades.¹ Proponents of separationism argue that social and cultural rights (ESCRs) lack enforcement criteria, as opposed to civil and political rights (CPRs), which are considered to be fundamentally justiciable.² Pro-indivisibles assert that all human rights are interdependent and inseparable, and intrinsically reinforce each other.³ In several years, judicial opinions on these have seemingly prevaricated. This study leans on the side of indivisibility of rights while examining the detrimental effects of de-prioritizing ESCRs, especially from the Nigerian context. Thus, it confronts the theory of non-justiciability of ESCRs as an aberration in the jurisprudence of international human rights. ESCRs are inextricably linked to CPRs as both mutually reinforce each other to sustain a quality and dignified life.

Commonsensibly, the interrelatedness of rights implies that a breach of one right would lead to a consequential infringement of the other. This logic was emphasized in a landmark decision by the African Commission in *Social and Economic Rights Action Center (SERAC) and the Center*

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¹ See, e.g. Danwood M. Chirwa, "Toward Revitalizing Economic, Social, and Cultural Rights in Africa," 10 *HRB* (2002): 14-17, 25; J. Nnamdi Aduba, *The Right to Life Under Nigerian Constitution: The Law, The Courts and Reality* (2011) at 1-33; Stanley Ibe, "Beyond Justiciability: Realising the Promise of Socio-Economic Rights in Nigeria," (2007) 7 *AFHRLJ*, 225-248.

² Ellen Wiles, "Aspirational Principles or Enforceable Rights? The Future for Socio-Economic Rights in National Law," (2006) 22 *AM. U. INT'L REV.*, 35.

³ *Id.*

for *Economic and Social Rights (CESR) v. Nigeria (SERAC case)*.⁴ Here, the African Commission held Nigeria and the Shell Petroleum company accountable for a breach of the rights of the Ogoni people. These include the rights to environment safety, RTL and right to satisfactory environment for development.⁵ Four years after *SERAC*, a Federal High Court in Benin, Nigeria handed in a similar decision in *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited (Shell & Nigeria National Petroleum Corporation (NNPC))*.⁶ Remarkably influenced by *SERAC*, the latter altered a traditional schism that Chapter II of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) is incapable of judicial attention pursuant to Section 6(6)(c).⁷ Section 13 CFRN created a duty on “all organs of government, and of all authorities and persons to exercise legislative, executive or judicial powers” to ensure that ESCRs are enforced.⁸ But prior to *Gbemre*, the judicial attitude towards the adjudication of ESCRs in Nigeria has been lethargic. For example, in *Attorney-General, Ondo State v Attorney-General, Federal Republic of Nigeria*,⁹ the Federal High Court, Ondo held that the Nigerian courts cannot enforce any of the provisions of Chapter II until the National Assembly has enacted specific laws for their enforcement.¹⁰ The above decision drew from the precedent in *Okogie (Trustees of Roman Catholic Schools) and other v Attorney General, Lagos State*.¹¹ In several other cases, the Nigerian courts rejected claims by plaintiffs to enforce their ESCRs within their rights to life and dignity.¹² Despite the progressive precedent of the African Charter on Human and Peoples’ Rights in ESCRs, the Nigerian courts have failed to recognize the country’s obligations to good faith observation of treaty - *pacta sunt servanda*,¹³ instead have asserted constitutional superiority to legitimize their nonjusticiable claims.¹⁴ Because of these, ESCRs face serious legitimacy test in Nigeria amidst persistent threats resulting from a colossal breakdown of the apparatus and essential life-wire for sustainable dignified living.

Basically, ESCRs comprise the rights to the necessary conditions of living such as food, shelter, health, sanitation, a healthy environment, work, and education.¹⁵ To make these rights non-justiciable means that a victim of ESCRs violations would not receive judicial redress even at an imminent threat of deprivation life or livable necessities. Yet in a strict sense, the different aspects of CPRs like the right to vote and freedom of speech would be meaningless without access to quality

⁴ *Social and Economic Rights Action Centre (SERAC) & Another v. Nigeria* 2001 60 A044/1 (ACHPR); See: Review of the decision, available at: <http://www.communitylawcentre.org.za/ser/casereviews/serac.php>. Accessed: 3 January, 2018.

⁵ *SERAC, Op Cite* 4.

⁶ s. no.FHC/B/CS/53/05 FHC Benin AHRLR 151(2005).

⁷ Section 6(6)(c) states inter alia that “[T]he judicial powers vested in accordance with the foregoing provisions of the section...shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set forth in Chapter II of this Constitution.”

⁸ CFRN 1999, Section 13 at Chap. II.

⁹ (2002) 9 SC. Monthly 1 [Ondo State].

¹⁰ *Id.*

¹¹ (1981) 2 NCLR 337 [The crux of the matter on the above school was right to education and authority of private institution to own and run educational programmes in Nigeria. The appellant challenged the Lagos State Government’s decision published 26th March 1980 to abolish private owned schools in Lagos. Relying on the strength of Chapter II, it the authority invoked the Federal Court of Appeal Lagos to declare its decision against private owned schools as unconstitutional. The main issue for determination was whether the court can exercise jurisdiction over matters derivative principles to enforce ESCR].

¹² *General, Ondo State v Attorney-General, Federal Republic of Nigeria* (2002) 9 SC. Monthly 1 [Ondo State]; *Oronto Douglas v Shell Petroleum Development Company Limited* (1999) 2 NWLR Pt. 591; *Adesanya v President of Nigeria* (1981) All NLR 1 at 39.

¹³ United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, UNTS 1155, p. 331., art. 26 and art. 27.

¹⁴ *Abacha v. Fawehinmi*, 2000 6 NWLR Pt.2

¹⁵ Constitution of the Federal Republic of Nigeria (CFRN) [Nigeria], Act No. 24, 5 May 1999, Chapter II; UNGA, *International Covenant on Economic Social and Cultural Rights (ICESCR)*, 16 December 1966, UNTS 993, p. 3.

education. Likewise, the rights to dignified conditions of living like food, shelter, a healthy environment, and health care are tied to the RTL. Therefore, the danger of de-prioritizing ESCRs is simply to create a fast track for human rights impunities. Of course, such a system imperils the RTL. Unfortunately, this is the reality with the Nigerian situation, as subsequent analysis would underscore.

SERAC reaffirmed the justiciability of ESCRs by stressing the intersectional ties of ESCRs with the RTL.¹⁶ Likewise, the Inter-American Convention of Human Rights recognized that the right to dignified life presupposes the rights to live and be preserved from preventable death. These include the rights to a healthy environment, nutritional life, medical rights, security needs and personal dignity.¹⁷ Lessons from the above progressive jurisprudences give cause to question the validity of Section 6(6)(c) and to reassert the provisions of Section 13 in the light of international best practice. Consistent with contemporary IHRL, ESCRs are reviewed here by expansion as significant aspects of the RTL, hence not isolated from CPRs. The approach gives primacy to complaint procedures for breaches and reaffirms the justiciability of ESCRs. By seeking a resolution between Sections 6(6)(c) and 13, the study prescribes functional approaches to judicial activism and transformative reviews. Applied to the Nigerian context, lessons from international best practices in countries like India, South Africa and regional frameworks are referenced to demonstrate how innovative judicial activism could translate to policymaking to enhance the protection of ESCRs.

The discussion in this study is grouped into four parts. The first part introduces the thesis. Part two explores the evolution of human rights and the development of ESCRs. Part three examines successful precedents on the enforcement of ESCRs at regional and state levels. The analysis reaffirms the justiciability of ESCRs and its interdependence with CPRs, as well as RTL. Part four contrasts findings with the Nigerian situation and the overall effects of the non-justiciability of the ESCRs. The analysis acknowledges some developments in Nigeria's human rights system in 2009 and the current deteriorating human rights situation. Against this backdrop, the study makes recommendations for reconsidering ESCRs within the framework of the RTL, following the expansionist's approach.

2.0 Regional and Domestic Implementation ESCRs – the African Charter and Others

The African Charter on Human and Peoples' Rights is widely reputed to be the first regional instrument to protect the three generations of human rights—namely CPRs, ESCRs and group or collective rights all in a single instrument, without distinction.¹⁸ Article 2 of the African Charter explicitly guarantee access to every right it created.¹⁹ Among these rights are the right to the RTL;²⁰ the respect of human dignity;²¹ the right to security;²² the right to enjoy the best attainable state of physical and mental health;²³ the right to work under equitable and satisfactory condition,²⁴ the

¹⁶ *SERAC*, *supra* note 4.

¹⁷ See, American Convention on Human Rights, art. 27(2), Nov. 22, 1969, entered into force July 18, 1978, 1144 UNTS 123 [hereinafter American Convention]; *Sawhoyamaya Indigenous Community Case (Paraguay)*, Inter-Am. Ct. H.R. (ser. C) No. 146 (March 29, 2006).

¹⁸ See, e.g. Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter") (adopted 27 June 1981, entered into force 1982), 58 CAB/LEG/67/3 re. 5, 21 I.L.M. 58; Rapporteur's Report on the Draft ACHPR, OAU Doc CAB/LEG/67/Draft Rapt. (II) Rev.4, para. 13; Viljoen, F., *International Human Rights Law in Africa*, OUP, Oxford, 2007, p. 238; Manisuli Ssenyonjo, "Analysing the Economic, Social and Cultural Rights Jurisprudence of the African Commission: 30 Years Since the Adoption of the African Charter," 29 NQHR (2001) 358–397.

¹⁹ African Charter, *Op Cite* 16 at art. 2.

²⁰ *Ibid.* at art. 4.

²¹ *Ibid.* at art. 5.

²² *Ibid.* at art. 6.

²³ *Ibid.* at art. 16.

²⁴ *Ibid.* at art. 15

right to health;²⁵ right to education;²⁶ and the right to social, family and cultural development.²⁷ Whereas these are considered to be individually protected rights, the African Charter protects group-based rights under Articles 19-24, as well as the rights to self-determination, free disposal of wealth, economic and natural resources. The African Charter, can therefore, be described as a paradigm of integrative human rights for recognizing and enforcing the principle of inseparability, indivisibility, and interdependence of rights. This is evident in its growing jurisprudence under the Charter Commission.²⁸

In *SERAC*,²⁹ for example, the Charter affirms the connectivity of basic needs of life such as the rights to food, housing, and sanitary or safe environment with the RTL.³⁰ The Charter Commission remarkably recognized the right to safe and satisfactory environment (Article 17)³¹ to be integral with the RTL. Reaffirming the justiciability of ESCRs, the Charter Commission held the military government of Nigeria and NNPC liable for the violation of the rights and freedom of the Ogoni people.³² These include the RTL.³³ right to a “general satisfactory environment favourable to their development,”³⁴ and the right of peoples to freely dispose of their wealth and natural resources.³⁵ The elements of the breaches were linked to the actions and negligence of the NNPC working in consortium with Shell Petroleum Development Corporation. This was phenomenal decision that asserted the Charter’s principle of interdependence, inseparability, and indivisibility, as well as the enforceability of these rights, as opposed to the Nigerian schism of non-justiciability of ESCRs. Prior to *SERAC*, the popular opinion was that ESCRs lacked effective monitoring mechanisms and are unlikely to compel obligation for accountability.³⁶ *SERAC* reversed the assumption that ESCRs are subject to programmatic realization, hence not justiciable.

Likewise, Inter-American Convention of Human Rights (IACHRs)³⁷ recognized the interdependence of the two generations of rights. Article 27(2) demonstrates that the conditions of dignified living, that is the necessities of life are essential aspects of the RTL.³⁸ In fact, the RTL is defined to include the rights to live a dignified life, *digna vida*.³⁹ IACHRs impose certain obligations on State Parties to the Convention to create “minimum living conditions that are compatible with

²⁵ *Ibid.* at art. 16

²⁶ *Ibid.* at art. 17.

²⁷ *Ibid.* at art. 22; (Articles 17(2) and (3), 18(1) and (2) and 61).

²⁸ 'June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, reprinted in 21 ILM 58 (1982) (entered into force Oct. 21, 1986). Articles 46 through 59 of the African Charter described the Commission's communication procedure.

²⁹ *Social and Economic Rights Action Centre (SERAC) & Another v. Nigeria* 2001 60 A044/1 (ACHPR).

³⁰ See, *SERAC*, *supra* note 4.

³¹ Article 17 guarantees the right to safe and healthy environments.

³² *Ibid.* at art. 2.

³³ *Ibid.* at art. 4.

³⁴ *Ibid.* at art. 24.

³⁵ *Ibid.* at art. 21.

³⁶ The claim is reinforced by the language of the ICESCR, which gives considerable discretion to states for progressive realization of ESCRs depending on the availability of resources, except for the right to free and compulsory primary education and the principle of non-discrimination. See, e.g., J. Cottrell & Y. Ghai, “The role of the courts in implementing economic, social and cultural rights,” (eds. Y Ghai & J Cottrell) *Economic, Social and Cultural Rights in Practice – The Role of Judges In Implementing Economic, Social And Cultural Rights* (2004) 61.

³⁷ See, American Convention (IACHRs), *supra* note.

³⁸ *Ibid.* at art. 27(2),

³⁹ Implemented in *Indigenous Community Yakye Axa Case (Paraguay)*, *Inter-Am. Ct. H.R.* (ser.C) No. 125 at 162-4 (17 June 2005) [The court held Paraguay liable for violating the rights of two indigenous communities by their actions in subjecting the communities to live in deplorable state for several years while waiting for property title and restitution of their ancestral land.].

the dignity of the human persons” or be liable to violation of RTL.⁴⁰ The standard is consistent with contemporary practice in international law. For example, in *Parmanand Katara v. Union of India*,⁴¹ the Supreme Court of India recognized that the right to livable conditions to be imperative to the RTL. It held that the “preservation of life is one of most important because if one’s life is lost, the *status quo ante* cannot be restored as resurrection is beyond the capacity of man.”⁴² A similar opinion was held in another decision by the Supreme Court of India in *Peoples Union for Civil Liberties v. Union of India*, holding that the right to food and nutritional health to be central to the RTL.⁴³ With time, the Indian jurisprudence expanded the scope of ESCRs beyond food and health to include the right to educational enlightenment and a conducive learning environment. It is imperative to examine how the principle of dignified life in the context of ESCRs and the nonjusticiable posture.

3.0 Jurisprudence of ESCRs in Nigeria and Non-Justiciability Claims

The term justiciability refers to an exercise of judicial authority in a case, with the view to arrive at judgement, and make a set of rules, norms, principles to resolve or clarify conflicts. It includes making supplement interpretative laws where a lacuna exists,⁴⁴ as seen in the Indian *Miss Mohini Jain v. State of Karnataka & Others*.⁴⁵ In *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*, the Supreme Court of Nova Scotia (Canada) illustrated the meaning of the exercise of judicial authority “delineating the scope of judicial intervention in social, political and economic life.”⁴⁶ If a matter is held not to be suitable for judicial determination, it becomes non-justiciable. In many decisions relating to Chapter II of the 1999 Constitution, the term – non-justiciability has been applied to oust the jurisdiction of courts to entertain cases relating to ESCRs. In *Okogie*, for example, the Lagos State High Court interpreted the application to enforce the rights to education (RTE) and management of private schools as non-stater under Section 6(6)(c).⁴⁷ Obviously, the court failed to identify the relationships between Chapter II and Chapter IV. Viewed in the light of international jurisprudence, *Okogie* deviates from the principle of interdependence of rights and the justiciability of the RTE.⁴⁸ Instead, it pushes binaries with Sections 6(6)(c) and 13 to justify its decisions on the non-justiciability of ESCRs.

⁴⁰ Jo M. Pasqualucci, “The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System,” 31 HASTINGS INT’L & COMP. L. REV. 2 (2008) [stating that [T]he Spanish term *vida digna* has been translated as “dignified life” or “dignified existence.” This article generally uses either the Spanish term or the translation “dignified life” which is in accordance with the terminology of other international bodies.]

⁴¹ 1989 AIR 2039, 1989 SCR (3) 997.

⁴² *Ibid* at 997.

⁴³ *Peoples Union for Civil Liberties v. Union of India*. The Supreme Court of India recognized the inextricable link between right to food (ESCR) and right to life (CPR).

⁴⁴ *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*

⁴⁵ AIR 1858 (1992) [the Indian court held that the right to education is embroiled in the RTL and personal liberty because education is paramount to life and overall development of an individual.]

⁴⁶ *Cape Breton (Regional Municipality, Op Cite*.

⁴⁷ Section 6(6)(c) precludes the judiciary from extending authority “to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution,” except as otherwise provided by this Constitution.

⁴⁸ *Miss Mohini Jain*, supra note 78; *SERAP*, supra note 66; *Kelvin Mgwanga Gumne et al*, supra note 62.

Nonetheless, Nigeria signed and ratified the African Charter. Article 17(1) of the African Charter on providing equal rights to quality and purposeful education⁴⁹ Yet, in *Abacha v. Fawehinmi*,⁵⁰ the Supreme Court asserted the superiority of the Nigerian Constitution over its treaty obligations referring to African Charter Cap 10⁵¹ as a statute within this jurisdiction (not superior to the Constitution).⁵² This decision is questionable when considered in the light of Article 27 of the Articles 26⁵³ and 27, which precludes a Party from “invoking the provisions of internal law for its failure to perform a treaty.”⁵⁴ Indisputably, Nigeria is bound to its treaty obligations on the enforcement of ESCRs regardless of the limitations of Section 6(6)(c). On the other hand, lessons the *SERAC* and the Indian *Mohini* have shown that ESCRs can be enforced through an expansionist approach. However, such interpretation requires judicial creativity, that is, interpreting both the letters and the spirit law to link judicial actions with reformation.

4.0 The Rights to Health (RTH) and the Conditions of Life for Prisoners

International law recognized the RTH as paramount to human life.⁵⁵ In its several decisions, the African Commission found the RTH to be integral with the RTL, thus classifying this CPRs as an entitlement of every person.⁵⁶ In *International Pen & Others v. Nigeria*,⁵⁷ the African Charter held Nigeria accountable for violating Mr. Ken Saro Wiwa’s right to health by denying him the required access to medical care while in detention. A similar opinion was upheld in *Malawi African Association and Others vs. Mauritania*.⁵⁸ Here the Commission held the government accountable for a breach of the “black Mauritians” rights to health, life, personal dignity and property through enslavement as they were “routinely evicted or displaced from their lands, which were confiscated by the government along with their livestock.”⁵⁹ Likewise, in domestic jurisdiction like India and South Africa, the right to health has attained classic recognition within RTL.⁶⁰ The decision reflected the opinion of the Inter-American Court in *Yakye Axa and Sawhoyamaya v. Paraguay*,⁶¹ which held that the violation of peoples’ rights to dignified conditions of lives through subjection to deplorable conditions of detentions amounts to a breach of their rights to life. Paraguay was held liable for having violated the rights of two indigenous communities, subjected to living in deplorable existence for years while awaiting title and restitution of their ancestral land.⁶² The victims include indigenous peoples of the communities, children, individuals kept in detention and affected persons who lived on roadside to the entrances to the land they claimed without access to livable necessities like good water, adequate food, healthy and safe environment. In emphasizing the inextricable ties of the RTL with ESCRs - *vida digna*, the court stated:

⁴⁹ Article 17(1) of the African Charter guarantees the right to education as a justiciable available to everyone without discrimination; Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interfrancophone des Droits de l’Homme, Les Témoins de Jehovah vs Zaire; *Kelvin Mgwanga Gumbe et al*, *supra* note ... at,

⁵⁰ 2000 6 NWLR Pt. pg. 2

⁵¹ Domesticated under African Charter Cap 10.

⁵² *Abacha v Fawehinmi* (1996) 9 NWLR Part 475 710.

⁵³ VCLT art. 26 [every treaty is binding on parties and must be performed].

⁵⁴ VCLT, art. 27

⁵⁵ UDHR, Article 25(1); ICESCR, art. 12, African Charter, art. 16(1).

⁵⁶ African Charter, art. 4; ICCPR, *supra* note 91 art. 6; 1999 Constitution FRN, Sec. 33(1), *Pen v. Nigeria; Mauritania ...*

⁵⁷ Comm. N 137/94 31 Oct. 1998 (AommHPR).

⁵⁸ [2000] Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98.

⁵⁹ *Id.*

⁶⁰ See, e.g. *Krishnan J.P. v State of Andhra Pradesh & Ors*, SCC (1) 645 (1993); *Avinash Mehrotra v Union of India & Others*, Writ Petition (Civil) No. 483 of 2004, 6 SCC 398 (2009) [emphasizing the RTL and living conditions].

⁶¹ *Sawhoyamaya Indigenous Community Case (Paraguay)*, Inter-Am. Ct. H.R. (ser. C) No. 146 (March 29, 2006).

⁶² *Id* at 73.61- 73.72; *Yakye Axa*, *supra* note 74, at 50; Pasqualucci, *supra* note 31 at 2.

The right to life is restored to its original status as an opportunity to choose our destiny and develop our potential. It is more than just a right to subsist, but is rather a right to self-development, which requires appropriate conditions. In such a framework, a single right with a double dimension is set, like the two-faced god Janus: one side, with a first-generation legal concept of the right to life; the other side, with the concept of a requirement to provide conditions for a feasible and full existence.⁶³

Following this reasoning the court found Paraguay liable for having violated the rights of the indigenous communities by subjecting to live in a deplorable existence for years while awaiting title and restitution of their ancestral land.⁶⁴ The victims include indigenous peoples of the communities, children, individuals who were kept in detention and were forced lived on the roadside to the entrances to the land they claimed without access to livable necessities like good water, adequate food, healthy and safe environment. The decision resonates with the African Charter's principle of inseparability of rights and inviolability of the rights of life and human dignity.

Compared with the Nigerian scenario, although Nigeria has one of the worst prison conditions that constantly pose a threat to the lives of inmates. Yet, it is unlikely that cases *Yakye Axa* and *Sawhoyamaxa*⁶⁵ would receive judicial attention in Nigeria as seen under the Inter-American Court. Hundreds of Nigerians die each year in prison because of poor health care, depression, and emotional trauma caused by prolonged incarceration, unsafe/unhealthy prison environment, abject deprivations and hardships.⁶⁶ According to the Federal Ministry of Women Affairs and Social Development, Abuja, the statistics of prisoners increase year with backlogs of cases causing over-congestions.⁶⁷ From 2013 to 2016, it was estimated that a total of 291,242 male inmates and 5,687 females admitted into the Nigerian prisons compared to 38,328 data in 2005 to 40,261 in 2006.⁶⁸ Consequently, the prisons are forced to hold about 200-300% beyond their capacity,⁶⁹ with more than 64% of Nigerian prisoners yet to be convicted of crimes or awaiting trial.⁷⁰ As the Nigerian economy continues to deteriorate, feeding and adequate nutrition, to say the least of hygiene of inmates become practically impossible. Congestion, unsanitary environment, poorly ventilated rooms, inadequate nutrition, and lack of adequate health care are common challenges facing inmates in the Nigerian prisons.⁷¹ Unfortunately, women, especially pregnant and nursing mothers in prison, are usually the most vulnerable victims of unhealthy prison environments. An interview with an inmate in the Kaduna Prison showed that about 18 female inmates are put in two cells and are made to sleep on iron beds stacked one atop another, some

⁶³ *Sawhoyamaxa Indigenous Community Case (Paraguay)*, Inter-Am. Ct. H.R. (ser.C) No. 146, (Judge Garcia Ramirez, concurring judgement) (March 29, 2006).

⁶⁴ *Id* at 73.61- 73.72; *Yakye Axa*, *supra* note;

Jo M. Pascqualucci, "The Right to a Dignified Life (Viva Digna): The Integration of Economic and Social Rights with Civil Political Rights in the Inter-American Human Rights System, HICLR 31 (2008) 1-32, 31.

⁶⁵ *Sawhoyamaxa*, *Op Cite* 109.

⁶⁶ FMGSD: *Nigeria Gender Statistics Book* (2007) 11-23.

⁶⁷ FMGSD: *Nigeria Gender Statistics Book* (2008) 23-61.

⁶⁸ *Statistical Report on Men and Women in Nigeria* (2017) 38-40.

⁶⁹ Alex Last, "The Notorious Jails of Nigeria," *BBC News* (April 7, 2006): Available at: <http://news.bbc.co.uk/2/hi/africa/4880592.stm>. Accessed: 2/11/2015

⁷⁰ *Id*.

⁷¹ *Statistical Report on Men and Women in Nigeria* (2017) 38-40.

without mattresses and without running water in their bathrooms.⁷² Another female inmate, Zainab, she lamented:

We are devoured by mosquitoes. We all suffer from malaria but don't have bed nets and the hospital has no medicine except paracetamol...There is nothing even sanitary napkins or pads—we have to share one bed between two women every month or even two months.⁷³

The situation caused the enactment of the Nigerian Corrective Service Act (NCSA) in 2019. However, despite the optimism brought by NCSA, not much has changed in the conditions of the Nigerian prisoners. It rather gets worse as the country's economy and living conditions dwindle. Inmates' rights to life and dignified living are constantly threatened without remedy. Undoubtedly, such the environmental hazards and vulnerable living conditions in the Nigerian prisons are detrimental to physical, emotional, and mental health. Yet, prison personnel are oftentimes ill-equipped to handle these challenges. Unlike the case of *Sawhoyamaxa*,⁷⁴ there is yet no evidence of a successfully lawsuit to challenge the breach of prisoners' ESCRs and the RTL. Of course, such suits would likely be trivialized because of the judicial posture to ESCRs. In contrast, lessons from *Yakye Axa*, *Sawhoyamaxa*, *International Pen & Others* challenge the Nigerian courts to judicial activism and to move from the traditional narrowminded interpretation of ESCRs to an inclusive approach. Likewise, the Nigerian human rights institutions are challenged to defend the ESCRs of inmates who suffer imminent threat to lives because of life-threatening and hazardous prison conditions.

5.0 The Rights to Life Versus Health

In the South African *Sobramoney v. Minister of Health (Kwazulu-Natal)*⁷⁵ and *Paschim Banga Khet Mazdoor Samity and Others v. State of West Bengal*,⁷⁶ the Constitutional Court interpreted the right to health to be integral to the RTL.⁷⁷ The decisions reaffirmed the justiciability of the right to health (RTH) and the government's obligation to it. The judicial opinion is consistent with the principle of *Vida Digna*,⁷⁸ which have gained traction in the international frameworks.⁷⁹

However, Nigeria stands alone as the 1999 Constitution still ESCRs, including the RTH as non-justiciable.⁸⁰ Although Section 17(3)(c)(d) of this constitution guarantees the protection of health, and welfare of all persons.⁸¹ Yet, the RTH suffers considerable harm in Nigeria in terms of poor or non-implementation. Nigeria has one of the highest rates of preventable deaths caused by high

⁷² Personal Interview with Female Inmate at Kaduna Prison, Kaduna (2017); See also, Okwendi Joseph Solomon, Richard Nwankwoala, and Victor Ushi, "The Plight of Female Prisoners in Nigeria and the Dilemma of Health Rights Violations," 3 AJSH (2014) 152-161.

⁷³ "In Overcrowded Prisons, Survival is a Daily Battle," *The Humanitarian* (January 11, 2006). Available at: <http://www.thenewhumanitarian.org/report/57777/nigeria-overcrowded-prisons-survival-daily-battle>. Accessed: 13/5/17.

⁷⁴ *Sawhoyamaxa*, *Op Cite* 109.

⁷⁵ ZAA 17, (1) SA 765 (CC) (1998).

⁷⁶ AIR SC 2426/4 SCC 37 (1996).

⁷⁷ Defining Section 2 of the South African Constitution pursuant to Sections 26 and 27

⁷⁸ ACHR articles 10 and 11.

⁷⁹ See, e.g., *Sawhoyamaxa*, *supra* note; European Convention of Human Rights, art. 11; African Charter, art. 16.

⁸⁰ Section 17(3)(c)(d) of the 1999 CFRN.

⁸¹ Article 17(3)(c)(d) of the 1999 CFRN.

maternal and child mortality rates.⁸² According to the World Health Organization (WHO), the maternal mortality rate (MMR) in Nigeria is 814 per 100,000 live births. Thus, the lifetime risk of Nigerian women dying through pregnancy, childbirth, postnatal, or postabortion is 1 in 22, as opposed to the estimate of 1 in 4900 in developed countries.⁸³ Pregnant women and children are equally affected by some prevailing diseases like HIV/AIDs,⁸⁴ pneumonia, diarrhea, and measles, to say the least of hunger⁸⁵ and unsanitary environments. Other causes of preventable deaths are attributed to malaria, pneumonia, diarrhea, and unskilled delivery methods.⁸⁶ In 2013, a survey report by the Demographic and Health Survey in Nigeria showed that about 6.6 million births in Nigeria occur through unskilled delivery methods.⁸⁷ As observed by the Partnership on Maternal and Newborn Child Health in 2019, poor access to obstetric care as one of the major factor in high maternal mortality. Whereas less than 20 percent of the health facilities in Nigeria offer emergency obstetric care,⁸⁸ only about 37 percent of the deliveries are conducted by skilled birth attendants.⁸⁹ Other causes include poverty, illiteracy, superstition, and poorly equipped health institutions maternal mortality. Such complications may include hemorrhage, eclampsia, sepsis, and abortion.⁹⁰ Also, inadequate training and poor immunization coverage in the rural areas exacerbate MMR. Other factors that primarily cause preventable diseases like typhoid, malaria, and diarrhea include unhealthy ecosystem, effects of gas pollution, toxic water, and overcrowded facilities especially prisons are primary.⁹¹ Regrettably, there are no sustainable policies to combat these ills.

Moreover, government-owned hospitals suffer serious instability due to lack of funding and strike actions in revolt to poor remunerations related challenges of health workers. Government's defects in the funding of health institutions diminish access to health and increase the threat to peoples' RTL. In 2005, for example, the Nigerian *Daily Trust* announced 20,000 deaths that were linked to industrial action by the National Association of Resident Doctors (NARD) in December 2004.⁹² The situation was not different in 2020 with a prolonged strike of health workers, which

⁸² *Nigeria, Demographic and Health Survey* 123-157 (2013). available at:

<https://dhsprogram.com/pubs/pdf/FR293/FR293.pdf> . Accessed: 20/7/19 [showing increase in maternal and neonatal mortality since 2013].

⁸³ Beatrice Wuruola Ope, "Reducing Maternal Mortality Health in Nigeria: Addressing Maternal Health Services' Perception and Experience," *JGHR* 4 (2020) 1-11; World Health Organization, "Trends in Maternal Mortality: 1990 to 2015: Estimates Developed," *WHO, UNICEF, UNFPA, World Bank Group and The United Nations Population Division*, Accessed December 19, 2019. <https://reliefweb.int/report/world/trends-maternal-mortality-1990-2015-estimates-who-unicef-unfpa-world-bank-group-and>

⁸⁴ See: *Id*; See also, Richard Tren and Dipo Salimonu, "Killing the Malaria Killer," *The Guardian* (April 23, 2010) [stating that "Nigeria has the second highest burden of Human Immunodeficiency Virus (HIV) infection in the world, with about 3.6 million people infected. In sub-Saharan Africa also, with a total population of over 120 million people, Nigeria is estimated to have the highest persons living with HIV/AIDS, with the exception of South Africa."]; 5; Suzan Edeh, "Malaria kills 300,000 Children, 5,000 Pregnant Women Yearly," *The Vanguard* 7 (June 2010).

⁸⁵ NIGERIA, *Hunger Relief in African, Action Against Hunger*. Available at:

<https://www.actionagainsthunger.org/countries/africa/nigeria>. Accessed: 03/10/2019.

⁸⁶ *Ibid.*; World Health Organization. *Sexual and Reproductive Health. Maternal Health in Nigeria: Generating Information for Action*. Accessed January 7, 2020. <https://www.who.int/reproductivehealth/maternal-health-nigeria/en/>; Okonofua F, Ntoimo L, Ogunbangbe J, Anjorin S, Imongan W, Yaya S. "Predictors of Women's Utilization of Primary Health Care For Skilled Pregnancy Care In Rural Nigeria," *BMCPC* (2018) 18:1-15.

⁸⁷ *Nigeria, Demographic and Health Survey supra* note 245 at 125-8.

⁸⁸ See: PMNCH, *The Partnership for Maternal, Newborn & Child Health, World Health* (2019). available:

<https://www.who.int/pmnch/en/>. Accessed: 15/2/19.

⁸⁹ *Ibid.*

⁹⁰ *Ibid supra* note 243 at 6.

⁹¹ *2013 National Demographic Survey*, 49; See also: Nigeria Gender Statistics Book (2013) 19.

⁹² "Nigeria: Doctors' Strike: Hospitals Record 20,000 Deaths," *Daily Trust*, (5 January 2005). Available at: <https://allafrica.com/stories/200501050339.html>.

lasted for several months under the most critical period of the covid-19 pandemic.⁹³ Individuals in need of health services who cannot afford treatment with private-owned hospitals would naturally face risks of death or deteriorated health under such conditions. Regrettably, in such circumstances, if the RTH cannot be enforced, peoples' rights to life-saving treatments would naturally become imperiled. These have been the Nigerian situation. Hence, considering the principle of *Vida Digna* would be imperative to the justiciability of the RTH.

6.0 The RTL, Food and Adequate Nutrition

Hunger and malnutrition (HAM) are among the greatest challenges of the contemporary Nigerians.⁹⁴ According to a 2021 global hunger index, Nigeria ranks 103rd out of 116 countries with high statistics of hunger and malnutrition with an estimate of 28.2 percent in 2021.⁹⁵ The statistics increased recently recognizing Nigeria as the second worst country in starvation and malnutrition.⁹⁶ A Press Release by the UNICEF, January 2023, recognized that 25 million Nigerians are at the risks of food insecurity in 2023.⁹⁷ 17 million are currently at food risks with greater statistics from the northeast states – Borno, Adamawa and Yobe (BAY). Such acute malnutrition connects with serious risks of child mortality as seen in the BAY states, which in 2022 had a child mortality rate increased to 1.7 million. HAM constitute the primary causes of child mortality in Nigeria. Not only children and adults, the young and old in mostly poverty-ravaging rural communities are affected by hunger and poor nutritional care leading to impoverished health conditions. With the current depreciating economy, impacts of climate change, and the effects of displacement, more Nigerians are plagued with HAM than ever.⁹⁸ Consequently, thousands of people, including pregnant and nursing mothers, die daily because of these,⁹⁹ in a richly oil-favored country. are not spared of the vulnerabilities of hunger and malnutrition. As the situation vindicates the inextricable ties between food and life, the import of Section 6(6)(c) that these ESCRs cannot be enforced remains questionable.

Lessons from the Indian *Peoples Union for Civil Liberties v. Union of India*¹⁰⁰ compel actions on the justiciability of the rights to food and nutritional health. In the above case, the problem of starvation and death occurred in Jaipur city of the state of Rajasthan at a time when the Food Corporation of India (FCI), government agency had stored excess grain enough to feed the hungry population with a surplus left. The *Peoples Union for Civil Liberties* (PUCL) brought a human rights action against the government and claimed a violation of the people's RTL. PUCL urged the Supreme Court to enforce "both the food schemes and the Famine Code, permitting the release of grain stocks in times of famine."¹⁰¹ Relying on *Francis Coralie Mullin v. The*

⁹³ Katarina Aman, "Nigeria Needs to Address the Incessant Strikes by Doctors," *The Conversation*, 29 September, 2021.

⁹⁴ Gift Habib, "Nigeria Second Country with the Worst Malnutrition," *Punch*, August 17, 2023,

<https://punchng.com/nigeria-second-country-with-worst-malnutrition-says-usaid/>; Aruaye Afeye Obada et al, "Hyper Prevalence of Malnutrition in the Nigerian Context," *Biomed J. Sc. & Tech. Res.* BJSTR 30916-30925 (2021).

⁹⁵ *Global Hunger Index: Nigeria* (Oct. 2021, <https://www.globalhungerindex.org/pdf/en/2021/Nigeria.pdf>).

⁹⁶ Gift Habib, "Nigeria Second Country with Worst Malnutrition, Says USAID," *Punch*, 17 August, 2023.

⁹⁷ 25 "Million Nigerians at High Risk of Food Insecurity in 2023," UNICEF, <https://www.unicef.org/press-releases/25-million-nigerians-high-risk-food-insecurity-2023#:~:text=There%20is%20a%20serious%20risk,to%20%20million%20in%202023.>

⁹⁸ "Nigeria: Safety and Lack of Food Worry Families Who Returned Home," *Relief Web*, April 4, 2022,

<https://reliefweb.int/report/nigeria/nigeria-safety-and-lack-food-worry-families-who-returned-home>.

⁹⁹ 3000 Nigerians Die Daily of Hunger, RELIEF WEB, <https://reliefweb.int/report/nigeria/3000-nigerians-die-daily-hunger-ngo>.

¹⁰⁰ *Peoples Union for Civil Liberties v Union of India* (2003) (3) SCALE 263 [In the *Peoples Union for Civil Liberties* the Court interpreted right to food as being integral with RTL.]

¹⁰¹ *Ibid.*

Administration,¹⁰² the Supreme Court held that “the rights to food and basic nutrition” is part of the constitutional right to life under Article 21, therefore, the deprivation the right to food constitutes a breach of the RTL.¹⁰³ Therefore, the right to food is justiciable on its own and as an integral part of the RTL. The impact of the landmark decision caused an expansion of the Indian Constitution on the RTL to include an enforcement of adequate food, basic nutrition, and health services programs.¹⁰⁴ The judicial activism demonstrated here by an expansionist interpretation of ESCRs exemplified the authority of courts in provoking transformation, policy making and accountable democracy. Such progressive judicial efforts are highly recommended in Nigeria.

Protection of the Right to a Healthy, Safe Environment (ESCRs) and RTL (CPRs)

Just as the right to food is linked to health and living conditions, the right to a safe and healthy environment is entwined with the RTL. A safe environment that is free from the degrading effects of pollution, and other human activities is imperative to healthy living and survival. This is emphasized in the Stockholm Declaration of the United Nations (SDUN) of 1972.¹⁰⁵ Also, the Rio Declaration on Environment and Development (RDED)¹⁰⁶ and Article 7b of the ICESCRs collectively guarantee protection of environmental safety and health, making same redressable.¹⁰⁷ Other international and regional instruments recognize the rights to environmental safety and hygiene.¹⁰⁸ In *SERAC*, the Commission found that environmental health is integral to the RTL.¹⁰⁹ Influenced by *SERAC*, the Federal Court of Benin in *Jonah Gbemre v. Shell Petroleum Division Corporation of Nigeria Limited*¹¹⁰ for the first time recognized the justiciability of ESCRs and their interweave with the RTL. The plaintiff alleged that the Shell Company violated the rights to life, a safe environment, means of livelihood and personal dignity of the Iwherekkan community pursuant to sections 33(1) and 34(1).¹¹¹ Analyzing a preponderance of evidence submitted, the court found the defendant liable for violation of the applicant’s RTL, environmental safety, and personal dignity.¹¹²

Significantly, *Gbemre* underscored the symbiotic connections of all rights by referencing the rights to environmental safety, health and life and dignified living.¹¹³ In many cases, as seen in *Bodo Community & Others v The Shell Petroleum Development Company of Nigeria Ltd*,¹¹⁴ and *Oronto Douglas v Shell Petroleum Development Company Limited (SPDC)*,¹¹⁵ the court dismissed

¹⁰² 1980 1 SCC 608.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid*; The decision integrated the Indian Constitution in Article 21 and Part IV of Article 47 which concretely enforced the right to adequate nutrition.

¹⁰⁵ Stockholm Declaration of the United Nations Conference on Human Environment 16 June, 1972 UN Doc./A.CONF.48/14/Rev. 1 at 3 (1973).

¹⁰⁶ GA Res. 35/48 of Oct. 1980.

¹⁰⁷ ICESCR, 1966, art. 7b [also, art. 11 stresses environmental hygiene].

¹⁰⁸ See e.g. ILO Convention No. 169 Concerning Indigenous and Tribal People in Independent Countries (Geneva, June 27, 1989, (articles 2, 6, 7, and 15); African Charter, art. 16; also Article 10 contextualize the meaning of rights to health within a healthy environment where the mental and social well-being are guaranteed. Article 24 of the African Charter guarantees the right to a satisfactory environment that is favourable for development.

¹⁰⁹ *SERAC*, *supra* note 4.

¹¹⁰ *Gbemre v. Shell* FHC (2005), Unreported Suit No FHC/B/CS/53/05. Available: at <http://www.climatelaw.org/cases>. Accessed: 18/2/2019.

¹¹¹ *Ibid.* The Court’s decision here followed provisions of sections 33(i) and 34(i) of the CFRN, 1999 [as amended].

¹¹² FHC/B, *Gbemre*, n. 5, 53.

¹¹³ *Ibid.*

¹¹⁴ EWHC (1973) 89/71 (TCC).

¹¹⁵ (1999) 2 NWLR Part 591.

petitions for an alleged violation of environmental safety.¹¹⁶ In *Ikechukwu Okpara & 3 Others v. Shell Petroleum Development Company of Nigeria Limited & 5 Others*,¹¹⁷ the plaintiffs sought injunction the African Charter and Chapter IV of the 1999 Constitution¹¹⁸ to restrain the defendant from an incessant gas-flaring, which allegedly caused serious damage on the environmental lives of the communities, health, and property. The court dismissed the claims, holding that the Environmental Impact Assessment Act¹¹⁹ was not contemplated by the Fundamental Rights under the 1999 Constitution and that the material claims are not enforceable rights within the provisions of Section 46(1) of the 1999 Constitution. Of course, the decision trivialized the damaging effects of gas pollution in the oil drilling zones of Nigeria and the impact on the ecosystem, as well as risks to life and environmental health. Instead, the RTL was wrongfully separated from these necessities of living. Although the petition relied on Nigeria's obligations to the Charter. Although, Nigeria ratified the African Charter in 1983, making it enforceable as an Act of the National Assembly,¹²⁰ the court failed to give deference to Article 24 of the African Charter.¹²¹ Evidently, the decisions demonstrate the overall judicial posture towards the enforcement of ESCRs. Given the debilitating impact of these on the RTL, there is need to reconsider the [non]-justiciability of ESCRs in Nigeria in line with Chapter IV (Section 33(1)) CFRN, the African Charter's principle of inseparability of rights and the international best practice of *viva digna*.

7.0 Conclusion

Judicial review of ESCRs as nonjusticiable is an aberration and abuse of the RTL. Regrettably, the Nigerian courts have kept this discouraging standard for several decades. The non-justiciability of ESCRs simply means a lack of accountability for the violations of these rights. The consequences in Nigeria, as demonstrated by this study, are enormous. Section 6(6)(c) of the 1999 Constitution created a barrier to the enforcement of ESCRs, thus contradicting the provisions of Section 13, and even undermining the imports of Article 26 of the VCLT on a good faith observation of treaties – the doctrine of *pacta sunt servanda*. Therefore, the argument of this study urges that Section 6(6)(c) be expunged from the Constitution to break the chains of inconsistencies and obstacles it creates between Chapters II and IV. Achieving transformative goals on ESCRs is unlikely where there exists no chance of accountability. ESCRs are empowerment rights that encourage the socially vulnerable and economically marginalized to seek legal remedies and restoration of rights. Decades of lack of enforcement of these rights in Nigeria have created an era of impunity in the violations of people's rights to quality life and dignified existence, without remedies. International human rights law does intend to create obligations that are passive and unenforceable. Therefore, this study has made recommendations on the adoption of the expansionist approach to interpreting ESCRs within the framework of the RTL.

ESCRs are inextricably bound to the RTL and livable necessities. Fundamentally, the RTL cannot be enjoyed fully where the necessary conditions of dignified living such as food, shelter, access to good health, education, environmental safety, sanitation, and economic and social security are deprived. Decisions in *SERAC*, *Sawwhoyamaxa*, *Paschim Banga Khet Samity*, *Francis Coralie*

¹¹⁶ *Ibid*. The petition was filed in a representative capacity by a human rights activist, Mr Oronto prior to the development of the 2009 Fundamental Rights Enforcement Procedure Rules that removed the barriers of locus standi.

¹¹⁷ FHC/CS/B/126 (2005).

¹¹⁸ on fundamental human rights

¹¹⁹ This was a Policy put in place to ensure the provision that protects the environmental health and dignity of the people.

¹²⁰ See, Act. No. 2 1983 African Charter on Human and Peoples' Rights (Ratification Enforcement) Act Cap 10 LFN 1990.

¹²¹ African Charter, arts. 4 [protection for life and human dignity] and art. 24 [right to favourable and safe environment].

Mullin, and *Gbembre*¹²² affirmed these facts. Likewise, different regional instruments have advanced the principle of *viva digna* to expand the interpretations of ESCRs and the RTL.¹²³ By acknowledging the interconnections of quality of dignified living (livable necessities) with the RTL, courts and international human rights instruments have validly set a standard for the enforcement of ESCRs, applicable in human rights societies. Examples from progressive jurisdictions like the African Charter, ECtHR, IACHR, and the practice of states like India and South Africa indicate that human rights cannot be compartmentalized. Lessons from these human rights societies underscored that the obligations to safeguard lives by extension are entwined with the necessities of living like food, water, quality health care, a safe and healthy environment for economic growth, and basic education for human development.

In the 21st century, maintaining a sustainable democracy and human rights society is untenable without effective implementation of all generations of human rights. For instance, what relevance would freedom of speech be to an illiterate or hungry person? In the same manner, the rights to vote or participate in democracy would be meaningless to the homeless or destitute.¹²⁴ In practical terms, therefore, CPRs are only realizable when the necessary conditions of ESCRs, that is dignified life are fulfilled. Against this backdrop, this study has urged the Nigerian courts to rethink their interpretations of ESCRs and re-write the generational wrongs caused by the schism of non-justiciability. Achieving a transformative jurisprudence is possible where accountability thrives for human rights violations, with government as no exception. Through such revolutionary human rights jurisprudence, the Nigerian courts would not stop at interpreting laws but like the Indian judicial system provoke policy making and social reforms to build a sustainable human rights society.

¹²² *SERAC*, *supra* note 4.

¹²³ *Ibid*, African Charter, *supra* note 16 at arts. 4 and 6; Inter-American Convention, art. 24.

¹²⁴ Alston and Goodman, *supra* note at 277.