Comparative Exposition of Judicial Interventionism in the Enforcement of the Healthcare Right in Nigeria and India

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Abstract

The significance of health to national life has made successive governments in Nigeria and India design certain fundamental policies to regulate, control and guide healthcare service delivery. Since the incorporation of fundamental human rights into the two countries' constitutions, the healthcare right has appeared as one of the fundamental objectives and directive principles of state policy. This requires governments to put in place policies geared towards implementing these obligations. However, regarding economic and social rights, the Nigerian judiciary has generally played a restrictive or a rather passive role in their enforcement. In contrast, Indian courts have employed a much more pragmatic approach to implementing economic and social rights. The problem with these rights is that judicial intervention resulting from a violation of the healthcare right remains a challenge because section 6(6)(c) and article 35 of the Nigerian and Indian constitutions, respectively, make economic and social rights non-justiciable. The article makes a comparative analysis of the practice in Indian and other jurisdictions in order to justify the possibility of embracing the enforceability of the rights, having regard to the link between economic and social rights and civil and political rights in Nigeria. By drawing on judicial synergy, this article suggests a legislative intercession to bring health rights within the enforceable rights by taking advantage of section 13 and item 60 of the Nigerian Exclusive Legislative List. In addition, the author recommends that the relevant international conventions signed by the country should be domesticated.

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Introduction

Health in general implies more than an absence of illness, but includes a state of absolute mental, physical, social and psychological well-being in an individual.[1] Invariably, healthcare and its facilities must be such that it ensures freedom from illness, disease and also that it makes the right to life meaningful. These essentials of healthcare cannot be achieved in a country that suffers from bad governance and widespread acts of corruption. It is noteworthy that one of the most nagging problems continually faced by Nigerians since independence in 1960 has been the struggle for good governance and sustainable development for all. The situation has never been so bad and devastating as the one the country has been experiencing from 2015 to date. Arguably, the basic human need and social rights as stated in the constitutions of India, Nigeria and in international conventions underscore the significant roles and responsibilities shouldered by the government. Nevertheless, inadequate resources to propel socio-economic development together with and resulting from corruption pose a serious challenge. The question then is whether, in view of the paucity of resources at the disposal of the government, the judiciary can enforce the right to health?

This article adopts a comparative approach to investigating the conundrum of the non-enforceability of healthcare rights from the Nigerian and the Indian perspectives. The basis for the comparison is the fact that, first, India and Nigeria were former British colonies prior to independence.[2] Secondly, they are both constitutional democracies and the two countries' constitutions devoted a chapter to the fundamental objectives and directive principles of state policy (FODPSP), which ouster the courts' jurisdiction.[3]In contrast to the submissive attitude of the Nigerian judiciary towards the non-justiciability principle, it has, however, been established from a plethora of decided cases[4] that the Indian judiciary has adopted a more proactive role in the realm of enforcing economic and social (ES) rights in the context of political rights. The theoretical argument has been that healthcare rights are inter-related with the right to life, the right to personal liberty and the right to dignity of human person, and that they are mutually supportive of one other. This judicial effort began after the Emergency

1 World Health Organization, World Health Report on Health Care – Chapter 3 General Health Care, 2011 <https://www.who.int/disabilities/world_report/2011/chapter3.pdf?ua=1> accessed on 3 February 2020.

2 Caroline Cohn, 'India and Nigeria; Similar Colonial Legacies, Vastly Different Trajectories: An Examination of the Differing Fates of Two Former British Colonies' (2013) 7(1) Cornell International Affairs Review 1 <www.inquiriesjournal.com/article/1483> accessed 2 February 2020.

3 Constitution of India 1996, chap IV and Constitution of Nigeria 1999, chap II.

4 *Kasavananda Bharati Sripadagalvaru v State of Kerala* AIR 1973 SC 1461 (India); *SP Gupta v President of India* (1982) 2 SCR 365; *Bandhua Mukti Morcha v Union of India* (1984) 2 SCR 67 (India).

Rule (1975–77), in which Prime Minister Indira Ghandi sought to weaken judicial review.[5] This article does not attempt to highlight the merits of judicial intervention in India and Nigeria; it focuses instead on the way in which the Indian judiciary deals with the enforceability of ES rights (healthcare) without offending the provisions of the constitution. The article employs the Indian judiciary's model of judicial intervention as a unit of comparison in order to underscore the propriety of the Nigerian judiciary's position and whether it needs to shift ground to assume a more proactive interventionist role against the violation of citizens' right to healthcare services.

Authors are mindful of the nagging problems associated with governance and underdevelopment in Nigeria and India, but they argue that this menace cannot be separated from the perversion of corruption and the mismanagement of public resources that have permeated all government institutions and agencies in the country. The phenomenon of corruption is underscored by the present economic recession facing the country, which has manifestly inhibited government's capability to fulfil its obligations to citizens under chapter II of the constitution.[6] As a consequence, many citizens have died of health-related problems, while so many have been turned into beggars.[7]

Indisputably, the experience of corruption has been with the countries since independence, despite the concerted efforts of successive governments in Nigeria and India to eradicate the scourge, with little success. Closely linked to governments' inability and failure to provide healthcare services to citizens is the pervasive large-scale corruption in the two countries. According to available reports, a total of 1.3 trillion Naira was stolen by the political leaders in Nigeria between 2011 and 2015.[8] If these monies had been judiciously used, it would have changed the economic status of ordinary citizens and improved the healthcare sector's ability to provide drugs, health equipment, modern facilities and human resources. The adverse effect of corruption is the government's inability to reverse or curtail the exodus of medical doctors from Nigeria to foreign countries and the incessant strikes most often embarked upon by

5 Rehan Abeyratne, 'Socioeconomic Rights in the Indian Constitution: Towards a Broader Conception of Legitimacy' (2014) 39 Brooklyn J of International Law 29.

6 According to a report in *Vanguard*, a total of NGN1.7 trillion was disbursed to states as extra-statutory funding, but little is known about how the funds were spent. The latest amount released is the NGN522.7 billion refund to states for surplus deductions of external debts servicing fees between 1995–2002; Editorial Staff, 'Federal Government Provided NGN1.7 Trillion Extra-Statutory 'Bailout' Fund to States *Vanguard Newspaper* (Nigeria, 26 April 2017) 1.

7 Balewa Bat, *Governing Nigeria: History, Problems and Prospects* (Malthouse Press Limited 1994) 26.

8 Nigeria Bureau of Statistics Report NBS (2016) <https://www.nigerianstat.gov.ng/page/data-analysis> accessed 10 August 2018.

health workers that put the lives of millions of Nigerians in jeopardy and which often lead to many untimely deaths.[9]

This situation seems not to be substantially different from that found in India as captured in the assertion by Nirvikar Singh that:

> Corruption is an issue which adversely affects India's economy of Central, States, Local Governments and agencies. Not only has it held the country back from reaching greater height, but rampant of corruption has stunted the country's development.[10] In 2018, the India Corruption Perception Index ranked the country 78th place out of 180, reflecting a steady decline on perception of corruption among people.

The reference to corruption in this article pertains to its consequences for the countries citizens' right to enjoy available, accessible and affordable healthcare services.[11]

While it is believed that citizens enjoy constitutionally guaranteed fundamental rights, the attainment of the FODPSP, which are the key mechanisms for achieving these fundamental rights, remains a challenge.[12] The right to health is an inherent part of human rights because the enjoyment of fundament rights is inseparably contingent upon the highest attainable standard of physical and mental health.[13] The implication of the non-justiciability of the ES rights is that governments are not under any compelling obligation to pursue and implement the FODPSP for the well-being of society. This is contrary to the objective of the Constitution of Nigeria, which provides that:

> It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive and judicial powers, to conform to, observe and apply the provisions of this Constitution.[14]

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9 Samuel Wolfe, 'Strikes by Health Workers: A Look at the Concept, Ethics, and Impacts' (1979) 69(5) American Journal of Public Health 431–433; S Olatunji, 'Resident Doctors Begin Warning Strike on Wednesday' *The Punch Newspaper* (Nigeria, 25 June 2013) <http://www.punchng.com/news/resident-doctors-begin-warning-strike> accessed 22 March 2019; W Ogbebo, 'The Many Problems of Nigeria's Health Sector' (2015) <http://leadership.ng/features/446619/the-many-problems-of-nigerias-health-sector> accessed 22 March 2019.

10 Nirvikar Singh, 'The Trillion-dollar Question' *The Finance Express* (India, 10 July 2019).

11 Corruption Perception Index 2018, Key Highlights, Centre for Media Study, New Delhi, India <https://www.cmsindia.org> accessed 22 January 2019.

12 See generally Peter Rowe, *The Impact of Human Rights Law on Armed Forces* (Cambridge University Press, 2006) 30 at 76; Micheline Ishay, *The History of Human Rights from Ancient Times to The Globalization Era* (California University Press 2004) 66.

13 David Landau, 'The Reality of Social Rights Enforcement' (2012) 53(1) Harvard International Law Journal 238.

14 Constitution of Nigeria, s 13.

Conversely, the constitution of India categorically directs the state to initiate measures directed at improving the welfare of the people.[15] From these expositions, it is not wrong to argue in support of the indispensability of judicial intervention in safeguarding citizens' rights to life, liberty and dignity of human person through the judicial enforcement of healthcare rights. More so, the quest for obedience to the rule of law has been one of the cardinal agenda points in modern democracy which accounted for the citizens' continuous interest in the judiciary and judicial process as a source of hope for the hopeless.[16] The right to healthcare as one of ES rights is a necessary requirement for preserving the lives Nigerians against avoidable death. This can be achieved only by making healthcare services affordable and easily accessible.

In reality, there is actually no basis for any government to claim it has provided adequate protection against the violation of fundamental human rights when the essential requirements for attaining the protection of the rights as enumerated in chapter II of the Nigerian Constitution, as in Chapter IV of the Indian Constitution, are not justiciable.[17] Importantly, fundamental human rights make life worthwhile and purposeful, especially the right to dignity of human persons. The sanctity of human life, as envisaged in Article 21 of Indian Constitution and section 35 of the Nigerian Constitution, broadens its scope to encompass human personality in its full content. In this context, this article argues that, irrespective of section 6(6)(c) of the Nigerian Constitution which makes ES rights non-justiciability, there seems to be causal link between health rights and some fundamental rights, especially the right to life. Therefore, the authors contend that, rights notwithstanding, the provision of section 6(6)(c) of the Nigerian Constitution which makes ES rights (health inclusive) non-justiciable, and healthcare rights could still be made enforceable like human rights to compel the government to fulfil its constitutional obligations to citizens. The consensus recommendation, according to scholars, is that courts can enforce socio-economic rights but should do so in a weak-form or dialogical manner, by which they point out violations of rights but leave the remedies to the political branches.[18] It is against this background that this article seeks to investigate the linkage between ES rights and human rights, on the one hand, and judicial intervention to enforce them in the emerging situation in Nigeria, on the other, drawing inspiration from the practice in India. The enforceable rights-based approach is a conceptual framework; if embraced, it could work to change the context in which judicial decisions

15 Constitution India, art 38.

16 The author is not unmindful of allegations of corruption in the judiciary. This is illustrated by the recent arrest of some judges, including two Supreme Court Justices, by the EFCC for corruption. However, the institution, though weak, remains the only available alternative for citizens to ventilate their grievances. See MB Lasisi 'Corruption in the Judiciary' *The Nation* (Nigeria, 20 August 2018) 1.

17 Navish Jheelan, 'The Enforceability of Socio-Economic Rights' (2007) 2 European Human Rights Law Review 146–157.

18 Landau (n 13) 223.

are made in respect of the violation of right to healthcare.[19] This theoretical exposition is significant especially in a developing country such as Nigeria, where there is an extreme gap between the rich and the poor, the leaders and their subjects. This makes the law a catalyst for the destitute, poor and disadvantaged individuals in society to reach out for or demand socio-economic justice and equity from their leaders.

Right to Health in the International and Regional Instruments

The relevance of this part of the article is that Nigeria and India are members of the global community, signatories to several international conventions and, by extension, under an obligation to ensure the workability of these instruments in their countries. ES rights is anchored on the principle embedded in the Universal Declaration of Human and Peoples' Rights (UNDHR), especially Articles 22–28.[20] They are rights which demand proactive commitment on the part of a government to protect its citizens.[21] These obligations include ensuring that citizens live and work in conditions suitable to the basic level of human development and dignity.[22] Arguably, the right to healthcare is a right to which individual citizens are entitled and it can be exercised only in their relationships with other human beings as members of a group. It is a right which can be made effective only when a government takes constructive steps to protect and safeguard its individual enjoyment.[23]

The right to healthcare is also embodied in many human rights treaties aimed at eradicating discrimination against the less privileged, poor and vulnerable groups in society.[24] Complementing UDHR is the International Covenant on Economic, Social and Cultural Rights (CESCR) of 1966.[25] CESCR enumerates socio-economic rights such as the right to work, to social security and social insurance, an adequate standard of living including adequate food, clothing, housing and the continuous improvement of the standard of living, to health, and to education.[26] For instance, CESCR[27] provides:

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19 John Aiyedogbon and Bright Ohwofasa, 'Poverty and Youth Unemployment 1987–2011' (2012) 3(20) International Journal of Business and Social Science 269–279.

20 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 12 <https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf> accessed 12 February 2019.

21 Etienne Mureinik, 'Beyond a Charter of Luxuries: Economic Rights in the Constitution' (1992) 8(4) South African Journal on Human Rights 464–474.

22 Stephen Holmes, and Cass Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (WW Norton & Company 1999) 23–24.

23 ibid.

24 See Martin Scheinin, *Economic and Social Rights and Human Rights* (Martinus Nijhoff 2001) 29.

25 Convention on Elimination of All Forms of Discrimination against Women (CEDAW) (adopted in 1979 by UN and came into force on 13 September 1981).

26 International Covenant on Economic, Social and Cultural Rights (adopted on 16 December1966; entered into force from 3 January 1976) arts 6, 7, 11, 12 and 13.

27 ibid, art 12.

> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
>
> The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
>
> *(a)* The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
>
> *(b)* The improvement of all aspects of environmental and industrial hygiene;
>
> *(c)* The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
>
> *(d)* The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

In this way, the right to healthcare admits of no discrimination on the basis of racial, religious or ethnic origin, just as the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), which affirms the applicability of the full range of socio-economic rights for women, does. At the regional level, the provisions for the protection of ES rights are incorporated in the African Charter on Human and Peoples' Rights (ACHPR) and the Rights of Women in Africa (RWA). Specifically on health, the ACHPR[28] provides:

> Every individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

As international treaties, these conventions ought to be unequivocally binding as a matter of international law, but many countries of the world, including Nigeria and India, have failed to domesticate the laws and consequently continue to discriminate against the enforceability of ES rights. However, in contrast to the practice in Nigeria, the Indian judiciary has shown some commitment to implementing the conventions, as can be distilled from several judicial interpretations of FODPSP in the context of FHR —especially right to life to sustain its justiciability.[29] This is evident from the observation of Archana that

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[28] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 16(1) and (2).

[29] *Paschim Banga Khet Mazdor v State of West Bengal* (1996) 4 SCC 37; *Panikurlangara v Union of India* (1987) 2 SCC 167.

> the Indian judiciary is dedicated to the task of upholding the force of law and subduing law of force by feeling the nation's purse to enforce the rule of law as against rule of arbitrariness.[30]

It should be noted that many international conventions allow reservations to be made on their provisions. A reservation is

> a unilateral statement, in whatever manner it is expressed, made by a country, when appending signature, or ratifying a treaty, whereby it purports to leave out or to vary the legal consequence of certain provisions of the treaties in application to that country.[31]

Therefore, a country may choose to endorse an international treaty without making its provisions binding.[32] Most international conventions have had reservations made to some of its provisions, hindering them from achieving their universal status.

Irrespective of whether the Nigerian judiciary is passive with regard to the adjudication of ES rights, the Nigeria Supreme Court, in *Ogugu v State*,[33] affirmed that all human rights provisions in the African Charter are applicable and enforceable in Nigeria through the ordinary rules of courts in the same manner as those fundamental rights set out in Chapter IV of the Nigerian Constitution 1999 as amended. This position was reaffirmed by the later decision of the Nigerian apex court in *Abacha v Fawehinmi*.[34] Just like the Nigerian judicial disposition, for example, the Namibian court in *Kuaesa v Minister of Home Affairs & Others*,[35] affirmed that the African Charter on Human and Peoples' Rights had become binding on Namibia and formed part of the law of Namibia; and, therefore, it had to be given effect in Namibia. The cases referred to above seem to support the enforceability of ES rights under the AFCHPR; they are not judicially enforceable domestically because of the concept of non-justiciability. The ouster of the court jurisdiction is contained in section 6(6)(c) of the Nigerian Constitution, 1999.

Healthcare Right in the Nigerian and Indian Constitutions

From the outset, it is pertinent to explain the basis for the comparative exploration of the Nigeria and India experiences on the subject under investigation. The fulcrum of this comparative study is based on the fact that Nigeria and India have exceptionally

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30 Archana Gadekar, 'Right to Health: A Myth or a Reality' (2009) 12(2) Journal of the Institute of Human Right 41.

31 J Riddle, 'Making CEDAW Universal: A Critique of CEDAW's Reservation Regime Under Article 28 and the Effectiveness of the Reporting Process (2003) 34 George Washington Intl LR 206.

32 ibid.

33 *Ogugu v State* (1994) 9 NWLR (pt 366) 1 at 22.

34 *Abacha v Fawehinmi* (2000) FWLR (pt 4) 533; see also *Fawehinmi v Abacha* (1996) 9 NWLR (pt 475) 710, where the Court of Appeal had opined that the African Charter was superior to any other municipal laws in Nigeria.

35 *Kuaesa v Minister of Home Affairs & Others* Case No A 125/94 (unreported, 1994) 78–79.

diverse populations, endured the purposeful divide-and-rule strategies executed by British colonisers who through it sought to exacerbate existing differences, and experienced peaceful transfers from colonial rule to independence.[36] In another respect, India and Nigeria have had very different levels of success in their efforts to bring about socio-economic development and political stability. Currently, India is distinguished from other post-colonial independent nations for its political stability, demonstrated by its 'set of stable political and legal institutions that have now remained more or less intact for over five decades' and a parliamentary democracy that has 'remained more or less unchanged since India's independence and continues to function in an orderly fashion'.[37] Nigeria, on the other hand, is an exemplar of third-world political instability, characterised as 'highly nondemocratic and prone to using force' and plagued by recurrent coups and violent ethno-religious conflicts.[38]

The source of India and Nigeria's divergent outcomes lies primarily in the structuring of their demographic diversity. India has had success in achieving political stability due to its diversity existing as 'crosscutting cleavages', a characteristic of society that is associated with political stability. On the other hand, Nigeria's 'overlapping cleavages' comprise a population whose linguistic, religious and ethnic differences overlaps on top of one another and coincide with regional differences.[39]

The right to healthcare as one of the FODPSP both in Nigeria and India is expressed in the form of constitutional obligations shouldered by the government. This is without prejudice to the consequences of the two countries' government failures, which have indirectly hindered individual enjoyment of the fundamental rights. Be that as it may, in some African countries ES rights appear in their constitutions following the same pattern as adopted in the CESCR but only in the form of FODPSP with the ouster of judicial intervention. Examples are Uganda[40] Zambia,[41] Ghana,[42] India,[43] Sierra

36 Cohn (n 2).
37 ibid.
38 ibid.
39 ibid.
40 Constitution of Uganda 1995, arts 35–40.
41 Constitution of Zimbabwe 1996, part IX, art 112; it lists the Directives of State Policy, which include, inter alia, the creation of an economic environment encouraging individual initiative and self-reliance; obtaining employment; clean and safe water; adequate medical and health facilities, and decent shelter.
42 See Constitution of Ghana 1992, ch 6, ss 34–39.
43 (n 15)

Leone[44] and Liberia,[45] all of them following the same pattern as Nigeria.[46] The principles are sometimes expressed in the form of enforceable rights; these are merely supposed to guide the state in the adoption of policies for their implementation. But the enactments of the principles do not in any manner confer judicial involvement in the event of their violation; therefore, FODPSP cannot be the subject of litigation. By implication, because the provisions do not impose a compelling duty on the government nor do they confer any rights on citizens, an aggrieved individual whose right is violated cannot pursue the infringement in court.

In spite of the above position, a careful perusal of article 47 of the Indian Constitution reveals that the provision demands that the state must regard raising the living standard of its people and the improvement of public health by ensuring that proper healthcare and health facilities are among the primary duties of state. This is contained in Part IV of the Indian Constitution, which exclusively mentions the primary duties of the state. In terms of this provision, it is the obligation and primary duty of state to ensure proper healthcare services for its citizens. Looking at the Nigerian legal and constitutional frameworks reveals without doubt that the laws do not in any way accord healthcare the standing of a right.[47] The provision of the Nigerian Constitution[48] which excludes the judicial power of intervention on FODPSP provides as follows:

> The judicial powers vested in accordance with the provision of this section shall not, except otherwise provided by this Constitution, extend to any issues or questions as to whether any act or 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.[49]

In a similar way, the Indian Constitution provides as follows:

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44 Constitution of Sierra Leone, Act No 6 1991, s 22(8)(3)(d), states, 'government shall provide adequate medical facilities for all persons having regard to the resources of the State'<http://global.org/globalex/SieriaLeoneLegalSystem> accessed 22 November 2018.

45 Constitution of Liberia 1986, art 8 of Chapter III; in fact, article 4 of the constitution states that all the provisions contained in chapter II are mere guidelines for the formulation of legislative, executive and administrative directives, policy-making and their implementation<http://www.2.ohchr.org/english>accessed 23 June 2018.

46 ibid.

47 Edoba Omoregie, 'Justifying the Right to Health in Nigeria: Some Comparative Lessons' (2014) 12 Nigeria Juridical Review 13.

48 (n 14) s 6(6)(c) (Nigeria).

49 ibid.

> The provisions contained in this Part (Part IV) shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.[50]

Under the Sierra Leone Constitution, it is stated that provisions of chapter IV shall not confer any legal rights or be enforceable in any court of law, but the principles are fundamental.[51] Invariably, section 13 and section 38 of the Nigerian and Indian constitutions, respectively, as well as section 4 of the Sierra Leonean Constitution, which imposes an obligation on all organs of government and on all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of ES rights, are defeated if by virtue of section 6(6) (C), section 37 and section 14 of Nigerian, Indian and Sierra Leonean constitutions, respectively, FODPSP are not justiciable.

The inference that can be drawn from the above is that it is not within the jurisdiction of the judiciary to intervene or to uphold a demand for the enforcement of the right to healthcare: even, for instance, getting at least first aid in an emergency situation or access to public medical care as a right in a life-threatening situation. This includes the failure of the two countries to make adequate provision for healthcare. In fact, this is often the case with fundamental rights, which most countries claim to respect, protect or fulfill because, routinely, an aggrieved person still has to go to court for enforcement in the event of a violation.

Evidence, however, abounds of a steadily increasing number of countries that have included ES rights such as the right to health in their constitutions, with varying levels of enforcement. Some countries which, like Nigeria, are signatories and have ratified many UN Human Rights Conventions have made a positive, binding international commitment to follow the standard set out in Universal Human Rights instruments by recognising the right to healthcare in their countries. Such countries include: South Africa, which, in article 15 of its constitution, embodies the right to health;[52] so also in the case of Guinea[53] and Rwanda,[54] which stand out as the most progressive countries in Africa in the realm of entrenching health rights and other ES rights provisions in their constitutions.[55] For instance, the South African Constitution has a unique feature: it

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50 (n 15) s 37 (India).

51 (n 44) s 14 (Sierra Leone).

52 South African Constitution 1996, art 15.

53 Republic of Guinea's Constitution 2010, art 25 provides that the state has the duty to assure the diffusion and the teaching of the constitution, of the UNDHR 1948, of ACHPR as well as all international instruments duly ratified relative to Human Rights.

54 Rwandan Constitution 2003, art 43; see also art 44, which empowers the court to protect and enforce rights according to the Constitution.

55 Mary Ann Glendon, 'Rights in Twentieth-Century Constitutions' (1992) 28 Univ Chicago LR 519, 527, 528. See also Wojciech Sadurski, 'Post-Communist Charters of Rights in Europe and the US Bill of Rights' (2003) 65 Journal of Law & Contemporary Problems 223; Sandra Liebenberg, 'South

entrenches both civil and political rights and also social and economic rights in the constitution and renders both justiciable.[56] Indeed, the South Africa Constitutional Court has declared that economic and social rights are justiciable.[57] The specifically enumerated economic and social rights in its 1996 Constitution are: the right to work,[58] the right to *physical and mental health and receive medical attention when they are sick*, [59] the right to education[60] and a cultural right.[61] In the same vein, the Kenyan Constitution guarantees a justiciable right to healthcare.[62]

In practical terms, the purpose of the constitution is not merely to protect extant rights but also to empower the vulnerable, disadvantaged persons and contribute to the alleviation of socio-economic evils such as poverty, illiteracy, health and environmental hazards, unemployment and homelessness. In order to achieve these, a commitment to fulfilling the objectives embedded in ES rights becomes imperative. Regrettably, whereas the FODPSP in most of those countries with a written constitution aimed at creating an egalitarian society, affirm the citizens' freedom against abject poverty, homelessness, insecurity, physical environmental conditions that may hitherto prevent them from accompanying their human developments, the contrary has been the case.[63] Instead of the principles being a creative part of most African countries' constitutions, and fundamental to advancing good governance, the common phenomenon militating against the enforceability of the principles is their non-justiciability status. Theoretically, though, the right to health remains non-justiciable, the language in which it is couched indisputably appears to contain positive obligations which governments must fulfil and, therefore, should ordinarily be justiciable.[64]

In contrast to the above position, a government is expected to ensure affirmative action in the provision of health services for benefit of the disadvantaged groups in society;[65] but the specific wording of the relevant provisions does not indicate that the right is

Africa's Evolving Jurisprudence on Socio-Economic Rights' (2002) 6(159) Law Democracy & Development <http://www.communitylawcentre.org.za/Projects/Socio-EconomicRights/research/socio-economic-rights> accessed 23 June 2013.

56 Kirsty MacLean, *Constitutional Defence: Courts and Social Economic Rights in South Africa* (Pretoria University Law Press 2009) 110–111<https://www.pulp.up.ac.za> accessed 12 March 2019.

57 ibid 110. See *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa, 1996,* 1996 (4) SA 744 (CC) para 77.

58 (n 53) art 23 (South Africa).

59 ibid art 27(1)(a)

60 ibid art 29.

61 ibid art 30–33.

62 Kenyan Constitution 2010, s 43(1)(a).

63 Gerard Casey, 'Are there Un-enumerated Rights in the Irish Constitution?' (2005) 23(8) Irish Law Times 123–127.

64 ibid.

65 Constitution of Nigeria, s 16(1)(a).

enforceable against the state or against individuals and non-state entities.[66] Irrespective of the affirmative assertions that all human rights are universal, interrelated, interdependent and inseparable, the international protection of FODPSP through courts' intervention has consistently been unsuccessful in some countries[67] compared to their civil and political rights (CPR) counterparts.[68] This in turn applies to asserting a right to health in Nigeria. It has been rightly posited that:

> The international community as a whole continues to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action.[69]

This has, to a certain extent remained the position in contemporary India and, in particular, in Nigerian society today. A number of arguments, which are discussed below, have been continually advanced to support the contention regarding the international protection of ESC Rights. Incidentally, a counter-argument has been advanced that the stated policy problems are not peculiar to the healthcare right and that they will, in reality, hold true for the implementation of a number of civil and political rights, such as the right to life and to freedom of movement.[70] In particular, the nature of ES rights makes determining correlating duties problematic, as underscored in the observation of Leckie:

> When someone is tortured… Observers almost unconsciously hold the state responsible. However, when people die of hunger or thirst (or when they suffer because they are unjustly disinherited), the world still tends to blame… the simple inevitability of human deprivation, before placing liability at the doorstep of the state. Worse yet, societies increasingly blame victims of such violations for creating their own dismal fates…[71]

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66 Section 17(3).

67 For example, the Constitutional Court of South Africa and the Supreme Court of India offer unique responses to the objections levelled against judicially enforceable socio-economic rights, with illuminating implications for constitutional legitimacy. See, generally, Natasha Menell, 'Judicial Enforcement of Socioeconomic Rights: A Comparison between Transformative Projects in India and South Africa' (2016) 49 Cornell International Law Journal 724–725.

68 R Hirschl, '"Negative" Rights vs "Positive" Entitlements: A Comparative Study of Judicial Interpretation of Rights in Emerging Neo-Liberal Economic Order' (2000) 22 Human Rights Quarterly1072–1073.

69 UN Committee on Economic, Social and Cultural Rights, 'Statement to the World Conference' UN Doc. E/1993/22, 83 para 5.

70 Alicia Yamin, 'The Future in the Mirror: Incorporating Strategies for the Defence and Promotion of Economic, Social and Cultural Rights into Mainstream of Human Rights Agenda' (2005) 27 Human Rights Quarterly 1214.

71 Scott Leckie, 'Another Step Towards Indivisibility: Identifying the Key Features of Violation of Economic, Social and Cultural Rights' (1998) 81 Human Rights Quarterly 81–82.

In summary, this article concludes that an acceptable comparison and critique of the practice in Nigeria necessitate a consideration of how Indian judiciary overcome the apparent constitutional limitation on the non-justiciability of healthcare right through its creative and proactive interpretation to justify the justiciability of the healthcare right and the lesson that can be learnt by its Nigerian counterpart.

Linking Healthcare Right to Fundamental Rights

Without prejudice to our earlier discussion, linking the right to health within the enforceable fundamental human rights for the purpose of justifying judicial intervention is not an entirely novel concept. For example, the Indian courts' activism exhibited in a plethora of cases established the connecting link between the right to healthcare and the right to life as justification for its enforcement. In the landmark case of *Paramanand Katara v Union of India*,[72] the Indian Supreme Court held that:

> Every doctor whether Government or private or otherwise has obligation to extend his service with due expertise for the protection of life. No law or state action can intervene to avoid delay.

This is congruous with the fact of an implicit or explicit recognition of the right of humanity to ES rights since the Universal Declaration of Human Rights in 1948 and, in the African region, the African Charter on Human and Peoples' Rights.[73] It is significant to bear in mind that the fulfillment or denial of either ES rights or any of the Fundamental Human Rights has direct effect on the other rights. However, the perception, advocacy and application of the two concepts and concerns have been diverse and varied overtime.[74]

The question then is this: Why is the healthcare right, like other ES rights, linked to enforceable human rights? There are several possible answers. Most obviously, and in contrast to the rest of international human rights laws, a human rights perspective directly addresses the impacts of ES rights on the life, economy, health, peaceful environment, private life, and propriety of individual human rights rather than on others.[75] It may serve to secure higher standards of living and well-being in citizens if governments take positive measures to empower their citizens socially and economically and control the pollution affecting individuals' private lives. In the case

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72 *Paramanand Katara v Union of India* AIR (1989) 4 SC 2030.

73 Fleur Kingham, 'Human Rights and Environmental Rights: Implications of a "Rights based" Approach for Mining in Australia' (Paper presented at the Queensland Environmental Law Association Conference 2003, Surfers Paradise, 8 May 2003) <http://www.sclqld.org.au/qjudiciary/profiles/fykingham/publications/> accessed 18 December 2015.

74 Chuks J Mba, 'Revisiting Aspects of Nigeria's Population Policy' (2002) 17(1) African Population Studies 23–36.

75 Landau (n 13) 408–411.

of *Vincent v Union of India*,[76] the Supreme Court of India, in its practical interpretation of Article 21 of the constitution, expanded the meaning and scope of the word 'life'. It judicially interpreted the word 'life' not to mean mere animal existence; it has to mean a life befitting human dignity. The right to livelihood is also part of this article, since a man cannot earn his livelihood without being healthy; the health of a person would also become an integral facet of their right to life.

Increasingly, aggressive and creative enforcement of FODSP is a potent tool that promotes the rule of law in this context: governments become directly accountable for their failure to provide the basic necessities of life. It can also be an instrument that facilitates access to justice and the enforcement of judicial decisions.[77] The significance of judicial synergy to the enforcement of the right to healthcare can be inferred from the well-articulated observation of Sachs J (Justice of the Constitutional Court of South Africa) that:

> An implication of placing social and economic rights in a constitution is to say that decisions which, however well-intended, might have the consequence of producing intolerable hardship cannot be left solely in the hands of overburdened administrators and legislators. Efficiency is one of the great principles of government. The utilitarian principle of producing the greatest good for the greatest number might well be the starting-off point for the use of public resources. But the qualitative element, based on respect for the dignity of each one of us, should never be left out. This is where the vision of the judiciary, tunnelled in the unshakable direction of securing respect for human dignity, comes into its own.[78]

In the above stand point, the right to health deserves a proactive judicial stance in securing its enforcement against neglect and violation by government.[79] This is not to say that it is the constitutional responsibility of the judiciary to lean on the side of one section of society against another, be it powerful or weak, the government or the governed; so also should the heartfelt sympathetic disposition of the judiciary to the claims of individuals influence their disposition.

Judicial Intervention and Conception

As a prelude to this investigation, it is useful to sketch the article's conception of judicial interventionism. According to the authors, contextually, 'judicial intervention' is

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76 *Vincent v Union of India* (1987) 6 SC 990 at 995.

77 Linda Stewart, 'Adjudicating Socio-Economic Rights Under a Transformative Constitution' (2010) 28(3) Penn State International LR 489–491.

78 Albie Sachs, 'The Judicial Enforcement of Socio-Economic Rights, the *Grootboom* Case' (2003) 56(1) Current Legal Problems 579–601.

79 For instance, there it was claimed that during the outbreak of Ebola, victims were discriminated against by healthcare providers. See 'Ebola Patient Abandoned. Health Team Down Tool'(Nairaland Forum 2014) <http://www.nairaland.com/186229/ebola-patient> accessed 27 March 2019.

construed as 'the policy practice of judicial influence on the enforceability of the right to healthcare' or 'judicial involvement in the interpretation of the right to healthcare within the confines of enforceable rights' or, simply put, 'judicial intervention of the protection of the right to health.' This is derived from judicial powers of dispute resolution and the interpretation of laws. From this paradigm, 'judicial interventionism' is not used in any way different from the traditional functions of court, but rather as third-party arbiter saddled with power to decide legal disputes and interpret laws. Therefore, *interventionism* here presupposes the power of courts to clarify and progressively interpret the justiciability of the right to health. After all, the hallmark of an effective judiciary is its ability to enforce laws. In summary, it is assumed that in their exercise of judicial power declaring the right to healthcare justiciable, the courts will be contributing to the progressive development of the enforceability of ES rights in Nigeria.

Arguments against judicial intervention in the violation of the right to health, however, are basically arguments against the concept of justiciability. This means that healthcare as an enforceable right capable of judicial intervention presupposes the fact that human rights—whether applied in an abstract or an idealistic sense—denote a special kind of decent claim that all human beings may bring into play as a demonstration of their constitutionally guaranteed rights. In any event, as a constitutionally guaranteed right, it provides a basis from which to hold government accountable under national or international legal processes. However, it has been asserted that the rights are so vague or uncertain in nature and character that their content cannot be adequately defined and, for this reason, they are impossible to adjudicate. Some have even focused on criticism of the judicial decisions on ES rights on the ground of their immediate and direct effect on individual and judicial reluctance to provide normative clarity on the content of different ES rights.[80]

What is being asserted here is that the protection of rights should not be restricted to fundamental human rights alone. Hypothetically, if the word 'right' is ascribed its ordinary meaning as a right to which a person has a valid claim, be it property or the freedom of doing or saying something; and the word 'human' pertains to having the characteristics of or the nature of humankind or a combination of both, the terms yield the inference that human rights—be it positive, social or economic—are rights that all persons are entitled to by virtue of their being human. They are inherent in every human being by virtue of their humanity and therefore they fall within the jurisdiction of judicial intervention.[81] Presumably, the healthcare right should be justiciable against the

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80 Craig Scott and Philip Alston, 'Adjudicating Constitutional Priority in a Transnational Context: A Comment on Soobramoney Legacy and Drootboons Promise' (2006) 16 South Africa Journal of Human Rights 206.

81 Anthony Nwafor, 'Enforcing Fundamental Rights in Nigerian Court – Process and Challenges' (2009) 4 African Journal of Human Rights 1.

backdrop of the prevailing reality of the economic and social deprivations confronting a large number of people.[82] Conversely, the provision of healthcare for the citizens by a country's constitution is fundamental and indispensable to the realisation and exercise of other human rights, especially the right to life. Every human being is entitled under both national and international instruments to the enjoyment of the highest attainable standard of health conducive to human well-being and to living a life in dignity.

Admittedly, the proposed judicial interventionism to enforce the health right is predicated on the fact that healthcare services in Nigeria and India have been below expectation despite the huge sums of money the governments claimed to have invested in them.[83] Consider, for example, a situation where health workers in a government institution embark on a strike for months, making access to health for poor Nigerian impossible and leaving patients abandoned, forcing those who cannot afford private hospitals either continue to suffer from their illness or to die. This graphically indicates the adverse effects of deliberate neglect by or a lackadaisical attitude on the part of government towards the health sector, which is one of its constitutional functions. The high and stagnating rate of death from treatable diseases is a worrying trend, the more so because the poor and the vulnerable are most affected. Authors opine that an important factor that is sometimes overlooked is the government's insensitivity to the need to improve the health sector generally, as shown from the attitude of government officials seeking medical treatment outside the country at the expense of taxpayers. For example, the BBC reported that at most 5 000 Nigerians travel abroad for the treatment of different types of ailment when such treatment should have been carried out in Nigeria. In essence, more than 1,2 billion dollars is claimed to have been lost to medical tourism annually in Nigeria, funds that could have been deployed to develop the country's healthcare system instead.[84]

With this state of affairs prevailing in the health sector and in living conditions of Nigerians, how is it possible for citizens to take care of their health effectively? Bearing in mind the above report, while civil and political rights provide clear guidance on what is required, health rights and other ES rights only set out inspirational and political goals

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82 Mashood Baderin and Robert McCorquodale, 'The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development' in Mashood Baderin and Robert McCorquodale (eds), *Economic, Social and Cultural Rights in Action* (Oxford University Press 2007) 23–24.

83 Yemi Kale and SI Dogawa, 'Compilation of Labour Force Statistics for Nigeria' (2015) 6(1) CBN Journal of Applied Statistics 183–197.

84 C Uneke, A Ogbonna, A Ezeoha and others (Innovative Research Group), 'The Nigeria Health Sector and Human Resource Challenges' (2007) 8(1) The Internet Journal of Health; see also BBC Report, 'Nigeria's Buhari Broke Promise to End Medical Tourism' (2016) <https://www.bbc.com.news.business> accessed 14 July 2016.

as obligations that governments are expected to fulfil, particularly in the realm of health rights.[85] Some of these arguments are discussed below.

Constitutional Rights' Perspectives

Constitutional rights perspective is expressed from the context of the distinction between 'civil and political rights' and 'social, economic and cultural rights'. Though, one of the dominant arguments here is the contention that the ES rights provide only protection for the government and as such are negative in conception. The rights do not demand that the government take affirmative action or engage in a protective function.[86] In another perspective, it has been argued that the non-justiciability of healthcare right like other ES rights in a constitution exposes other rights to unnecessary jeopardy, because it creates the possibility or the inevitability that elected branches will fail to respect such rights and so encourage overall disrespect for constitutional limits.[87] Still other critics opposed including socio-economic rights in a constitution because, such rights will place heavy burden on governing.[88] In response, it may be argued that the line between so-called negative and positive rights is unstable. On this view, all rights, whether to life, to free speech or to free association, to movement, to personal liberty, to dignity of human person, require affirmative protection from the government, and so depend on the public expenditure of funds and resources.[89] It is notable, though those ES rights provisions consistently appear in the 1999 and 1996 constitutions of the Federal Republic of Nigeria and of India respectively. The traditional nature of these provisions ought to carry some weight even if the federal constitution does not embrace them. Moreover, elsewhere the legitimacy of socio-economic rights has been confirmed over time by their inclusion in international conventions and in many national constitutions adopted in some countries. This is against the spirit of the constitution which indicates the constitution's commitment to transform and sustain the society's socio-economic need for their well-being. Arguably, putting the burden on citizens to approach court for the enforcement of healthcare right, a constitutionally ordained or obligation of government is contended to be unrealistic and discriminatory.

Jurisdiction of Courts to Intervene on Right to Health

Another recurring criticism against judicial intervention is the view that Nigerian courts are institutionally incapable of enforcing positive rights in part, because they cannot

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85 Henry Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Morals* (Oxford University Press 2000) 66.

86 Henry Abraham and Barbara Perry (eds), *The Double Standard, Freedom and the Court: Civil Rights and Liberties in the United States* (Oxford University Press 1998) 7–29.

87 A Onigbinde, *Governance and Leadership in Nigeria* (Hope Publications Ltd 2007) 22.

88 Yemi Akinseye-George, 'Improving Judicial Protection of Human Rights in Nigeria' (Centre for Socio-Legal Studies 2011) 1–2.

89 Philip Alston, 'US Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy' (1990) 84(2) American Journal of International Law 365–393.

develop manageable standards for carrying out such rights, and in part because they cannot compel the political branches to respect and effectuate the standards that they seek to impose.[90] The ouster of jurisdiction of courts in matters concerning right to healthcare is a regular feature of the Nigerian constitutions 1960, 1963, 1979 and 1999 as altered.[91] The argument takes a recurrent perspective because courts may be designed to lack the wherewithal and resources needed to interpret, to declare, to announce, to order, or to compel actions that touch on executive prerogative functions. However, the Constitutional Court of South Africa and the Supreme Court of India offer unique responses to the objections levelled against judicially enforceable socio-economic rights, with illuminating implications for constitutional legitimacy.[92] Interestingly, the Indian judiciary has shown its deep concern for maintenance of and improvement of public health. Consequently, it has relied on several provisions of international conventions or covenants and fundamental human rights guaranteed in the constitution to elevate the right to health and healthcare as basic human rights capable of enforcement in court.[93] The institutional argument makes an indirect assault on the health right and other ES rights on the assumption that, without the possibility of judicial enforcement, these provisions hold no rightful place in a constitution.[94] It is contended that even if the right to health is not enforceable 'in the same, self-executing way as other rights', it may nevertheless serve other important constitutional purposes[95]—for example, such provisions may serve 'as programmatic indicators' that can be used to interpret other justiciable rights and may inform a court's interpretation of due process or equality requirements.

The argument about developing convenient standards focuses on the innumerable particulars that courts must consider in resolving questions that concern constitutionally vested executive obligations of government to the citizens, that is, the availability of resources. As the complexity of judicial intervention increases, so might the possibility of slippage between compliance and mandate, even where the mandate is expressed in open-ended standards.[96] This seems to fly in the face of the rationale behind ES rights or healthcare rights, which are considered to be necessary in order for the citizens to meet those basic needs essential to human welfare and survival. It is also a lawful human

90 Jheelan Navish, 'The Enforceability of Socio-Economic Rights' (2007) 2 European Human Rights Law Review 146–157.

91 (n 14) Constitution of Nigeria, s 6(6)(c).

92 Menell (n 67) 724–725.See also the case of *Francis Corelie Mullia v Union territory of Delhi* AIR (1981) SC (2) 516 at 529.

93 Frank Michelman, 'The Constitution, Social Rights and Liberal Political Justification' (2013) 1 International Journal of Constitutional Law 13.

94 William Forbath, 'Social Rights, Courts and Constitutional Democracy: Poverty and Welfare Rights, in United States' in Julio Faundez (ed), *The State of Democracy* (Routledge, London 2007) 1–124.

95 Maryam Uwais, 'Fundamental Objectives and Directive Principles of State Policy: Possibility and Prospect' in CC Nweze (ed), *Justice in the Judicial Process–Essay in Honour of Justice Eugene Ezonu, JSC* (Fourth Dimension Publishing Co 2014) 179.

96 ibid.

entitlement against deprivation and discrimination and a safeguard against poverty. The experience derived from the Supreme Court of India's activism shows that, in the absence of guaranteed justiciable ES rights, the judiciary has a crucial role to play in ensuring its justiciability.[97]

Anti-democracy Perspective of Judicial Intervention

The main focal point of argument in this part of the article is the salient distinctiveness of socio-economic rights, which makes the enforcement of their violation intricate. On this premise, judicial intervention is confronted with more practical and conceptual challenges. A comparative investigation of the Nigerian and Indian situations shows that these challenges, emanating extensively from the concept of separation of powers, constitute a budding hindrance to the achievement of social justice through the mechanism of judicial intervention. This is because ES rights demand more affirmative obligation from the executive arm of government that is vested with powers of policy formulation, resource allocation and budgetary spending for them to be realised.[98]

Recognising how highly controversial judicial decisions can run counter to majority preference, the opponents of judicial non-interventionism involving the healthcare right have raised a challenge as to whether it is democratically legitimate for courts to enforce the violation of health without interfering with the legislative and executive powers.[99] This concern is expressed here in the context of the doctrine of the separation of powers and so it borders on questions of judicial capacity to intervene without transgressing the legislative and the executive powers. In particular, it is posited that the right to healthcare raises complicated issues that are difficult to analyse, especially those concerning the allocation of scarce resources and the setting of competing priorities that are best left to the political branches and which courts are not competent to decide. Others have argued along the lines of democratic justification and political transparency. But the anti-democratic critique rings hollow when those whose interests are mostly at stake in the enforcement of the right to healthcare (typically people of limited means or power who are vulnerable) lack equal or meaningful access to democratic processes.[100] In particular, the Nigerian federal system of government

97 See the cases of *Murli S Deora v Union of India* (2001) 8 SCC 765; *Consumer Education and Research Centre v Union of India* (1995) 3 SCC 42; *X v Hospital* (2003) 1 SCC 500.

98 Malcolm Langford, 'The Justiciability of Social Rights: From Practice to Theory' in Malcom Langford (ed), *Social Rights Jurisprudence: Emerging Trends in Comparative Constitutional Law* (Cambridge University Press 2008) 9.

99 Mark Tushnet, 'Social Welfare Rights and the Forms of Judicial Review' (2004) 82(7) Texas Law Review 1895–1920.

100 James Ryan, 'Schools, Race and Money' (1999) 109(2) Yale Law Journal 249–316.

complicates the picture, making it important to unravel discussions about democratic legitimacy, the separation of powers, and federal–state relations.[101]

Without prejudice to the above arguments, determining the content of every right, regardless of whether it is classified as 'civil', 'political', 'social', 'economic' or 'cultural', is vulnerable to being labelled as insufficiently precise.[102] This is because many legal rules are expressed in broad terms and, to a certain extent, in unavoidably general wording that may demand judicial interpretation. More importantly, under the rule of law and the separation of powers, defining the content and scope of a right is primarily the task of the legislative branch, which subsequently has to elaborate on them through administrative regulations.[103] It is opined that there is no conceptual obstacle to applying a similar legislative and administrative process to defining health rights by developing the same kind of general, abstract and universal standards that characterise international conventions. In this regard, the legislature can and should explain the scope of health rights or ESC rights in their entirety.

Judicial Synergy as a Panacea to Intervention

The judiciary plays an important role in a constitutional democratic state, performing as it does functions that are crucial to the maintenance of the rule of law and the enforcement of fundamental rights and popular sovereignty.[104] The judiciary, as represented by the courts, is invested with the power of judicial review to perform the monitoring, signalling and coordination functions that facilitate the exercise of popular control over the government.[105] The relationship between judicial power and popular rule is not antagonistic but symbiotic.

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101 ibid 256.

102 See, generally, Maria Green, 'What We Talk about When We Talk about Indicators: Current Approach to Human Rights Measurements' (2001) 23 Human Rights Quarterly 23–24.

103 Elizabeth Palmer, 'Resource Allocation, Welfare Rights – Mapping the Boundaries of Judicial Control in Public Administrative Law' (2000) 20(1) Oxford Journal of Legal Studies 63–88 at 67.

104 Lon Fuller, 'The Forms and Limits of Adjudication' (1978) 92(2) Harvard Law Review 353–409.

105 The courts in Nigeria, as in every democratic state, are invested with judicial powers 6, 1999 Constitution of Nigeria. For judicial restatement see *Bronik Motors Ltd v Wemat Bank* (1983)1 SCNLR 296 and *Attorney General, Cross River State v Archibong* (1985) 6 NCLR597; it has been defined as the power 'for the determination of the civil rights and obligations of persons in cases of controversies brought before the courts by such regular proceedings as are established or recognised by law and custom'; see Benjamin O Nwabueze, *The Presidential Constitution of Nigeria* (C Hurst & Co 1982) 294. See also *Abraham Adesanya v President of the Federation of Nigeria* (1981), 2 ALL NLR 26 or 2 NCLR 358; Benjamin O Nwabueze, *Judicialism in Commonwealth Africa* (C Hurst & Co 1977) 1–2. This power extends to all inherent powers and sanctions of a court of law and to all matters between persons in Nigeria and to all actions and proceedings relating to them, for determining any question regarding the civil rights and obligations of that person, as provided for in s 6(6) of the Nigerian Constitution 1999.

The robust structure of the judiciary in the scheme of governance, with its outstanding agility and superlative constitutional interpretative power, places the institution in the best position to be proactive in the enforcement of violations of citizens' right to health. Therefore, from this perspective judicial intervention presupposes the judges' proactive stance in interpreting laws to meet the demands of substantive justice, irrespective of the bare letter of the law and the constitution. This may require the judiciary to stick its neck out and demonstrate that it hears the cry of the oppressed, sees the oppressive bravado of the oppressor and interprets the law in a way which shows that oppression and arbitrariness do not benefit the oppressed and society.

The author's position here is that proactive judicial intervention is key to making the healthcare right justiciable. This is because it will afford the courts grounds to apply a literal and purposeful interpretation when construing ES rights provisions in favour of implementing progressive social and economic policies which ensure greater equity in social relations.[106] This can be reinforced by rejecting the traditional restraints on the exercise of judicial power of intervention without negating the principle of the separation of powers. In that event, the task of the courts in enforcing the healthcare right can be justified in the context of the following:

- the courts' powers to engage in judicial review;
- constitutional power to do it better; and
- the courts' practice of judicial activism is justified.

Constitutional protection of the health right can occur either directly or indirectly. Prominent examples of the direct model of protection are the South African, Kenyan and Zimbabwean constitutions: the Bill of Rights in each, apart from civil and political rights, also contains FODPSP. On the other hand, indirect constitutional protection occurs through the application or interpretation of civil and political rights, most commonly through the application of equality and fair process norms.[107] Experience has shown that blatant exclusion of the judiciary from hearing specific legal questions has failed, even when political conditions appeared favourable.

The contention that ES rights such as the right to health should not be granted any kind of judicial or quasi-judicial protection, and should be left to the discretion of political branches of the state, devalues the right to health within citizens' legal rights.[108] It is

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106 Suleiman Nchi, *The Nigerian Law Dictionary* (Green-World Publishing Company 1996) 226.

107 See, generally, Sandra Liebenberg, 'The Protection of Economic and Social Rights in Domestic Legal System' in A Eide, C Krause and R Alan (eds), *Economic, Social and Cultural Rights: A Textbook* (Martinus Nijhoff 2001) 61.

108 Dennis Davis, 'The Case against the Inclusion of Socio-Economic Demands in a Bill of Rights Except as Directive Principles' (1992) 8(4) South African Journal on Human Rights 475–490.

also worthy of note that completely excluding courts' from intervening to consider violations of Nigerians' right to healthcare is incompatible with the idea that

> An independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments are essential to the full and non-discriminatory realisation of human rights.[109]

However, the courts have exercised restraint in construing ES rights in the constitution because of the justiciability doctrine.[110] This is one of the peculiarities of the constitution, especially considering Chapter II of the 1999 Constitution of the Federal Republic of Nigeria or Chapter IV of the Indian Constitution. Section 6(6)(c) of the Nigerian Constitution, for instance, provides that

> the judicial power vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person as to whether any law or any judicial decision is in conformity with the FODPSP set out in the Chapter II of this constitution.[111]

The non-justiciable status of Chapter II of the Nigerian Constitution was tested and judicially confirmed in *Archbishop Anthony Okogie v AG Lagos State,*[112] where it was held that:

> While section 13 of the constitution makes it a duty and responsibility of the judiciary among other organs of government to conform to and apply the provisions of Chapter II, section 6(6)(c) of the same constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear therefore that section 13 has not made chapter II of the constitution justiciable.

Aside from the above, the Nigerian courts have also embraced the African Charter on Human and People's Rights (AFCHPR) notion that there exists no watertight compartment of civil/political and socio-economic rights. This argument underscores the claim that the right to healthcare is not a distinct compartment of 'right'. For instance, in the case of *Oronto Douglas v Shell Petroleum Development Company Limited,*[113] the Court of Appeal in Nigeria upheld the justiciability of an action brought

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109 GN Okeke and C Okeke, 'The Justiciability of the Non-justiciable Constitutional Policy of Governance in Nigeria' (2013) 7(6) IOSR Journal of Humanities and Social Science 8–17.

110 ibid.

111 Boniface O Okere, 'Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution' (1983) 32 International Comparative Law Quarterly 214–215.

112 (1981) 2 NCLR 337 at 350.

113 (1999) 2 NWLR (Pt 591) 466.

on the basis of article 24 of the African Charter (Ratification and Enforcement) Act.[114] The important thing to note here is that the provisions of article 24 of the African Charter (or at least its spirit) are similar to the provisions of section 20 of the 1999 Nigerian Constitution.[115] In the same vein, the Federal High Court Benin City, in the case of *Gbemre v Shell Petroleum Development Company Nigeria Limited,*[116] the court did not have any difficulties with entertaining an action based on article 24 of the African Charter (Ratification and Enforcement) Act.

Notwithstanding the above, the Nigerian judiciary has consistently exercised more restraint in exercising its interpretative power in making ES rights justiciable. This can be gathered from several other judgments delivered by the courts. In *AG Ondo v AG Federation,*[117] the Supreme Court held that those Objectives and Principles provided for under Chapter II of the constitution remain mere declarations. In view of the foregoing, it is rather obvious that chapter II of the constitution is non-justiciable, but there are ways by which Chapter II of the constitution can be made justiciable and these are contained in the very section 6(6)(c) that made chapter II of the constitution non-justiciable. A similar position was upheld in *Federal Republic of Nigeria v Aneche*,[118] where Niki Tobi (JSC) observed as follows:

> that section 6(6)(c) of the constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words 'except as otherwise provided by this constitution'.

In similar manner, there are instances where the Supreme Court of India exercised restraint against the potential danger of breaching the doctrine of the separation of powers when enforcing ESCR. For example in *Olga Tellisv Bombay Mun Corp*[119] the Supreme Court refused to prescribe to the Government of India that it make houses available for all of its citizens; and also in *Balco Employees' Union v Union of India*,[120] the Supreme Court, in examining the validity of a state's decision to be divested of its shares in the public manufacture of aluminium, the court notoriously declared its incompetence to deal with policy issues. This means that if the constitution provides otherwise in another section, which makes healthcare in the sections of Chapter II justiciable, it will be so interpreted by the courts. More importantly, many scholars

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114 (n 23) art 24

115 ibid. Section 24 provides that the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. The fact that the provision falls within the non-justiciable fundamental objectives and directive principle of state policy alone did not deter the Court of Appeal from arriving at its decision.

116 AHRLR 151 (NgHC 2005) <https://www.globalhealthrights.org>africa/gbemre-v-shell-petroleum-development-company-and-ors/> accessed 11 December 2018.

117 (2002) 9 NWLR (Pt 772) 22.

118 (2004) 1 SCNJ 36 at 78.

119 1985 SCR 51 (India).

120 AIR 2001 SCW 5135.

conceived this cautious stance as a signal of the abandonment of the hitherto prevailing model of judicial activism.

Nonetheless, there are other instances where the Indian judiciary seems to be more proactive in accepting justiciability for ES rights. This is established from several judgments of the Supreme Court of India, including, for instance, the case of *Maneka Gandhi v Union of India.*[121] There, the court, applying directive principles in its interpretation, found under the right to life and liberty the right to travel abroad. This was followed by a series of cases in which socio-economic elements fortified the minimum core of the right to life. In the *Francis Coralie Mullin v The Administrator, Union Territory of Delhi*[122] case, the court found that there are certain socio-economic entitlements under the right to life; in *Bandhua Mukti Morcha v Union of India*[123] it declared unconstitutional the inhumane conditions of work as contrary to the right to life; in *Olga Tellis v Bombay Municipal Corporation*[124] the eviction of pavement dwellers without due process and without any provision being made for alternative accommodation was found unlawful on the same grounds.

The author is of the opinion that the Nigerian courts ought to exercise judicial intervention and learn from other jurisdictions globally. In India, for instance (as with Nigeria), apart from fundamental rights, Part IV of the Indian constitution includes a set of directive principles encompassing socio-economic rights; these directive principles were originally envisaged as distinct from fundamental rights, and inferior in status and in legal effect to them. For example, the Supreme Court of India breathed substantive life into directive principles and initiated their creative interpretation[125] on the substantive due process doctrine in considering the chapter on fundamental rights. The public interest litigation (PIL) concept was also judicially developed to allow easier access to justice for everyone. This was part of a struggle to achieve 'social justice'.[126]

It is important to bear in mind that the case law involving judicial review challenging a public authority's allocation of resources indicates that the mere fact that ES rights involve resource-allocation issues need not be an automatic bar to enforcement. It is an established fact that courts, albeit in the area of administrative law, have overturned

121 (1978) 1 SCC 248 or AIR 1978 SC 597 or (1978) 2 SCR 621.

122 1981 AIR 746 OR 1981 SCR (2) 516.

123 1992 AIR 38 OR 1991 SCR (3) 524.

124 (2007) CHR 236, (1987) LRC (const) *Soobramoney v Minister of Health, Kwazulu-Natal*; 12 BCLR 1696, (1997), (SAfr).

125 S Muralidhar, 'Economic, Social and Cultural Rights: An Indian Response to the Justiciability Debate' in Yash Ghai and Jill Cottrell (eds), *Economic, Social and Cultural Rights in Practice: The Role of Judges in the Implementing Economic, Social and Cultural Rights* (Inter-rights Publishers 2004) 23–32.

126 Prafullachandra N Bhagwati, 'Judicial Activism and Public Interest Litigation' (1984–1985) 23 Columbia Journal of Transnational Law 561–578.

public authorities' resource-allocation decisions when the issue of limited resources has *not* influenced that authority's decision. It must be admitted, therefore, that in reality it is uncommon for public authorities to operate with unlimited expenditure or unlimited resources, or to make decisions without taking into account the costs involved (either implicitly or explicitly).

Taking a clue from the judicial stand in India, however, it remains evident that although it may be difficult to enforce the health right within ES rights, with its complex redistributive element, the resource-allocation issues alone should not render them non-enforceable in all cases. These points were also made in the case of *Damish v Speaker House of Assembly of Benue State*,[127] where it was held that even though the rights contained in Chapter II are not justiciable, they contain guidelines as to what the courts should do when confronted with the problem of interpreting the constitution.

Paradoxically, the consequence of this longstanding notion that ES rights (or the healthcare right) are not enforceable has been the absence of any effort on the part of the Nigerian judiciary to define interpretative principles for their construction ES rights.[128] Therefore, the very fact that the Nigerian Constitution is a cog in the wheel of protecting ES rights is in itself a ground for presuming that the use of African Charter on Human and Peoples' Rights in finding a linkage between ES Rights and political rights may be difficult. This underlines the proposal for a judicial intervention framework that would afford citizens a sufficient degree of safeguard against the potential violation of their healthcare right.

The purely rhetorical value ascribed to these rights (the healthcare right) deprived them of judicial intervention. Judging by the contributions from legal academics, fewer concepts have been developed that would help in us to understand the enforceability of the rights such as the right to education, the right to an adequate standard of health, the right to employment, the right to adequate housing or the right to food. However, the lack of practical elaboration on these concepts does not justify the claim that because of some essential or hidden trait in the ES rights they cannot be defined at all. One way of circumventing the non-justiciability syndrome is either to have the healthcare right incorporated into the enforceable rights or to enact specific legislation guaranteeing the right. This proposition finds support in the statement by Uwaifo JSC that:

> Every effort is made by the Indian perspectives to ensure that the Directive Principles are not a dead letter. What is necessary is to see that they are observed as much as practicable so as to give cognisance to the general tendency of the Directives. It is necessary therefore, to say that our own situation is of peculiar significance. We do not need to seek uncertain way of giving effect to the directive principles in Chapter II of our constitution. The constitution itself has placed the entire Chapter II under the

127 (1983) NCLR 625.

128 Tushnet (n 99) 1890.

> Exclusive Legislative List. By this, it simply means that all the Directive Principles need not remain mere or pious declaration. It is for the Executive and the National Assembly, working together to give expression to any one of them through appropriate enactment as occasion may demand.[129]

It is worthy of note that the principal function of the constitutional provision on the right to healthcare is symbolic. This is because it sets forth the intention of the government to protect the health of his citizens. However, a statement of a nation's policy alone is not sufficient to assure citizens' entitlement to healthcare; the right must be developed through specific statute,[130] programme and service.

Conclusion

The question whether, given the nature of the healthcare right, the right is legally justiciable is ultimately evidence of its political tinge. This is because its enforceability could provide courts with enhanced powers to protect an individual's right to healthcare, notwithstanding the fact that it may constitute a potential threat to politicians and economists. Even when viewed from the perspective of social welfare rights, it will be inextricably linked to enormous costs and executive policy-making. Yet these possibilities have no patent basis in human rights or law. Therefore, political constraints to the justiciability of healthcare and ideologies may be successfully camouflaged by complex theoretical and legal arguments against judicial intervention. However, the potential remedy to countering any legal disguise is to be found when the right to healthcare is given the character of human rights norms. In the above proposition, judicial intervention could be used as a tool with which to crack the constraint even more than the cautious stance most courts often adopt in dealing with social welfare rights. Accordingly, when the concealing outfit of non-justiciability collapses, what would emerge is the need for brave, substantive judicial will to intervene. The question is whether the judiciary is ready for it.

As indicated above, statutory regulations, case law and jurisprudential concepts all contribute to interpreting and clarifying the content and scope of rights. Nevertheless, in their absence, there are other ways to lend a degree of substance to the content of ES rights and to guarantee that they are respected, protected and fulfilled. Importantly, it is concluded that any judicial enforcement of socio-economic rights must aim at protecting the wide range of conditions confronting the marginalised individuals. If the judiciary is left to develop a template for the protection of socio-economic rights, employing their linkages to civil and political rights, it will undoubtedly enable the courts to extend the

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129 *Attorney General Ondo State v Attorney General of the Federation* (2002) 9 NWLR (pt 772) 222 at 391.

130 The National Assembly can legislate to bring any FODPSP within enforceable rights pursuant to s 13 and item 60(6)(a) of the Exclusive Legislative List, Nigeria Constitution 1999 (as amended). (confirmed)

protected areas within the 'core' of the meaning of the rights. Doing so is essential to safeguarding the life and dignity of the individual in a democratic society. The exact limit of the right to health is debatable because, if left non-justiciable, it would make a mockery of other rights –this even though, in doing so, the judiciary would face legitimate criticism that their intervention would constitute interference in an area of legislative competence that is the preserve of the legislature and the executive.

References

Abeyratne R, 'Socioeconomic Rights in the Indian Constitution: Towards a Broader Conception of Legitimacy' (2014) 39 Brooklyn Journal of International Law.

Abraham H and Perry B (eds), *The Double Standard, Freedom and the Court: Civil Rights and Liberties in the United States* (Oxford University Press 1998).

Aiyedogbon J and Ohwofasa B, 'Poverty and Youth Unemployment 1987–2011' (2012) 3(20) International Journal of Business and Social Science.

Akinseye-George Y, *Improving Judicial Protection of Human Rights in Nigeria* (Centre for Socio-Legal Studies, 2011).

Alston P, 'US Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy' (1990) 84(2) American Journal of International Law <https://doi.org/10.2307/2203459>

Baderin M and McCorquodale R, 'The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development' in Mashood Baderin and Robert McCorquodale (eds), Economic, Social and Cultural Rights in Action (Oxford University Press 2007) <https://doi.org/10.1093/acprof:oso/9780199217908.001.0001>

Bat B, *Governing Nigeria: History, Problems and Prospects* (Lagos Malthouse Press Limited, 1994).

BBC Report, Nigeria's Buhari Broke Promise to end Medical Tourism (2016) <https://www.bbc.com.news.business> accessed on 14 July 2016.

Bhagwati P, 'Judicial Activism and Public Interest Litigation' (1984–1985) 23 Columbia Journal of Transnational Law.

Casey G, 'Are there Un-enumerated Rights in the Irish Constitution?' (2005) 23(8) Irish Law Times.

Cohn C, 'India and Nigeria; Similar Colonial Legacies, Vastly Different Trajectories: An Examination of the Differing Fates of Two Former British Colonies' (2013) 7(1) Cornell International Affairs Review 1 <https://doi.org/10.37513/ciar.v7i1.445>

Corruption Perception Index 2018, Key Highlights, Centre for Media Study, New Delhi, India, <https://www.cmsindia.org> accessed 22 January 2019.

Davis DM, 'The Case Against the Inclusion of Socio-Economic Demands in a Bill of Rights Except as Directive Principles' (1992) 8(4) South African Journal on Human Rights <https://doi.org/10.1080/02587203.1992.11827876>

Ebola Patient Abandoned. Health Team Down Tools, National (2014) <http://www.nairaland.com/186229/ebola-patient> accessed 27 March 2019.

Editorial Staff, 'Federal Government has Provided N1.7 Trillion Extra-Statutory 'Bailout' Fund to States, *Vanguard Newspaper* (Nigeria, 26 April 2017).

Forbath WE, 'Social Rights, Courts and Constitutional Democracy: Poverty and Welfare Rights, in United States' Julio Faundez (ed), *The State of Democracy* (London Routledge, 2006) <https://doi.org/10.1080/13510340500400011>

Fuller L, 'The Forms and Limits of Adjudication' (1978) 92(2) Harvard Law Review <https://doi.org/10.2307/1340368>

Gadekar A, 'Right to Health: A Myth or a Reality' (2009) 12(2) Journal of the Institute of Human Right 41.

Glendon MA, 'Rights in Twentieth-Century Constitutions' (1992) 28 University of Chicago Law Review <https://doi.org/10.2307/1599944>

Green M, 'When We Talk about Indicators: Current Approach to Human Rights Measurements' (2001) 23 Human Right Quarterly <https://doi.org/10.1353/hrq.2001.0054>

Hirschl R, '"Negative" Rights vs "Positive" Entitlements: A Comparative Study of Judicial Interpretation of Rights in Emerging Neo-Liberal Economic Order' (2000) 22 Human Rights Quarterly <https://doi.org/10.1353/hrq.2000.0044>

Ishay M, *The History of Human Rights from Ancient Times to the Globalization Era* (California University Press 2004).

Jheelan N, 'The Enforceability of Socio-Economic Rights' (2007) 2 European Human Rights Law Review.

Holmes S and Sunstein C, *The Cost of Rights: Why Liberty Depends on Taxes* (WW Norton & Company 1999).

Kale Y and Dogawa SI, 'Compilation of Labour Force Statistics for Nigeria' (2015) 6(1) CBN Journal of Applied Statistics.

Kingham F, 'Human Rights and Environmental Rights: Implications of a "Rights based" Approach for Mining in Australia' (Paper presented at the Queensland Environmental Law Association Conference 2003, Surfers Paradise, 8 May 2003) <http://www.sclqld.org.au/qjudiciary/profiles/fykingham/publications/> accessed 18 December 2015.

Landau D, 'The Reality of Social Rights Enforcement' (2012) 53(1) Harvard International Law Journal.

Langford M, 'The Justiciability of Social Rights: From Practice to Theory' in M Langford (ed), *Social Rights Jurisprudence: Emerging Trends in Comparative Constitutional Law* (Cambridge University Press 2008) <https://doi.org/10.1017/CBO9780511815485>

Leckie S, 'Another Step Towards Indivisibility: Identifying the Key Features of Violation of Economic, Social and Cultural Rights' (1998) 81 Human Rights Quarterly <https://doi.org/10.1353/hrq.1998.0008>

Liebenberg S, 'The Protection of Economic and Social Rights in Domestic Legal System' in A Eide, C Krause and R Alan (eds), *Economic, Social and Cultural Rights: A Textbook* (Martinus Nijhoff 2001).

Liebenberg S, 'South Africa's Evolving Jurisprudence on Socio-Economic Rights' (2002) 6 (159) Law Democracy & Development.

MacLean K, *Constitutional Defence: Courts and Social Economic Rights in South Africa* (Pretoria University Law Press 2009) <https://www.pulp.up.ac.za> accessed 12 March 2019.

Mba CJ, 'Revisiting Aspects of Nigeria's Population Policy' (2002) 17(1) African Population Studies.

Menell NG, 'Judicial Enforcement of Socioeconomic Rights: A Comparison Between Transformative Projects in India and South Africa' (2016) 49 Cornell International Law Journal.

Michelman F, 'The Constitution, Social Rights and Liberal Political Justification' (2013) 1 International Journal of Constitutional Law <https://doi.org/10.1093/icon/1.1.13>

Muralidhar S, 'Economic, Social and Cultural Rights: An Indian Response to the Justiciability Debate' in Ghai Y and Cottrell J (eds), *Economic, Social and Cultural Rights in Practice: The Role of Judges in the Implementing Economic, Social and Cultural Rights* (Inter-rights Publishers 2004).

Mureinik E, 'Beyond a Charter of Luxuries: Economic Rights in the Constitution' (1992) 8(4) South African Journal on Human Rights <https://doi.org/10.1080/02587203.1992.11827875>

Nigeria Bureau of Statistics Report NBS (2016) <https://www.nigerianstat.gov.ng/page/data-analysis> accessed 10 August 2018.

Nwabueze BO, *Judicialism in Commonwealth Africa* (C Hurst & Co 1977).

Nwabueze BO, The Presidential Constitution of Nigeria (C Hurst & Co 1982).

Nwafor AO, 'Enforcing Fundamental Rights in Nigerian Court – Process and Challenges' (2009) 4 African Journal of Human Rights.

Ogbebo W, 'The Many Problems of Nigeria's Health Sector' (2015) <http://leadership.ng/features/446619/the-many-problems-of-nigerias-health-sector> accessed 22 March 2019.

Okeke GN and Okeke N, 'The Justiciability of the Non-justiciable Constitutional Policy of Governance in Nigeria' (2013) 7(6) IOSR Journal of Humanities and Social Science <https://doi.org/10.9790/0837-0760914>

Okere BO, 'Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution' (1983) 32 International Comparative Law Quarterly <https://doi.org/10.1093/iclqaj/32.1.214>

Olatunji S, 'Resident Doctors Begin Warning Strike on Wednesday', *The Punch Newspaper* (Nigeria, 25 June 2013) <http://www.punchng.com/news/resident-doctors-begin-warning-strike> accessed 22 March 2019.

Omoregie EB, 'Justifying the Right to Health in Nigeria: Some Comparative Lessons' (2014) 12 Nigeria Juridical Review.

Onigbinde A, *Governance and Leadership in Nigeria* (Hope Publications 2007).

Palmer E, 'Resource Allocation, Welfare Rights – Mapping the Boundaries of Judicial Control in Public Administrative Law' (2000) 20(1) Oxford Journal of Legal Studies <https://doi.org/10.1093/ojls/20.1.63>

Riddle J, 'Making CEDAW Universal: A Critique of CEDAW's Reservation Regime Under Article 28 and the Effectiveness of the Reporting Process (2003) 34 George Washington International Law Review.

Rowe P, *The Impact of Human Rights Law on Armed Forces* (Cambridge University Press 2006) <https://doi.org/10.1017/CBO9780511616198>

Ryan J, 'Schools, Race and Money' (1999) 109(2) Yale Law Journal <https://doi.org/10.2307/797490>

Sachs A, 'The Judicial Enforcement of Socio-Economic Rights, the *Grootboom* Case' (2003) 56(1) Current Legal Problems <https://doi.org/10.1093/clp/56.1.579>

Sadurski W, 'Post-Communist Charters of Rights in Europe and the US Bill of Rights' (2003) 65 Journal of Law & Contemporary Problems <https://doi.org/10.2307/1192244>

Scheinin M, *Economic and Social Rights and Human Rights* (Martinus Nijhoff 2001).

Scott C and Alston P, 'Adjudicating Constitutional Priority in a Transnational Context: A Comment on Soobramoney Legacy and Drootboons Promise' (2006) 16 South Africa Journal of Human Rights 206 <https://doi.org/10.1080/02587203.2000.11827595>

Singh N, 'The Trillion-dollar Question' *The Finance Express* (India, 10 July 2019).

Steiner H and Alston P, *International Human Rights in Context: Law, Politics and Morals* (Oxford University Press 2000).

Stewart L, 'Adjudicating Socio-Economic Rights Under a Transformative Constitution' (2010) 28(3) Penn State International Law Review.

Tushnet M, 'Social Welfare Rights and the Forms of Judicial Review' (2004) 82(7) Texas Law Review.

Uneke C, Ogbonna A, Ezeoha A, Oyibo P, Onwe F and Ngwu, 'The Nigeria Health Sector and Human Resource Challenges' (2007) 8(1) The Internet Journal of Health, <https://www.semanticscholar.or> accessed 7 August 2020

UN Committee on Economic, Social and Cultural Rights, 'Statement to the World Conference' UN Doc E/1993/22.

Uwais M, 'Fundamental Objectives and Directive Principles of State Policy: Possibility and Prospect' in CC Nweze (ed), *Justice in the Judicial Process* (Essay in Honour of Justice Eugene Ezonu, JSC (Fourth Dimension Publishing 2014).

Wolfe S, 'Strikes by Health Workers: A Look at the Concept, Ethics, and Impacts' (1979) 69(5) American Journal of Public Health <https://doi.org/10.2105/AJPH.69.5.431>

World Health Organization, World Health Report on Health Care – Chapter 3 General Health Care, 2011 < https://www.who.int/disabilities/world_report/2011/chapter3.pdf?ua=1> accessed on 3 February 2020.

Yamin AE, 'the Future in the Mirror: Incorporating Strategies for the Defence and Promotion of Economic, Social and Cultural Rights into Mainstream of Human Rights Agenda' (2005) 27 Human Rights Quarterly <https://doi.org/10.1353/hrq.2005.0056>

Cases

Abacha v Fawehinmi (2000) FWLR (pt 4) 533.

Abraham Adesanya v President of the Federation of Nigeria (1981), 2 ALL NLR 26 or 2 NCLR 358.

AG Ondo v AG Federation (2002) 9 NWLR (Pt 772).

Archbishop Anthony Okogie v AG Lagos State (1981) 2 NCLR 337 at 350.

Attorney General, Cross River State v Archibong (1985) 6 NCLR597.

Attorney General Ondo State v Attorney General of the Federation (2002) 9 NWLR (pt 772) 222.

Balco Employees' Union v Union of India AIR 2001 SCW 5135.

Bandhua Mukti Morcha v Union of India (1984) 2 SCR 67 (India).

Bandhua Mukti Morcha v Union of India 1992 AIR 38, 1991 SCR (3) 524.

Bronik Motors Ltd v Wemat Bank (1983) 1 SCNLR 296.

Consumer Education and Research Centre v Union of India (1995) 3 SCC 42.

Damish v Speaker House of Assembly of Benue State (1983) NCLR 625.

Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of Republic of South Africa, 1996, 1996 4 SA 744 (CC).

Fawehinmi v Abacha (1996) 9 NWLR (pt 475) 710.

Federal Republic of Nigeria v Aneche (2004) 1 SCNJ 36.

Francis Coralie Mullin v The Administrator, Union Territory of Delhi I981 AIR 746 OR 1981 SCR (2) 516.

Gbemre v Shell Petroleum Development Company Nigeria Limited AHRLR 151 (NgHC, 2005).

Kuaesa v Minister of Home Affairs & Others Case No A 125/94 (unreported, 1994).

Kasavananda Bharati Sripadagalvaru v State of Kerala, AIR 1973 SC 1461 (India).

Maneka Gandhi v Union of India (1978) 1 SCC 248, AIR 1978 SC 597, (1978) 2 SCR 621.

Murli S Deora v Union of India (2001) 8 SCC 765.

Ogugu v State (1994) 9 NWLR (pt 366) 1 at 22.

Olga Tellis v Bombay Mun Corp 1985 SCR 51 (India).

Olga Tellis v Bombay Municipal Corporation (2007) CHR 236, (1987) LRC (const).

Oronto Douglas v Shell Petroleum Development Company Limited (1999) 2 NWLR (pt 591) 466.

Panikurlangara v Union of India (1987) 2 SCC 167.

Paramanand Katara v Union of India AIR (1989) 4 SC 2030.

Paschim Banga Khet Mazdor v State of West Bengal (1996) 4 SCC 37.

Soobramoney v Minister of Health, KwaZulu-Natal; 12 BCLR 1696, (1997) (South Africa).

SP Gupta v President of India (1982) 2 SCR 365.

Vincent v Union of India (1987) 6 SC 990 at 995.

X v Hospital (2003) 1 SCC 500.

Legislation

African Charter on Human and People's Rights 1986.

Constitution of Ghana 1992.

Constitution of India 1996.

Constitution of Kenya 2010.

Constitution of Liberia 1986.

Constitution of Nigeria 1999.

Constitution of the Republic of Guinea 2010.

Constitution of the Republic of South Africa 1996.

Constitution of Rwanda 2003.

Constitution of Sierra Leone, Act No 6 1991.

Constitution of Uganda 1995.

Constitution of Zimbabwe 1996.

Convention on Elimination of All Forms of Discrimination against Women (CEDAW) 1981.

International Covenant on Economic, Social and Cultural Rights 1976.

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).