

UDU, ALISIGWE & AFOLABI: *Employing International Standards In Advancing The Enforcement Of Economic, Social And Cultural Rights In Domestic Jurisdictions: Nigeria In View*

EMPLOYING INTERNATIONAL STANDARDS IN ADVANCING THE ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN DOMESTIC JURISDICTIONS: NIGERIA IN VIEW*

Abstract

The mandate of all democratic governments is fundamentally to ensure the welfare and security of the citizenry. The welfare of the people is undoubtedly determined by the extent of guarantees accorded the economic, social and cultural (ESC) rights. This is premised on the fact that ESC rights are the set of rights that seek to satisfy the needs of the people. ESC rights therefore constitute an antidote to poor governance as government everywhere is assessed by its commitment in guaranteeing ESC rights. ESC rights, though impinged in its enforceability vide section 6(6)(c) of the Constitution of the Federal Republic of Nigeria, 1999, are protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR) which Nigeria is a signatory to. This paper is aimed at identifying the possible ways international standards can be implemented and enforced at the domestic jurisdictions and in particular, Nigeria, to bring to fruition the acclaimed right to ESC rights under the ICESCR. The doctrinal methodology was employed in course of this research. The study found that the human rights norms so protected under the ICESCR do not enjoy justiciability since the instrument is not a domesticated legislative instrument in Nigeria. Accordingly, section 12 of the Constitution of the Federal Republic of Nigeria provides that no treaty ratified by the government of Nigeria shall have the force of law except it has been enacted into law by the National Assembly, i.e. the national legislature. It is recommended that the Government of Nigeria via the national legislature should domesticate the ICESCR through legislation to enable the citizens to enforce their ESC rights without let or hindrance. It is further recommended that the precedents in other jurisdictions such as India where the enforcement of ESC rights has assailed constitutional bottlenecks be adopted in our jurisdiction to advance the realization of ESC rights. This development will benefit all sectors of the population in a country like Nigeria, which has achieved significant and successful economic growth over the years.

Keywords: Justiciability, Economic, Social, Cultural, Domestication and Implementation

1. Introduction

At the inception of international human rights discourse, economic, social and cultural rights¹ were relatively unpopular to civil and political rights. International human rights concepts, norms and standards evolved from a European discourse that gave priority attention on individual civil liberties. Thereafter, the Universal Declaration of Human Rights (UDHR) 1948, which had a broad vision of equality emerged. Although the focus was on civil Liberties of the individual, there were references to economic, social and cultural rights, including the right to just and favourable conditions of work, adequate standard of living, shelter, education and health.² Unlike the civil liberties that were considered immediately enforceable, ESC rights were to be realised through national effort and international co-operation and in accordance with the organization and resources of each state.³ Some early multilateral treaties such as the Convention on Racial Discrimination and also Women's Rights (CEDAW) adopted a different approach and recognized the parity of both sets of rights in working to eliminate discrimination and achieve a standard of equality and inclusive citizenship. The concept that civil liberties were enforceable and justiciable hard rights and economic and social rights only programmatic and discretionary policies of the state that were dependent on available resources dominated the human rights discourse for decades.⁴ This gave our political leaders the discretion to determine which ESC right to protect and at the most convenient time and manner. The ultimate consequence is the vicious circle of poverty and unemployment especially in countries bedeviled by corruption and maladministration.

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¹Hereinafter referred to as ESC Rights.

²Universal Declaration of Human Rights (UDHR), article 22-26.

³*Ibid.*, article 22.

⁴S Goonesekere, available at: <http://www.un.org/esa/socdev/egms/docs/2013/EmpowermentPolicies/National%20Implementation%20of%20International%20Human%20Rights.pdf>, accessed on 22th November, 2019.

There is therefore urgent necessity to enthrone the regime of ESC rights enforcement to orchestrate poverty eradication, full employment and to create a context for inclusive citizenship as an important goal of governance. Social indicators across developing nations such as Nigeria shows that inequality and disparity derived from several factors including persistent poverty, ethnicity, corruption and gender deny the prospect of inclusive citizenship, economic growth and development. Even within developed countries, some sectors experience poverty, discrimination and disadvantage. There is no gainsaying that a human rights based approach that integrates international human rights norms and standards into national development policies and programmes is an essential strategy in responding to the contradiction between successful economic growth and disparity reduction. They have also argued that it is the integration of these norms and standards that can facilitate people's participation and their empowerment in development. It is useful to reflect on the implementation of international human rights and examine whether country experiences indicate that a human rights based approach to development can contribute in some measure to achieve inclusive citizenship enjoying both civil and political rights as well as economic, social and cultural rights. Consequently, it is pertinent to evaluate the contents of ESC rights to position them as enforceable rights.

2. The Contents of Economic, Social and Cultural Rights

The relative inattention given to ESC rights has led to the fact that the content and meaning of most ESC rights remain considerably ill-defined. The vague and indeterminate way in which ESC rights have historically been articulated constitutes a fundamental obstacle to its development and progressive realization. In defining the contents of ESC rights, distinction is made between core content and minimum core content. The 'core content' of a human right refers to the set of guarantees that constitute the rights. The core content of ESC rights has both 'universal' and 'unique' characteristics.⁵ The universal characteristics are those which apply to all rights, e.g. non-discrimination. The unique characteristics are those which apply and are unique to a specific right for example, access 'to immunization against preventable epidemic or endemic diseases' is one of the unique characteristics of the right to health, but is not applicable to other rights.⁶

The 'minimum core content' of a right on the other hand, is viewed as the intangible baseline that must be guaranteed for all persons in all contexts. It indicates a minimum below which no government should go even in unfavourable conditions. Unlike some elements of the core content which may be limited in special circumstances, the minimum core content cannot be derogated from or diminished. It is the core content of rights that determines and establishes the minimum bench mark for governmental actions. The minimum core content of a right establishes the minimal conditions that each individual should enjoy, in the absence of which the right is understood to be absent. Achieving a definition of content of rights is a valuable instrument for their enforcement, as it makes it possible to have a minimum standard for evaluating the observance of a right.

The starting point for arriving at a definition of a right is to benchmark it against the standards established in human rights treaties and other international instruments that provide for the protection of the right. The next place to look at is the comprehensive view of the rights emanating from the interpretation as to what constitutes the rights, developed by relevant international institutions and organizations in the performance of their duties. Domestic laws on the other hand can be helpful. However, where they cannot be extrapolated beyond the territory in which they apply, they can be helpful for reference purposes. Some activists believe that focusing on such definition can be counter-productive to activities. They base their arguments on the difficulty of establishing universally applicable standards, and some activists believe that defining the core content and minimum core content is essential as to effectiveness. They maintain that defining the core content of each right is a way to identify what it is that the right confers upon those who enjoy the entitlement, and to help identify the specific obligations that a state assumes by recognizing those contents. Alston commented thus: 'Each right must therefore give rise to an absolute minimum entitlement, in the violation of its obligations'.⁷

The essence of defining the minimum core content is to set a universal standard for the enjoyment of some rights. For example, it is necessary to state that a certain number of square metres is required for the guarantee of adequate housing. However, the argument against defining core and minimum core content focus on the difficulty of

⁵Available at: <http://www1.umn.edu/humanrts/edumat/IHRIP/Circle/modules/modules8.htm>(accessed, on 10 December, 2019).

⁶*Ibid*; See also Provea, *Health as a Right: Framework for National and International Protection of the Human Rights of Health* (Caracas, 1996) p. 39.

⁷P Alston, 'Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social and Cultural Rights,' Vol.9 *Human Rights Quarterly* (1987) pp. 352-53.

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establishing such universally applicable standards. This could be construed as operating to limit the overall guarantee of rights, by establishing a defined standard of compliance. Thus, it may lend itself to the argument that everything that is excluded from that content is not within the right. However, this paper maintains that establishing a framework of the definition of minimum core content ensures a uniform baseline that must be respected even by states with insufficient economic resources, to promote realization of the right and to guarantee equity in the distribution of available resources.⁸ This is where Nigeria as a nascent democracy and a developing economy has got it wrong. There is apparently huge resources generated in Nigeria but the management and distribution of the resources is sabotaged by greed, ethnic considerations and corruption. The result is a vicious circle of poverty, dissatisfaction and civil disturbances as indices of socio-economic insecurity.

However, those against the definition of minimum core contents point out that often the minimum core gets associated with those elements that cannot be derogated from or that require immediate implementation and are also seen as elements of a right that are justiciable. The danger they point out is that courts may inappropriately latch onto the notion of minimum core content as being the content of an ESC right that is justiciable, and leave the other components to government policies.⁹ They also point out that focusing on minimum core content tends to ignore violations of ESC rights in affluent countries, where the issue is usually not a failure to meet minimum core obligations, but rather to fulfill the obligation to apply the maximum of available resources.

In its *General Comment No. 3*, the Committee on Economic, Social and Cultural Rights argues that states have 'minimum core obligations' under the covenant to ensure a basic level of enjoyment of each economic, social and cultural right. Thus, the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at least, minimum essential levels of each of the rights is incumbent upon every state party. For example, a state party in which any significant number of individuals is deprived of essential foodstuffs, primary health care, basic shelter and housing or of the most basic forms of education is *prima facie*, failing to discharge its obligations under the International Covenant on Economic, Social and Cultural Rights. If the covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.¹⁰

Attempts will therefore be made to define the contents of certain ESC rights and the obligations attached thereto in the context of the International Covenant on Economic, Social and Cultural Rights.

The Right to Education: This right encompasses the right to free and compulsory primary education, and increasing access to secondary, technical, vocational and higher education.¹¹ In Nigeria, government shall strive to eradicate illiteracy. The right to education encompasses the right to free and compulsory basic education, which starts from Primary One to Junior Secondary III Class. This is the minimum core content of our right to education. Accordingly, government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. Government shall, therefore, as at when practicable provide free, compulsory and universal primary education; free university education, and free adult literacy programme.¹² This presupposes a progressive realization of certain contents of the right to education in Nigeria. This right is important in the sense that its realization will ultimately reduce people's vulnerability to child labour, early marriage, discrimination etc and increase their opportunities to realize other human rights including the right to health, food, employment etc.

The Committee on Economic, Social and Cultural Rights in *General Comments 13*¹³ states that the right to education shall exhibit the following inter-related and essential features: availability of sufficient quantity of functioning educational institutions and programmes; physical and economic accessibility of educational institutions and programmes to everyone without discrimination; acceptability of the form and substance of education, including curricula and teaching methods; and adaptability of the education to the needs of changing societies and

⁸Commentary to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Guidelines Nos. 9 & 10', Vol. 20 No 3 *Human Rights Quarterly* (August 1998) p.717.

⁹L Bolívar, 'The Fundamentalism of Dignity', in *A Human Rights Message*, (ed.) Swedish Institute (Stockholm: The Ministry of Foreign Affairs of Sweden, 1998), 29-30, available at: <http://www1.umn.edu/humanrts/edumat/IHRIP/circle.modules/module1.htm>, accessed on 12 December, 2019.

¹⁰General Comment No 3, para 10.

¹¹ International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 13-14.

¹²Constitution of the Federal Republic of Nigeria 1999 (as amended), section 18.

¹³ Committee on Economic, Social and Cultural Rights, General Comment 13 (1999): The Right to Education, available at <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/gencom/3.htm>, accessed on 25 September, 2019; UN Doc. E/C.12/1999/10.

communities and the response of same to the needs of students within their diverse social and cultural settings. In the application of these features, the best interests of the student shall be a primary consideration.¹⁴ The Committee further noted that for the right to education to be enjoyed, it ought to be accompanied by the academic freedom of staff and students.¹⁵ This is particularly relevant in higher educational institutions. Academic freedom includes the liberty of individuals to express freely, opinions about the institution or system in which they work to fulfill their functions without discrimination or fear of repression by the state or any other actor, to participate in professional or representative academic bodies and to enjoy all the internationally recognized human rights applicable to other individuals.¹⁶

Despite the progressive realization of the components of right to education envisaged in section 18 of the Nigerian Constitution¹⁷, the state parties to the ICESCR are obliged under this right to realize immediately the following: guarantee that the right will be exercised without discrimination of any kind¹⁸ and to take steps towards the full realization of Article 13.¹⁹ Such steps must however be deliberate, concrete and targeted towards the realization of the right. This right also imposes three levels of obligation on state parties: the obligations to respect, protect and fulfill. The obligation to respect requires state parties to avoid measures that hinder or prevent the enjoyment of the right. The obligation to protect requires that measures be taken by state parties to prevent third parties from interfering with the enjoyment of the right. The obligation to fulfill requires state parties to take positive measures that enable and assist individual and communities to enjoy the right.²⁰

The Right to Health: This right refers to the right to the highest attainable standard of physical and mental health given the individual's genetic make-up and lifestyle choices, as well as the extent of scientific understanding and the maximum of resources available to the state.²¹ It consists of two basic components: healthy living conditions and health care. Article 12 of ICESCR in the second paragraph identified four areas in which steps should be taken to guarantee full observance of the right: reducing infant mortality and providing for the healthy development of children; improving environmental conditions and closer monitoring of the consequences and working conditions of the industry; disease prevention, treatment and monitoring occupational health; and basic medical services for the entire population.²²

The Committee on Economic, Social and Cultural Rights noted that the right to health is not to be understood as a right to be healthy and that it contains both freedoms and entitlements. While freedoms include the right to control one's health and body, including sexual and reproductive freedom, freedom from torture, non-consensual medical treatment and experimentation, entitlements include the rights to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.²³ The Committee in paragraph 11 further states that rights to health extends to timely and appropriate health care and also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions and access to health-related education and information.

The following are essential elements of the right to health: availability of functioning public health and health care facilities, goods and services as well as programmes in sufficient quantity; accessibility of health facilities, goods and services without discrimination (this also includes physical, economic and information accessibility); acceptability (this means that all health facilities are culturally appropriate and of good quality).²⁴ Special provisions

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment 13 (1999): The Right to Education, available at <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/gencom/3.htm>, accessed on 21st November, 2019; UN Doc. E/C.12/1999/10, para. 6.

¹⁵ UN Doc. E/C.12/1999/10, para. 38.

¹⁶ *Ibid.*, para 39.

¹⁷ Constitution of the Federal Republic of Nigeria, *op cit*, footnote 11.

¹⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 2(2).

¹⁹ *Ibid.*, article 2(1).

²⁰ Committee on ESCR, General Comment 13, *op. cit.*, para. 47.

²¹ S. Salgado, *Human Rights for Human Dignity: A Primer on Economic Social and Cultural Rights* (London: Amnesty Int'l Public, 2005), pp. 15-16.

²² ICESCR, article 12.

²³ Committee on Economic, Social and Cultural Rights General Comment 14: The Right to the Highest Attainable Standard of Health (Twenty-Second Session, 2000), UN Doc. E/C.12/2000/4, para 8.

²⁴ *Ibid.*, paragraph 12.

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are made in the General Comment 14, with respect to women, children and adolescents, older persons and persons with disabilities.²⁵

This right imposes three types or levels of obligations on state parties: the obligations to respect, protect and fulfill.²⁶ The obligation to respect requires states to refrain from interfering directly or indirectly with the rights. The obligation to protect requires states to take measures that prevent third parties from interfering with the right. Finally, the obligation to fulfill which also contains obligations to facilitate, provide and promote, requires states to adopt appropriate legislative, administrative, budgetary, judicial and promotional and other measures towards the full realization of the right to health. In Nigeria, the State social order is founded on the ideals of freedom, equality and justice. The state shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons.²⁷

The Right to Work and Rights at Work: The right to work and right at work appear to be the least understood of the economic, social and cultural rights. The right entails at least the right to have access to employment without discrimination, free choice of employment and a supportive structure that aids access to employment, including appropriate vocational education.²⁸ Right at work on the other hand include the right to fair wages, to equal pay for work of equal value, to safe and healthy working conditions, and to reasonable limitations on working hours, the prohibition of dismissal on the grounds of pregnancy, as well as equality of treatment in employment.²⁹ On the normative content of the right to work, the committee on ESCR in General comments 18 stated that the right encompasses all forms of work, whether independent work or dependent wage-paid work, and that the right should not be understood as an absolute and unconditional right to obtain employment.³⁰ The work being referred to must be decent work i.e. work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work, safety, and remuneration.³¹ Just like the above discussed rights, this right of work requires the existence of the following interdependent and essential elements:³² availability of specialized services to assist and support individuals in order to enable them to identify and find available employment; accessibility of the labour market (this comprises prohibition of discrimination in access to and maintenance of employment, physical accessibility and information accessibility); acceptability and good quality of conditions of work. This also includes the right to form trade unions and the right to freely choose and accept work. Special provisions are made regarding women, young persons, child labour, aged persons, person with disabilities and migrant workers vis-à-vis the right to work.³³

Under the Nigerian Constitution, the State shall direct its policy towards ensuring that all citizens have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. The State's policy must also ensure that the conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life. Furthermore, the health, safety and welfare of all persons in employment should be safeguarded and not endangered or abused. There should be equal pay for equal work without discrimination on account of sex, or on any other ground. The policy of the government should also protect children, young persons and the aged against moral and material neglect.³⁴

Three levels of obligations, which include the obligations to respect, protect and fulfill are imposed on state parties. These obligations are to be discharged in the same contexts as the ones explained in the rights explained above.³⁵

²⁵*Ibid*, paras 19-26

²⁶For more on General Comment 14, available at: <http://www1.umn.edu/humanrts/gencom/escgencom14.htm>, accessed on 23 July 2019.

²⁷Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 17(3)(d).

²⁸S Salgado, *op. cit.*, footnote 20, p.18.

²⁹ICESCR, articles 6-8.; African Charter on Human and Peoples' Rights, article 15 & 29 (6).

³⁰Committee on Economic, Social and Cultural Rights, General Comment 18 (Thirty-fifth Session, 2006), UN Doc. E/C.12/GC/18, para 6, available at: <http://www1.umn.edu/humanrts/gencomm/escgencom/18.html>, accessed 20th October, 2019).

³¹ICESCR, articles 6-8.; African Charter on Human and Peoples' Rights, article 15 & 29 (6).

³²Committee on Economic, Social and Cultural Rights, General Comment 18 (Thirty-fifth Session, 2006), UN Doc. E/C.12/GC/18 para 12(a)-(c), available at: <http://www1.umn.edu/humanrts/gencomm/escgencom/18.html>, accessed 20th October, 2019).

³³Committee on Economic, Social and Cultural Rights, General Comment 18 (Thirty-fifth Session, 2006), UN Doc. E/C.12/GC/18 paras 13-16.

³⁴Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 17(3)(a),(b),(c),(e) and (f).

³⁵*Ibid*, para 22.

The Right to Adequate Food: The right to adequate food is guaranteed under the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁶ This right requires states to immediately tackle hunger and progressively ensure that every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.³⁷ The obligations of states with respect to realization of this right are: availability, accessibility and acceptability. Availability entails either making it possible for individuals to feed themselves directly from productive land or other natural resources, or from well-functioning distribution, processing market systems.³⁸ Accessibility includes both physical and economic accessibility of food. Economic accessibility may include economic activity, appropriate subsidies or aids that will help make food accessible. Special programmes may be created for vulnerable groups e.g. victims of natural disasters. On the other hand, acceptability requires that food be made available 'in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture'.³⁹ In *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*,⁴⁰ the African Commission on Human and Peoples' Rights held that the right to food, among other requirements, requires that the (government) should not destroy or contaminate food resources, and prevent peoples' efforts to feed themselves. This right obligates the states not to starve those within their control, such as prisoners. The UN Human Rights Committee established that when the state arrests and detains individuals, it takes on direct responsibility to care for their lives, which amongst other things includes providing food for them.⁴¹ Just like all types of ESC rights, state obligations in respect of this right include to respect, protect and fulfill. The obligation to respect requires a state not to destroy a person's access to food. This obligation is unconditional. The obligation to protect on the other hand makes a state duty-bound to protect a person's access to food against destruction by a third party. Finally, fulfillment obligation refers to the duty to fulfill access to food for those in need. In other words, it refers to the state's obligation to provide food for each person threatened by hunger and malnutrition.⁴² This does not mean a general obligation to provide food. Under the Nigerian Constitution, the State shall direct its policy towards ensuring that suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and employment, sick benefits and welfare of the disabled are provided for all citizens.⁴³ In order to realize this, it is expected that government should, in line with the Constitution, establish a body having the powers to review the ownership and control of business enterprises operating in Nigeria.

The Right to Adequate Shelter: Right to suitable and adequate shelter is provided by both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁴ This right requires that everyone should have a degree of security of tenure, protecting them from forced eviction, harassment and other threats. Services available should include safe drinking water, sanitation and energy.⁴⁵ This right does not require a state to build houses for the entire population, or that housing should be provided free of charge to the populace, or that this right will manifest itself in the same manner in all places at all times. Rather, the state is to undertake under this right: to ensure that everyone has access to affordable and acceptable housing by appropriate means; to put in place series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right to housing; and to protect and improve houses and neighborhoods rather than damage or destroy them.⁴⁶

³⁶ICESCR, article 11.

³⁷Committee on Economic, Social and Cultural Rights, General Comment No 12, the Right to Adequate Food, UN.Doc. E/C.12/1999/5, para 6.

³⁸*Ibid*, para 36.

³⁹Committee on Economic, Social and Cultural Rights, General Comment No 12, the Right to Adequate Food, UN.Doc. E/C.12/1999/5, para 8.

⁴⁰Communication No. 155/96, October, 2001.

⁴¹UN Human Rights Committee, General Comment 21 on article 10, para. 2.

⁴²R. Kunnemann, 'The Right to Adequate food in International Human Rights Internship Programme, Circle of Rights (2000), available at: <http://www1.umn.edu/humanrts/edumat/IHRIP/Circle/modules/module/2.htm> accessed on 20 March 2019; See also Committee on ESC Rights, General Comments No. 12, para 15.

⁴³Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 16(2)(d).

⁴⁴UDHR, article 25(1); ICESCR, article 11 (1).

⁴⁵S. Salgado, *Human Rights for Human Dignity: A Primer on Economic Social and Cultural Rights* (London:Amnesty Int'l Public 2005) p. 14.

⁴⁶F. Mork, 'The Right to Adequate Housing in International Human Rights Internship Programme (IHRIP), Circle of Rights (2000), available at: <http://www1.umn.edu/humanrts/edumat/IHRIP/Circle/modules/module13.htm> (accessed, accessed on 20 March, 2019).

The concept of adequacy is significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute 'adequate housing' for the purposes of this right and ICESCR. On the heels of the above, the Committee on Economic, Social and Cultural Rights in General Comments No 4⁴⁷ went ahead to identify certain aspects that must be taken into account for the purposes of determining whether there is 'adequate housing'. They include: legal security of tenure; availability of services, infrastructures, materials and facilities essential for health, security, comfort and nutrition; and affordability, which refers to personal or household financial costs associated with housing. Such should be at a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Others include habitability (this means that inhabitants should be provided adequate space and protected from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors); accessibility; location (adequate housing must be located where there is access to employment options, health care services, schools and other social facilities). Besides, cultural adequacy must allow expression of cultural identity.⁴⁸ In Nigeria, the government shall direct its policy towards ensuring that suitable and adequate shelter is provided for all citizens.⁴⁹

3. Employing International Standards in Guaranteeing Economic, Social and Cultural Rights in Domestic Jurisdictions

The human right norms discussed above are hardly enforced in domestic jurisdictions owing partly to the limited available resources to implement them and majorly on the ouster clause provisions in national jurisdictions, which deny this class of rights their justiciability. In Nigeria, Chapter II of the Constitution embodies ESC rights but another provision of the Constitution ousts the jurisdiction of the courts from entertaining matters of infringement of the rights.⁵⁰ Apart from this inherent deficiency in the enforcement of ESC rights under the Constitution, there is paucity of statutory provisions in aid, hence, a resort to implementation of international standards at the domestic clime in the effort to protect ESC rights in Nigeria. Implementing international standards in protecting ESC rights in domestic jurisdictions depends on whether a state follows 'Monist system or 'dualist' system.

The notion that underlies monism is that international law and domestic law are regarded as one and the same. Therefore, when a state ratifies an international treaty, the provisions of the treaty automatically becomes part of domestic law. International law thus becomes self-executing. The doctrine of dualism on the other hand is the opposite of monism. It sees international law and domestic law as two separate systems. Thus, in a country that operates dualist system, international law has to be incorporated or domesticated through legislation before it is applied in the domestic arena. However, despite the above dichotomy, it is important to note that international human rights treaties (of which ICESCR is one) have established some principles for domestic implementation of international standards. These principles were expounded in the Advisory opinion of the Inter-American Court of Human Rights when it stated *inter alia* that the object and purpose of human right treaties is the 'protection of the basic rights of individual human beings irrespective of their nationality, both against the state of their nationality and all other contracting states'. It stated further that the states in concluding these human rights treaties 'can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other states, but towards all individuals within their jurisdiction'.⁵¹

In its General Comment 9, the Committee on Economic, Social and Cultural Rights stated that the central obligation in relation to the covenant (i.e. ICESCR) is for state parties to give effect to the rights recognized therein by all appropriate means. However, the covenant adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each state, as well as other relevant considerations to be taken into account.⁵²

⁴⁷UN Doc. E/1992/23.

⁴⁸ Available at: <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/gencom4.htm>, accessed on 21 April, 2019.

⁴⁹Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 16(2)(d).

⁵⁰Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 6(6)(c).

⁵¹ See the Effect of Reservations on the Entry into force of the American Convention on Human Rights (Arts.74 and 75), Advisory Opinion Oc-2/82, September 24, 1982, Inter-Am.Ct.H.R.(Ser.A) No.2 (1982) at Para 29.

⁵² The Committee on Economic, Social and Cultural Rights, General Comment 9, the Domestic Application of the Covenant (Nineteenth Session, 1998), U.N. Doc. E/C.12/1998/24, Para 1.

One of the fundamental requirements is that the covenant norms must be recognized in appropriate ways within the domestic legal order. Additionally, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.⁵³

Different measures have been put in place by some states in relation to ESC rights. Some states have transformed the covenant into domestic law by supplementing or amending existing legislation, without invoking the specific terms of the ICESCR. Others have adopted or incorporated ESC rights stipulated in the ICESCR into domestic law, so that its terms are retained and given formal validity in the national legal order. The Committee on Economic, Social and Cultural Rights notes however that whatever measures a state adopts, certain things are basic. They include: first the means of implementation chosen must be adequate to ensure fulfillment of the obligation under the covenant; secondly, account should be taken of the means which have proved to be most effective in the country concerned in ensuring the protection of other human rights;⁵⁴ the committee finally encouraged formal direct adoption or incorporation of the covenant in national law, to avoid problems that might arise in the translation of treaty obligation into national law.⁵⁵

At this point, the question to ask and answer is in what ways can international standards in protecting ESC rights be implemented in domestic jurisdiction, particularly Nigeria? These ways will now be noted and explained.

Advancing the Justiciability of ESC Rights

International standards in protecting ESC rights cannot be fully implemented without the judiciary, which is the ultimate guarantor of rights. The task before all states is to ensure enforcement of these ESC rights by domestic courts. International law is indifferent as to whether international obligation is carried out administratively, judicially, or legislatively. Nonetheless, in the face of non-performance, whether total or partial, it is the justice system that should set in motion the machinery to guarantee the enjoyment of the right, both because under domestic law the judiciary is the ultimate guarantor of person's rights and because it is the judiciary that has responsibility for incorporating the international rules to the domestic legal system.⁵⁶ Ensuring the justiciability of economic, social and cultural rights is important because, it would reaffirm the judicial process as a method for enabling ordinary citizens to challenge state agencies regarding ESC rights; it will expand the scope of activism for ensuring the realization of ESC rights; and it will allow the court to assume its role as a guarantor of fundamental rights, etc. In Nigeria, for instance, there is need to amend the Constitution of the Federal Republic to expunge the ouster clause in section 6(6)(c) precluding the court from matters relating to the enforcement of ESC rights embodied in Chapter II of the constitution.

Employing Administrative Remedies

Administrative remedies could be employed in implementing international standards on ESC rights, by taking account of the requirements of those international standards in the policy or decision-making of government. Such administrative remedies should be accessible, affordable, timely and effective. However, according to the Committee on Economic, Social and Cultural Rights in its General Comment 9,⁵⁷ it would be appropriate to have an ultimate right of judicial appeal from such administrative remedies.

Employing International Norms in Interpreting Domestic Human Rights Guarantees

The essence of this is that in some cases, the national constitution standing alone may be vague in their coverage and thus standing alone may provide inadequate protection against ESC rights violations.⁵⁸ In such cases, International standards which are usually more developed should be employed to expand domestic protection of ESC rights. This method was adopted by the Indian Supreme Court in the case of *Vishaka et al v. State of Rajasthan*.⁵⁹ Here, the court while dealing with the rights of working women to be protected against sexual harassment in the workplace accepted

⁵³*Ibid*, Para.2.

⁵⁴The Committee on Economic, Social and Cultural Rights, General Comment 9, the Domestic Application of the Covenant (Nineteenth Session, 1998), U.N. Doc. E/C.12/1998/24, Para 7.

⁵⁵*Ibid*, Para. 8.

⁵⁶J Rossi, 'Strategies for Enforcing ESC Rights through Domestic Legal Systems in International Human Rights Internship Programme, Circle of Rights', (2000), available at: <http://www1.umn.edu/humanrts/edumat/HRIP/Circle/modules22.htm>(accessed, accessed on 21 May, 2019).

⁵⁷Committee on Economic, Social and Cultural Rights, General Comments 9, *op. cit.*, para 9.

⁵⁸J Rossi, *op.cit.*, footnote 55.

⁵⁹[1997] 6 SCC.

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that in the absence of domestic laws guaranteeing the right to protection from such harassers it will take into account international norms in the formulation of guidelines to achieve gender equality, which includes protection from sexual harassment. It must be recalled that for the purpose of advancing but not restricting the applicant's rights and freedoms, the Court shall respect municipal, regional and international bill of rights cited to it or brought to its attention or of which the court is aware; whether these bills constitute instruments in themselves or forms part of larger documents like constitution. Such bills include the Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system.⁶⁰

Adopting Precedents from Courts in other Jurisdictions

Under this head, it is expected that courts in Nigeria should draw inspiration from decisions of courts in other jurisdictions in a bid to decide a case that presents new issues relating to ESC rights. In doing this, it is necessary to ensure that the countries follow similar legal systems or frameworks or that there is a historical or geographical tie that encourages such reference. In working to ensure the implementation of international standards in ESC rights in domestic jurisdictions, it is pertinent to recall that Nigeria and India share similar constitutional framework. It is instructive therefore that Nigerian judges should be aware of and use decisions by courts in other jurisdictions, especially the innovative case law and practice of the Indian Supreme Court, and of the South African Constitutional Court where the enforcement of ESC rights is impinged upon by constitutional conundrum.

ESC Rights Consciousness through Education

Human rights education by its very nature is a positive intervention in the lives of people, as it seeks to empower individuals and groups. Human right education is defined by Ravindran as a process of acquiring relevant knowledge, skills and values for knowing, asserting and vindicating one's rights based on international human rights norms⁶¹ which emerged as a result of the prominence achieved by human rights in the last few decades. However, what is missing according to Ravindran in human rights education is a debate on the education practice itself.⁶² Proper human rights education should be able to encourage the development of competence and capabilities of participants and thus contribute to the realization of economic, social and cultural rights. It should be an empowering process enabling those being marginalized in economic, social and cultural rights to claim their status as full participating members of a community.

The human rights education that could aid in the implementation of international standards in ESC rights in domestic jurisdiction should have the following elements: the content of the education must be based on people's current concerns and must apply to real-life experience; it must be participatory and dialogical process and avoid the tendency to see educators as possessing all essential information and the participants as 'empty vessels' needing to be filled up with knowledge; it must facilitate critical thinking alongside action; as it would contribute to the act of knowing, which means grasping the contradictions of reality.⁶³ Human rights institutions in Nigeria should incorporate in its mandate the task of sensitizing the general public on the ESC rights and possible enforcement and implementation mechanisms. The campaign for ESC rights awareness should be launched even amongst the rural dwellers, the less privileged, the down-trodden and the oppressed. This will serve as a harbinger in the effort at liberating the public from socio-economic servitude.

Employing Policy Instrument and Legislation to Guarantee ESC Rights

There is an integral connection between the enjoyment of democratic freedoms and the protection of ESC rights. As such, it is imperative that the government of Nigeria should, through policymaking and legislative reform, advance the implementation of ESC rights. If there is in place, national economic or action plans, such can be used as a public tool for evaluating the government's commitment to ESC rights and its performance in terms of relevant international treaties protecting ESC rights. Nigerian government should ensure that it ratifies international standards on ESC rights and domesticate them through legislation in meeting with the demands of section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). These represent a governments' commitment to respect, protect and promote the rights in the treaties. Governments that are yet to ratify relevant international

⁶⁰Fundamental Rights (Enforcement Procedure) Rules 2009, paragraph 3(b)(ii) of the preamble.

⁶¹DJ Ravindran, 'Education for Empowerment, in International Human Rights Internship Programme, Circle of Rights (2000)', available at <http://www1.umn.edu/humanrts/edumat/IHRIP/Circle/modules/moduel20htm>(accessed, on 22 June, 2019).

⁶²*Ibid.*

⁶³Ravindran, 'Education for Empowerment, in International Human Rights Internship Programme, Circle of Rights (2000)', *op cit.*, footnote 60.

treaties can also enact laws and formulate policies that adhere to international human rights standards. In *Attorney General of Ondo State v. Attorney General of the Federation*,⁶⁴ the Supreme Court observed:

Courts cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws for their enforcement, as has been done in respect of Section 15(5) of the 1999 Constitution by the enactment of the Corrupt Practices and other Related Offences Act 2000.

The implication of the foregoing is that once the National Assembly enacts a law for the enforcement of any of the provisions of Chapter II of the 1999 Constitution, the Court will enforce it in spite of the non justiciability of that Chapter under s.6(6)(c). In its General comment 3, the Committee on ESC rights states that legislation ‘is highly desirable and in some cases may even be indispensable’ to the realization of ESC rights. It is necessary therefore to have a legislative framework as this will provide a more precise and detailed definition of the scope and content of various ESC rights; prescribe the exact responsibilities and functions of different spheres of government at the national, state and local level in giving effect to a particular right; create a coherent and co-ordinate institutional framework for the delivery of the right; prohibit actions by public officials and private parties that curtail the enjoyment of ESC rights; and ensure provision of specific remedies to redress violations of a right.⁶⁵ Legislation is definitely a better option because plans and policies have their limitations. This is owing to the fact that policies are often primarily developed by government officials and may amount to a government setting the standards against which it is to be monitored and held accountable, especially where they are not developed as part of a wide-ranging and well publicized consultative process.

4. Conclusion and Recommendations

The whole gamut of economic, social and cultural (ESC) rights is provided in international instruments and the participation of states in the protection and enforcement of the right contents of these instruments varies according to their economic, legislative and political peculiarities. Nigeria is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) but has not domesticated it. Most ESC rights are neither constitutionally nor statutorily recognized in Nigeria. The lack of domestication of this instrument makes it difficult to implement and enforce the human rights standards entrenched in the treaty. It is recommended that the Government of Nigeria via the national legislature should domesticate the ICESCR through legislation. It is further recommended that the precedents in other jurisdictions such as India be adopted in our jurisdiction to fast-track the realization of ESC rights. In India, one of the factors that led to the development of public interest litigation has been judicial insistence on the need to overcome formalistic procedural obstacles when violation of right becomes massive and affects persons in a disadvantageous situation. Similarly, where there is absence of judicial authorities to back up a decision, reference should be made to landmark cases in other jurisdictions with similar legal system or geographical affiliation, or by making reference to international norms. The judiciary is the ultimate guarantor of rights. It is high time this duty is discharged to its fullest even when the situation appears daunting.

⁶⁴[2000] 9 N.W.L.R. (pt. 772) p. 222.

⁶⁵S Liebenberg, ‘Development of Policy, Plans and Legislation to Protect and Promote Economic, Social and Cultural Rights’ in ‘International Human Rights Internship Programme, Circle of Rights’, (2000), available at: <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module21.htm>(accessed, accessed on 21 June 2019).