JUSTICIABILITY OF SOCIOECONOMIC RIGHTS IN NIGERIA AND ITS CRITICS: DOES INTERNATIONAL LAW PROVIDE ANY GUIDANCE?

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A simple vote, without food, shelter and health care is to use first generation rights as a smokescreen to obscure the deep underlying forces which dehumanize people. It is to create an appearance of equality and justice, while by implication socioeconomic inequality is entrenched. We do not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society.
– Nelson Mandela, 1991

Abstract: A recalcitrantly enduring polemic in the annals of human rights and constitutional law jurisprudence in Nigeria centers on whether socioeconomic rights are justiciable in the country. This burgeoning controversy is rooted not only in the balkanization of the two principal genres of human rights and their compartmentalization into distinct parts of the Constitution, namely Chapters II and IV respectively, but also in explicitly baptizing one as 'fundamental rights' whilst denying similar appellation to the other. Adding to this obfuscation is deafening silence on the part of the Supreme Court of Nigeria, thereby fueling the belief, in many circles, that domestic legal frameworks do not bestow recognition upon socioeconomic rights. But does this understanding represent the correct position of the law? Does international law offer any guidance? Responding to these questions is the task of this paper. Its central contention is that current reality, made more evident by international human rights law, leans toward justiciability of socioeconomic rights.

Keywords: Justiciability, constitution, international law, human rights, socioeconomic rights.

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1. Introduction and Preliminary Background: The Original Position

The polemic regarding justiciability of human rights in Nigeria derives from the balkanization or compartmentalization of the human rights provisions of the Constitution into two distinct chapters – an idea that is traceable to the report of the Committee which drafted the Constitution of 1979. This Constitution was remarkable for being the first in the country to entrench provisions known as "Fundamental Objectives and Directives Principles of State Policy" (Constitution, 1979, c. II). The Constitutional Drafting Committee defines 'Fundamental Objectives' as comprising of ideals toward which the nation is expected to strive whilst "Directive Principles" set forth policies which should be pursued in the efforts of the Nation to realize the national ideals (FGN, 1976, p. 5). Incorporated in Chapter II of the 1979 Constitution, the provisions are repeated in the current one, the Constitution of 1999. The Chapter (Constitution, 1999, as amended) enumerates classic socioeconomic rights such as right to work (section 17(3)(a),(b), right to health care (section 17(3)(d)), right to social security (section 17(3)(g)), right to education (section 18), and right to environment, (section 20) but does not designate them as human rights; instead, they are dubbed 'Directive Principles' and deemed non-justiciable (Constitution, 1999, c. II) The ouster provision, Section 6(6)(c), stipulates that the judicial powers '(c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.' The consequence of denying human rights status to the Chapter and the proscriptive force of section 6(6)(c) is that even when armed with credible evidence of violation of any of the items specified in that Chapter, an aggrieved party cannot seek remedy before the courts. This view received judicial affirmation in *Archbishop Olubunmi Okogie (Trustee of Roman Catholic Schools) and Others v Attorney-General of Lagos State* (1981) 2 NCLR 337 at 350 ('Okogie'):

> 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 justiciable.

This holding has been assailed by some commentators on the ground that it does not represent a correct interpretation of the Constitution. Human rights attorney Femi Falana, for instance, was of the view that:

> [T]he Court of Appeal erred in its restrictive interpretation of [Section] 13 of the constitution as it did not consider the purport of the phrase, "except as otherwise provided in this constitution" in [Section] 6(6)(c) thereof. If that had been done, the court would have come to a different conclusion as [Section] 13 of the constitution has "otherwise provided" for the justiciability of chapter II by imposing an obligation on all organs of

> government and on all authorities and persons "to conform to observe and apply the provisions of this chapter of this constitution." Since [Section] 13 of the constitution is a latter provision, it has altered the provision of the said [Section] 6(6)(c) of the constitution (Falana, 2017, p. 6).

Similarly, a former Chairman of Nigeria's National Human Rights Commission denies any inconsistency between Section 6(6)(c) and 13, arguing that:

> . . . because of the contingent modifier in the former provision, which, in the structure of the Nigerian Constitution, necessarily means that the latter applies by virtue of the modifying contingency evinced in the former. To read the text in any other way would be to import extraneous consideration into the Constitutional text (Odinkalu, 2013).

Both commentators are wrong. The best approach to extricating the labyrinth of Chapter II is to resort to a literal interpretation of associated or relevant stipulations, the most important of which is Section 6(6)(c). The import of this provision is not shrouded in mystery: "The judicial powers vested in accordance with the foregoing provisions of this section - (c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution." This implies that in the absence of a contrary constitutional stipulation (inferred from this language, "except as otherwise provided by this Constitution"), there is a total forbiddance of the jurisdiction of courts regarding the matters listed in Chapter II. That was the reason for estranging or isolating the rights of Chapter II from those listed in Chapter IV (CIPO rights), a reason derived from the misconceived notion that Nigeria lacks requisite capacity to address socioeconomic rights. Strikingly, this tortuous position was not shared by two members of the Constitutional Drafting Committee who objected to the majority report in these terms:

> The [Constitutional Drafting Committee] draft has correspondingly robbed the masses of Nigerians of one major instrument for monitoring and controlling the conduct of those making public decisions on their behalf. We cannot grasp the value of a set of 'fundamental objectives and directive principles of state policy' which cannot be enforced in law even when it is clear to all and sundry that state policy decision-makers are constantly and consistently violating these objectives and principles. (Osoba and Yusuf, 2019, p. 15).

This statement (from two people who participated in the deliberations and completely understood the intent behind the language used in couching the provisions in contention) suggests that there was no intention to ascribe justiciability to Chapter II, convoluted as the language of Section 6(6)(c) and 13 might be, otherwise there would have been no need to make a submission (for justiciability) chastising the majority for leaning against justiciability. Moreover, the Committee was quite categorical regarding the legal

status intended to be attached to the contents of the Chapter. Not wanting to confuse the items with the (recognized) human rights of Chapter IV, the Committee defines the term "Fundamental Objectives" as consisting of ideals toward which the nation would strive whereas "Directive Principles" refers to policies to be pursued in the efforts of the Nation to realize the national ideals (FGN, 1976, p. v). As if to preempt objections regarding the interface between socioeconomic rights and Chapter II, the Committee observed that socioeconomic rights are:

> [r]ights which can only come into existence after the government has provided facilities for them. Thus, if there are facilities for education or medical services one can speak of the 'right' to such facilities. On the other hand, it will be ludicrous to refer to the 'right' to education or health where no facilities exist (FGN, 1976, p. XV).

The Committee never referred to any of the contents of the Chapter as a human right. This was clearly not fortuitous. Underlying the denial of the imprimatur of human rights to the provisions of Chapter II was an anticipation, on the part of the Committee, that at some future date, it would be possible to jettison the cloak of non-justiciability. It was this idea that birthed the clause "except as otherwise provided by this Constitution" in Section 6(6)(c). The possibility for operationalizing this clause is evident, as succinctly captured in Part II of this work, in the provisions of Section 4 and Item 60, Part I of the Second Schedule to the Constitution (the Exclusive Legislative List), on the basis of which statutory frameworks have been enacted by the National Assembly, conferring justiciability to some of the items contained in Chapter II.

The argument of the preceding paragraphs notwithstanding, it needs to be pointed out that the holding in *Okogie,* to the effect that Section 13 of the Constitution does not make Chapter justiciable (on account of Section 6(6)(c) is consistent with the positivist or restrictive approach to human rights. According to this approach, a human right comes into being only upon recognition by a positive law. In other words, codification is an indispensable ingredient of any law, including those relating to human rights. Deducible from this postulation, therefore, is that since, in the case of Nigeria, its Constitution recognizes only civil and political (CIPO) rights, by virtue of Chapter IV, which is entitled 'Fundamental Rights,' only such rights can legitimately be projected as human rights and regarded as justiciable. Similarly, in so far as the Constitution does not recognize socioeconomic rights of Chapter II as human rights, they cannot be so treated. In absence of prior legal recognition, such claims amount to what an early proponent of the positivist tradition – Jeremy Bentham – describes as 'simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts' (Harrison, 1983, p.78). As summed up in a recent publication (Nnamuchi, 2008, p.6):

> By this thesis, only [CIPO] rights are human rights; that is, in so far as the constitution or statutory law declares them as such. Since [socioeconomic] rights generally lack this quality of prior legal recognition, they cannot properly be regarded as human rights. At best, they are moral imperatives but certainly not legal rights capable of attracting sanctions upon breach. As such, any action purporting to enforce them will be tantamount to

> nothing more than an exercise in futility: *ex nihilo nihil fit* . . . Therefore, by this view, Directive Principles under Nigeria's constitution encapsulate [socioeconomic] interests, not human rights: since [those] interests are Directive Principles under the constitution, they are neither justiciable nor enforceable.

This restrictive approach (positivism) remains the dominant position in Nigeria. In *Badejo v Federal Minister of Education* (1990) LRC (Const) 735, for instance, the question was whether long-established admission procedure to federal government high schools, which was based on quota system instead of merit, was an infringement of the constitutionally guaranteed right to freedom from discrimination. The Court declined to exercise jurisdiction on the ground that the action sought to establish a right to education, a right declared non-justiciable as a result of its inclusion in Chapter II of the Constitution. Consistent with this reasoning, a leading constitutional law scholar in the country, argues that since socioeconomic rights are *ab initio* non-justiciable, it would make no sense to incorporate them in a constitutional bill of rights (Nwabueze, 1964, p. 408). Focusing centrally on economic considerations, he contends that compelling a state by the instrumentality of a judicial fiat to allocate resources which it does not have would serve no useful purposes (Nwabueze, 1964, p. 408). As a result, therefore, socioeconomic rights are best classified as Directive Principles, not rights subject to immediate enforcement. The value of such Principles lies in being used as a parameter for assessing the responsiveness of the government to the needs of the citizenry – a view subsequently endorsed by the Supreme Court, per Uwaifo J in *Attorney General of Ondo State v. Attorney General of the Federation & Ors* (2002) 9 NWLR (Part 772) 222 at 382 paras A–B ('*Attorney General of Ondo State'*), "[w]hile they remain mere declarations, they cannot be enforced by legal procedure but would be seen as a failure of duty and responsibility of State organs if they acted in clear disregard of them …"

Curiously, another constitutional law scholar posits that since, in contradistinction to Western countries, Nigeria is yet to attain the status of a welfare state 'all the provisions for welfare assistance [that is, the Directive Principles] must remain unattainable goals or ideals' Akande, 1982, p. 13). This conclusion is beset with serious problems – a mischaracterization and misrepresentation of the spirit of the Constitution and its stipulations as clearly evident in this subsequent statement by the Supreme Court in *Attorney General of Ondo State* (at 391 para(s). F-G; 410 para(s). G-H.), "The Constitution itself has placed the entire Chapter II [on Directive Principles] under the Exclusive Legislative List. By this, it simply means that all the Directive Principles need not remain mere or pious declaration. . ." It was on this basis that Nnamuchi (2008, p.7) faults the scholar's reasoning as based on a false premise, "on the assumption that given the disparity in wealth and development, Nigeria cannot afford to provide welfare assistance to its citizen, as say for instance, Canada."

> The error in the statement [rests on the fact] that it fails to recognize that transformation of Western countries to welfare states was not an automatic but a gradual process, and that levels of benefit afforded to citizens fluctuate depending on prevailing fiscal and other considerations. Moreover, at its inception, welfare experiments in wealthier countries were rudimentary at

> best and even though considerable advances have been recorded, there still remain serious systemic limitations and inadequacies notwithstanding that the experiment began several decades ago (Nnamuchi, 2008, pp. 7 – 8).

Despite the strength of these counter arguments, the default position in Nigeria, as understood in many quarters, remains that socioeconomic rights are not justiciable. Consequently, victims of human rights violations of socioeconomic nature are denied remedy on account of the stipulation in Section 6(6)(c) of the Constitution, which ousts the jurisdiction of courts in such cases. But does this interpretation represent the correct position of the law? The rest of the paper is devoted to answering that question.

Following this introduction, Part II weaves the default position in Nigeria regarding justiciability of socioeconomic rights into current reality, what the section terms "cosmopolitan (progressive) interpretation. It argues that extant legal regime and judicial decisions signal a shift from the constrictive position of the constitution, tilting toward granting the imprimatur of human rights to socioeconomic rights. In Part III, the paper explores the position of African regional human rights system regarding whether socioeconomic rights are amenable to the jurisdiction of courts. The section returns an affirmative response, holding that neither the regional law on the subject nor the adjudicatory body draws any category-based distinctions between CIPO and socioeconomic rights. Part IV delves into the evolution of human rights at the international level. It shows that although there were controversies regarding justiciability of socioeconomic rights, reflected most prominently in early European human rights system, the controversies have been laid to rest. Building on the indivisibility paradigm of human rights as a formidable response to sceptics of socioeconomic rights justiciability, the conclusion – Part V – is that any human rights jurisprudence straying from this paradigm is not in tune with current reality and that international law certainly provides guidance to Nigeria regarding the status of socioeconomic rights.

2. Socioeconomic Rights in Nigeria: Cosmopolitan (Progressive) Interpretation

An apt starting point of discussion on this section is to take cognizance of two salient points. The first is a statement in the previous section, *to wit*, the default (original) position regarding socioeconomic rights in Nigeria tilts toward non-justiciability. Second, Nigeria is not a pariah in holding on to the bifurcation of human rights and the resulting judicial attitude toward each category of rights. As will become evident subsequently (see Part IV), at one point or the other, this retrogressive posture held sway in many countries (those in Europe, for instance). But there is a growing wind of change globally and this has affected the underlying dynamics regarding the protection of human rights, even in countries, such as Nigeria, whose constitution generally denies recognition to socioeconomic rights. Nigeria presents a particularly interesting situation. The prohibitory thrust of Section 6(6)(c), as the Supreme Court pointed out in *Olafisoye v Federal Republic of Nigeria*, (2005) 51 WRN 52, is not all-encompassing:

> [T]he non-justiciability [language] of [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'. This means that if the Constitution otherwise provides in another section which makes a section or sections of Chapter II justiciable, it will be so interpreted by the court.

The gist of the pronouncement by the Supreme Court, in other words, is that despite Section 6(6)(c) of the Constitution, which proscribes the jurisdiction of courts regarding socioeconomic rights of Chapter II, there could be constitutionally legitimate paths to dismantling the prohibitory tentacles of the provision. Exactly which path to follow is the legislative prerogative of the National Assembly. As set forth in Section 4 of the Constitution:

> (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.
>
> (2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof *with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.*

Specified in Part I of the Second Schedule to the Constitution (the Exclusive Legislative List) as inclusive in the authority of the National Assembly is:

> 60. The establishment and regulation of authorities for the Federation or any part thereof
>
> (a) To promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.

A reasonable interpretation of item 60(a) seems to be that the provision grants authority to the National Assembly to confer justiciability status to the Directive Principles in Chapter II of the Constitution (Nnamuchi, 2008, p. 19).The consequence of a legislative action under this authority would be to abrogate the application of Section 6 (6)(c), thereby empowering courts in Nigeria to enforce "observance" thereof of the Directive Principles of the Constitution(Nnamuchi, 2008, p. 19). A combined reading of Section 4 (1) & (2) and item 60(a) on the Exclusive Legislative List would yield the following result. The National Assembly may (a) enact a statutory framework declaring that some or all of the provisions of Chapter II are legal entitlements (human rights) and, therefore, justiciable; and/or (b) repeal Section 6 (6)(c), thereby conferring jurisdiction on courts to entertain cases brought under Chapter II. There are dual avenues through which option (a) may be operationalized, namely, by (i) enacting a statute *de novo* or (ii) domesticating a treaty that had been ratified by Nigeria (Nnamuchi, 2008, p. 19). Regardless of which

avenue is adopted by the National Assembly, the legal effect is the same. Domesticated treaties enthrone enforceable claims, just as statutes enacted through regular domestic legislative process. In fact, as elucidated by Uwaifo J.S.C, underlying the specification of the Directive Principles within the Exclusive Legislative List under item 60(a) was "to show by and large that they can in letter be turned into enactments within the competence of the National Assembly as far as practicable when the need should arise" (*Attorney General of Ondo State,* at 408 – 409, para(s). H-A.).

Acting on this authority, the National Assembly enacted the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act ('African Charter Act') in March 1983, effectively converting the Charter provisions to domestic law. The consequence of this action (domestication), as evident in the commencement section of the Act, is that the provisions of the Charter "have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities" (Section 1). Remarkably, the incorporating Act (African Charter Act) did not draw any distinction between the different categories of the rights specified in the Charter but imported all of them; meaning that all the rights of the Charter, whether of civil and political nature (such as those contained in Chapter IV of the Constitution) or socioeconomic genre (Chapter II, hitherto Directive Principles) as well as solidarity (third generation) rights are presently integrated within the domestic law of Nigeria. This holistic incorporation prompted the summation by the Supreme Court in *Abacha & Others v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228, that where [a] treaty is enacted into law by the National Assembly, as was the case with the African Charter, it becomes binding and the courts must give effect to it like all other laws falling within the judicial power of the courts and that the African Charter is now part of the laws of Nigeria and, therefore, like all other laws, the courts must uphold it. *Nemi v. The State* (1994) 1 LRC 376 ('*Nemi'*) affirms that "the Charter has become part of our domestic law" and "the enforcement of its provisions like all our other laws falls within the judicial powers of the courts as provided by the Constitution and all other laws relating thereto" (*Nemi* 385 C-D). These cases are important for concretizing the jurisdiction of courts, both domestic and foreign, seised with matters entrenched in Chapter II of the Constitution, to exercise jurisdiction so long as the rights being invoked is also accorded recognition by the Charter. Caselaw is gradually evolving in support of this position.

In *SERAP v Federal Republic of Nigeria* (2012, para. 36) the Court of Justice of ECOWAS held that so long as the right in issue is "enshrined in an international instrument that is binding on a Member State, the domestic legislation of that State cannot prevail on the international treaty or covenant, even if it is its own Constitution." Therefore, for the Government of Nigeria to invoke "lack of justiciability of the concerned right" under a non-domesticated treaty such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) "to justify non accountability before this Court, is completely baseless" (2012, para. 38) in so far as the same right is recognized in a legal regime that is binding upon the country such as the African Charter. The Court held that notwithstanding the declaration of the right to environment as non-justiciable by the Nigerian Constitution, justiciability is conferred on the right by virtue of the operation of Art. 24 of the African Charter (2012, para. 120). A similar decision was reached by the ECOWAS Court of Justice

in *SERAP v Federal Republic of Nigeria and Universal Basic Education Commission* (2009), holding that notwithstanding Chapter II of the Constitution, the right to education is justiciable under Art. 17 of the African Charter and, therefore, justiciable in Nigeria. The effect of these decisions is to nullify the jurisdiction-proscription thrust of Section 6(6)(c) of the Constitution.

The cosmopolitan attitude of the ECOWAS Court of Justice, a shift away from the restrictive approach of yesteryears, seems to have been embraced domestically. For instance, in *Attorney-General of Ondo State v Attorney-General of the Federation & 35 Ors* (2002) 9 Sup. Ct. Monthly 1, the Supreme Court of Nigeria was asked to determine whether the National Assembly was competent to legislate on a matter contained in Chapter II of the Constitution, specifically, Section 13 and 15 (5) – provisions deemed non-justiciable. Section 13 stipulates that "It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution" whereas section 15(5) requires that "The State shall abolish all corrupt practices and abuse of power." The second issue presented for determination centered on the constitutional validity of the Corrupt Practices and Other Related Offences Act No. 5 of 2000 and its enforcement body, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) – both of which were established pursuant to Section15 (5). The Court had no difficulty finding that the National Assembly has power to legislate on items in Chapter II of the Constitution and make them justiciable:

> [I]t must be remembered that we are here concerned not with the interpretation of a statute but the constitution which is our organic law or grundnorm. Any narrow interpretation of its provisions will do violence to it and will fail to achieve the goal set by the constitution (p. 53, paras. C-G).

Differently stated, the Supreme Court's position is that the non-justiciability status of the provisions of Chapter II could be vested with justiciability through the enactment of a statute, precisely the kind represented by the ICPC legislation.

There are several instances of similar legislative actions regarding items contained in Chapter II. Some of them are quite audacious, explicitly projecting as human rights those socioeconomic rights of Chapter II whose recognition has hitherto been circumscribed by the operation of Section 6(6)(c). The first is the Child's Rights Act ('CRA', 2003), which is a domestication of the UN Convention on the Rights of the Child ('CRC', 1989). The statute bestows a wide array of *human rights* upon children in Nigeria, including the right to survival and development (section 4), right to leisure, recreation and cultural activities (section 12), right to health(section 12), right to education (section 15), and a host of other socioeconomic rights. Second is the Compulsory, Free Universal Basic Education Act (2004). Section 2, titled "*[r]ight of a child* to compulsory, free universal basic education, etc," requires the government to "provide free, compulsory and Universal basic education for every child of primary and junior secondary, school age" (*Italics* added). The third of such statutes is the National Health Act, which was enacted in 2014. The Act was specific as to the goal of the national health system, namely, to "protect, promote and fulfil *the rights*

of the people of Nigeria to have access to health care services" (section 1(1)(e)). (*Italics* added). By explicitly conferring the status of human rights to the provisions of Chapter II of the Constitution, these legislative regimes demonstrate quite vividly the eruption of a new thinking, deep-seated consciousness on the importance of socioeconomic rights to human development and welfare in the country.

Several local cases illustrate this wind of change. In a sharp disavowal of the restrictive approach, the Court in *Odafe & Ors v Attorney-General & Ors* (2004) AHRLR 205 (NgHC) held that by virtue of Art. 16 of the African Charter on Human and Peoples' Rights (1981), which guarantees the right to health, HIV-positive prisoners in Nigeria are entitled to medical care, despite the non-justiciability of the right under Chapter II of the Constitution. Nwodo J. was unequivocal:

> The government of this country has incorporated the African Charter on Human and Peoples' Rights Cap 10 as part of the law of the country. The Court of Appeal in Ubani v Director SSS . . . held that African Charter is applicable in this country. The Charter entrenched the socio-economic rights of a person. The Court is enjoined to ensure the observation of these rights (para(s). 37 – 38).

It is noteworthy that this case was decided in 2004, ten years before the enactment of the National Health Act. Were similar circumstances to present themselves today, it is likely that the Court would rely on the Act by virtue of section1(1)(e), which mandates the government to "protect, promote and fulfil the rights of the people of Nigeria to have access to health care services." An authority for this claim is *Legal Defense &Assistance Project (LEDAP) GTE & LTD v Federal Ministry of Education & Another* (2017).There, appellant sought, *inter alia*, a declaration that the constitutional provisions on the right to free, compulsory and universal primary education up to junior secondary school for all Nigerian citizens under Section 18(3)(a) of the Constitution (contained in Chapter II) is an enforceable constitutional right by virtue of the Compulsory, Free Universal Basic Education Act, 2004. The argument of the plaintiff was that having enacted the Compulsory, Free Universal Basic Education Act, 2004, the National Assembly has given legal effect to free universal primary education and free junior secondary education for every Nigerian child. They relied on section 2(1) which stipulates that the government "shall provide free, compulsory and Universal basic education for every child of primary and junior secondary, school age" and Section 3(1) to the effect that the "services provided in public primary and junior secondary schools shall be free of charge." The Court held that although, ordinarily section 18(3) (a) of the Constitution is non-justiciable, having been incorporated in Chapter II of the Constitution, the effect of the enactment by the National Assembly of the Compulsory, Free Universal Basic Education Act of 2004, was to confer justiciability to that provision of the Constitution, notwithstanding Section 6(6)(c) of the Constitution and, therefore, failure by the government to provide free primary and junior secondary education would amount to a violation of Constitution. This progressive trend was earlier affirmed in *Femi Falana v Attorney-General of the Federation* (2014):

> The obligations under [Section] 16 of the Constitution are reinforced by the provisions of Articles 15 – 18 of the African Charter on Human and Peoples' Rights which is a part of our domestic law, the Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights . . . With the domestication of the African Charter on Human and Peoples' Rights, and ratification by Nigeria of the International Bill of Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights along with the Optional Protocols, the stage was set for the judiciary to assist in transforming the Nigerian nation from political to economic democracy. The stage was set for the judiciary to take steps towards ensuring the economic prosperity of the Nigerian State, by enforcing the implementation of the economic and social rights contained in the International Bill of Rights which Nigeria has ratified, including its obligations under the Constitution and other legislation.

Reference by the court to the International Bill of Rights speaks volumes. It evinces an evolution of cosmopolitanism in adjudication of socioeconomic rights in Nigeria, a new awakening on the part of the judiciary that is traceable to the domestication of the African Charter in 1983 and the promulgation of the Fundamental Rights (Enforcement Procedure) Rules 2009 ('FREP Rules'), by then Chief Justice of Nigeria, Idris Legbo Kutigi, pursuant to the powers conferred upon him by Section 46(3) of the 1999 Constitution. Particularly remarkable is this requirement, imposed by the FREP Rules:

> For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions (FREP Rules, *Prmbl.* Section 3(b)).

The thrust of this requirement is quite extensive and, in terms of socioeconomic rights justiciability, relatively progressive. Once seised of a human rights action, the court is under an obligation to respect human rights and freedoms recognized not only by the African Charter and other legal frameworks (including protocols) in the African human rights system, and the Universal Declaration of Human Rights (UDHR) but also those contained in other instruments (including protocols) in the United Nations (UN) human rights system as well as regional and municipal human rights regimes (Ndubuisi Abanah and Ors v Inspector General of Police & Ors (2012) ('Ndubuisi Abannah,' 2012). Interestingly, the FREP Rules does not erect any artificial barrier regarding justiciability on account of genre of rights. To the contrary, as the Court held in 2012:

> It would seem however that the divide between fundamental rights and human rights has become somewhat blurred under the Fundamental Rights Enforcement Procedure Rules, 2009 wherein 'human rights' is defined in

> Order 1 Rule 2 thereof to include fundamental rights which transcend the rights specifically enshrined under Chapter IV of the 1999 Constitution and incorporate rights guaranteed under the African Charter on Human & Peoples' Rights ('Ndubuisi Abannah,' 2012).

Therefore, considering that the African Charter integrates both genres of rights into its definition of human rights, and there is nothing in the FREP Rules compelling courts to bifurcate or compartmentalize the rights in the Charter into different genres, it is safe to assume that no such disparate conceptualization was intended. Thus, in *Alhaji Sani Dododo v Economic & Financial Crimes Commission and Others,* the Court of Appeal held, elevating socioeconomic rights to the same status as CIPO rights:

> The African Charter is now part of the laws of this country protecting the social and economic rights of citizens. The African Charter is preserved by the 1999 Constitution and must always be relied on to recognize political and socioeconomic rights ((2103) 1 NWLR (Pt. 1336) 468).

For avoidance of doubt, the African Charter was unambiguous as to how the two classes of rights are to be implemented by States Parties, including Nigeria, namely:

> . . . civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights (African Charter, *Prmbl.* para. 7).

An astute interpretation of this provision seems to be that reliance on Section 6(6)(c) to deny recognition of socioeconomic rights of Chapter II of the Constitution would amount to judicial error. This thinking, reflecting an exodus from ascription of superiority or primacy to one genre of rights over the other to equality of consideration and recognition, dovetails with the universality paradigm of human rights – a paradigm cascading throughout the world, including the African regional human rights system.

3. African Regional Human Rights System and the Justiciability Question

Similar to human rights systems of other regions, countries in Africa charted a human rights path that is distinctively Afrocentric. This is evident in the charge given to African experts gathered in Dakar, Senegal in 1979, *to wit*, "to prepare an African human rights instrument based upon an African legal philosophy and responsive to African needs" (Khushalani, 1983, p. 436). Specifically, the experts were tasked with preparing a legal regime that unambiguously reflects an "African conception of human rights" (Ahmed and Appiagyei-Atua, 1996, p. 836). That this charge was taken seriously is apparent in the stipulation in the African Charter on Human and Peoples' Rights to the effect that in formulating the legal framework, States Parties took into account the "virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection" on of human rights (African Charter, *Prmbl.*.

para. 5). The Charter is replete with instances of African values and traditions, such as the requirement to "pay a particular attention to the right to development" (African Charter, *Prmbl.*. para. 7). and institutionalization of third generation rights, including the "right to development"(Art.22) and the right to peace (Art. 23). Aside from this genre of human rights (third generation or solidarity rights), the Charter recognizes both CIPO and socioeconomic rights, including the right to non-discrimination (Art. 2), right to life (Art. 4), right to fair hearing (Art.7), religious freedom (Art. 8) as well as the right to health (Art. 16), right to education (Art. 17) and so forth. As to whether one genre of is justiciable but not the other, the Charter was quite unambiguous, asserting that not only are CIPO rights inseparable from socioeconomic rights "in their conception as well as universality," attending to socioeconomic rights "is a guarantee for the enjoyment" of CIPO rights (African Charter, *Prmbl.*. para. 7). Inseparability of the two classes of human rights and actualization of one being projected as a *sine qua non* for the enjoyment of the other clearly shows that in terms of justiciability, differential treatment was not contemplated by the drafters of the African Charter. Support for this proposition is found in the implementation mechanism of the Charter.

Neither Art. 30, which establishes the African Commission on Human and Peoples' Rights as an implementation arm of the Charter, nor Art. 45, on the mandate of the Commission, tilts toward parochialism in the language used. The precise language of Art. 30 is that the Commission shall "promote human and peoples' rights and ensure their protection in Africa." Similarly, Art. 45 specifies the following as the functions of the Commission, namely, to promote human and people's rights; ensure the protection of human and peoples' rights under conditions laid down by the Charter; interpret all the provisions of the Charter at the request of a State Party, an institution of the African Union or an African Organization recognized by the African Union; and so forth. Absence of any language disaggregating or compartmentalizing the rights according to a distinctive character suggests quite powerfully that the African Commission is required to deal with both classes of right uniformly. To further buttress this claim, Art. 60 mandates the jurisprudence of the Commission to be anchored on domestic, regional as well as international human rights instruments. Strikingly, there was no mention of justiciability-related distinction between CIPO and socioeconomic rights in the operation of the Commission, implying that no such distinction was intended in the human rights adjudicatory responsibilities of the implementing body.

Further evidence that no distinction (based on whether a right belongs to CIPO or socioeconomic class of rights) was intended in the operation of the Commission is provided by interrogating the communications it has entertained. Most recent data indicates that the Commission has decided 97 cases on merit (African Commission on Human and Peoples' Rights, 2021). In one of such communications, *Free Legal Assistance Group and Others v Zaire,* Comm. No. 25/89, 47/90, 56/91, 100/93 (1995), the Commission held Zaire in violation of both CIPO and socioeconomic rights of the African Charter, including the right to life (Art. 4), the prohibition of torture and inhuman or degrading treatment, the right to liberty and security of person (Art. 6), the right to fair hearing (Art. 7), the right to health (Art. 16), and the right to education (Art. 17). Similarly, in *Social and Economic Rights Action Center for Economic and Social Rights v Nigeria*, Comm. No. 155/96,

(2001), the Commission held Nigeria to have violated CIPO and socioeconomic rights, including the right to freedom from discrimination (Art. 2), right to life (Art. 4), right to property (Art. 14), right to health (Art. 16), right of all peoples to freely dispose of their wealth and natural resources (Art. 21) and right to clean environment (Art. 24) of the African Charter).

Playing a complementing role to the African Commission in ensuring the realization of the rights of the African Charter is the African Court on Human and Peoples' Rights, which was established under Art. I of the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights ('Protocol to the African Charter,' 1998, Art. 2). The Court is vested with an all-encompassing, cosmopolitan jurisdiction, extending to all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol establishing the Court and any other relevant human rights instrument ratified by the States concerned('Protocol to the African Charter,' 1998, Art. 3). There is no stipulation anywhere in the Protocol ousting the jurisdiction of the Court with respect to cases brought under any genre of human rights. As of March 2019, the African Court of Human and Peoples' Rights has received 190 applications (cases) regarding contentious matters, out of which 175 was filed by individuals and the rest by non-governmental organizations (NGOs) and the African Commission (African Court of Human and Peoples' Rights, Contentious Matters, 2019). Current data indicates that 48 of the cases have been finalized whereas four have been transferred to the Commission and 138 are pending (African Court of Human and Peoples' Rights, Contentious Matters, 2019). The record of the Court indicates that it has adjudicated cases involving not only CIPO and socioeconomic rights but also those touching on third generation rights (African Court of Human and Peoples' Rights, Contentious Matters, 2019). In this sense, the African Court on Human and Peoples' Rights stands alone in terms of holistic human rights enforcement. It is noteworthy that only the African Charter on Human and Peoples' Rights stamps third generation rights such as the right to development with the imprimatur of human rights (Art. 22) – a recognition that although not shared by the rest of the international community, has received a seal of approval by the African Court on Human and Peoples' Rights.

African Commission on Human and Peoples' Rights v Republic of Kenya, decided on May 26, 2017, is quite illustrative. The African Commission lodged this complaint before the African Court on behalf of an indigenous population in Kenya – Ogiek Community – whose members were forcefully evicted from their ancestral land by the government of Kenya, canvassing that the action of the government infringed upon the African Charter. The Court held that the eviction violated a bastion of rights, particularly Art. 1 (obligation to adopt legislative or other measures to give effect to the rights of the Charter), Art. 2 (freedom from discrimination), Art. 8 (right to religion), Art. 14 (right to property), Art. 17 (right to education), Art. 21 (peoples' freedom to dispose of their wealth and natural resources) and Art. 22 (right to development). The best way to conceptualize this case is to see it as projecting the African human rights system as a pace-setter in terms of expansive approach to actualizing human rights, in that whilst other regional systems are still focused on only first and second generation human rights, Africa is already building human rights jurisprudence that is inclusive also of third generation human rights.

A significant development to consider pertaining to the evolution of human rights in Africa is the emergence of the African Court of Justice and Human Rights (ACJHR) – a creature of Art. 2 of the 2008 Protocol on the Statute of the ACJHR (African Union, Protocol on the Statute of the African Court of Justice and Human Rights, 2008) The ACJHR Protocol amalgamated the African Court on Human and Peoples' Rights and the Court of Justice of the African Union (established by the Constitutive Act of the African Union, albeit never operational) into a single Court, namely, the ACJHR (Constitutive Act of the African Union, OAU Doc, 2001). Designated as "the main judicial organ of the African Union," the Court comprises two chambers or sections, namely, a General Affairs Section and a Human Rights Section (Protocol on the Statute of the African Court of Justice and Human Rights, Annex, Art. 2(1)). Whereas the Human Rights Section has jurisdiction over all human rights cases involving States Parties to the African Charter and the Protocol, the General Affairs Section is charged with the responsibility of hearing all cases submitted under Art. 28 of the Statute, including those involving the interpretation and application of the Constitutive Act of the African Union, the interpretation of the African Charter as well as other regional treaties and so forth, excluding human rights cases (Protocol on the Statute of the African Court of Justice and Human Rights, Annex, Art. 17). In addition, the Human Rights Section of the ACJHR is mandated to hear cases pending before the African Court on Human and Peoples' Rights, that have not been concluded before the entry into force of the Protocol establishing the ACJHR, on the understanding that such cases shall be dealt with in accordance with the Protocol on the establishment of the African Court on Human and Peoples' Rights the (Protocol of the Court of Justice of the African Union, Art. 5). Deducible from this recent development is the fact that as far as adjudication of the human rights provisions of the African Charter is concerned, the Human Rights Section of the ACJHR performs identical functions as the African Court on Human and Peoples' Rights. The implication, therefore, is that the ACJHR is to decide human rights cases without distinction as to whether the right in question belongs to CIPO, socioeconomic or solidarity category.

Plan is underway to abolish the ACJHR and, in its stead, establish a court with a more extensive jurisdiction. On June 27, 2014, the African Union adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol) to replace the extant Protocol on the Statute of the ACJHR. Annexed to the Protocol is the Statute of the African Court of Justice and Human and Peoples' Rights. Art. 1(3) of the Statute redefined "court" to mean the African Court of Justice and Human and Peoples' Rights"(ACJHPR). The major distinction between the ACJHR and ACJHPR is the addition of a third Chamber, namely, the International Criminal Law Section, to the already existing General Section and Human Rights Section – that is, a total of three Chambers (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, Annex, Art(s). 6, 14). Aside from this addition, the ACJHPR retains the same function as the ACJHR in the realm of human rights (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, Annex, Art. 7(1)). Specifically, there will be no justiciability-related distinctions based on genre of rights. Therefore, in so far as no material changes are made to the operation of the Human Rights Section of the Court, further analysis of the law establishing the ACJHPR is not necessary.

4. Does International Law Deny Justiciability Status to Socioeconomic Rights?

The concern of this section is quite straightforwardly simple; and that is, whether balkanization of human rights exists under international law, in the sense of compartmentalizing them as being distinct from each other in the realm of justiciability. The starting point of any productive response to this concern must begin with the United Nations (UN) Charter (UN Charter, 1945) arguably the first contemporary legal regime on human rights. The human rights foundation of the organization is apparent from the preambular provisions and other stipulations of the Charter. The organization came into being on account of the need, amongst others, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women" (UN Charter, *Prmbl.)* and one of its purposes is to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (UN Charter, Art. 1(3)). Just as there was no explicit mention of any particular class or genre of human right in the Charter, categorization or justiciability-based delineations are nowhere to be found throughout the instrument.

The formal institutionalization of human rights as a defining element of relations amongst States in the UN Charter paved the way for refining and further elaboration of the constituent elements of the human rights milieu envisaged by the global community. This task was accomplished by the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. Noting the importance of "a common understanding of [the human] rights and freedoms" (UDHR, *Prmbl.,* para. 7) referenced in the UN Charter, the General Assembly of the UN proceeded to enumerate a legion of human rights, which it requires "every individual and every organ of society" to ensure "their universal and effective recognition and observance" (UDHR, *Prmbl.,* para. 8). The human rights enshrined in the UDHR and in respect to which the General Assembly requires "common understanding" comprise CIPO rights as well as socioeconomic rights, including freedom from discrimination (Art. 2); right to life, liberty and security of the person(Art. 3); right to free speech(Art. 19); right to health(Art. 25); right to education (Art. 26), and so forth. There was no attempt to accord either genre of human rights superior recognition. Both were placed on the same pedestal, although this was not without controversy.

It was this controversy between Western countries and the Soviet Union regarding the primacy of CIPO or socioeconomic rights that led to subsequent bifurcation of human rights in 1966 via the adoption of two distinct legal instruments, namely, the International Covenant on Civil and Political Rights (ICCPR, 1966) and International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). Interestingly, despite this bifurcation, the two instruments enjoy widespread ratification. As of November 2022, the ICCPR has been ratified by 173 States (UNa, 2022) whereas the ICESCR has 171 States Parties (UNb, 2022). The high number of States Parties to the two instruments evidences quite profoundly that both classes of human rights enjoy universal recognition as human rights and are equally subject to justiciability before domestic and international adjudicatory bodies.

The controversy referenced in the previous paragraph (disagreement between Western countries and Soviet Union) underscored the position taken by Europe in 1950 (two years after the adoption of the UDHR) when it enacted the European Convention on Human Rights and Fundamental Freedoms, more commonly referred to as the "European Convention on Human Rights" (Council of Europe, 1950). The first legally-binding (of a general nature) human rights framework, the ECHR did not toe the path sculpted by the UDHR in terms of incorporating both CIPO and socioeconomic rights in its provisions; instead, it recognized only the former category of rights – a reason the instrument was described as a "charter on CIPO rights" (Nnamuchi, 2014, p. 47). The reason was that "1950 Europe conceptualized human rights as non-inclusive of socioeconomic rights" (Nnamuchi, 2014, p. 47). Fortunately, this parochial conceptualization was short-lived, subsequently rendered nugatory by the emergence of the European Social Charter in 1961 (European Social Charter, 1961). According to the Council of Europe, under whose aegis the Social Charter was adopted, the instrument is:

> based on the principle of universality, interdependence and interrelation of human rights, set forth in the Vienna Declaration of 1993, which confirms that [socioeconomic] rights are human rights on an equal footing with civil and political rights (Council of Europe, 2022).

Deducible from this pronouncement is that, unlike yesteryears, the European regional human rights system currently accords equal recognition to CIPO as well as socioeconomic rights. This explains the recognition of a battery of socioeconomic rights by the European Social Charter, including the right to work (Art. 1), right to health (Art.11), right to social security (Art. 12) and the right of mothers and children to social and economic protection (Art. 17) and so forth. Remarkably, the European Social Charter (revised) of 1996 (Council of Europe, 1996), which embodies in one instrument all the rights guaranteed by the Charter of 1961 and its additional Protocol of 1988 (ETS No. 128), accords recognition to an additional set of rights, including, *inter alia*, the right to protection against poverty and social exclusion (Part II, Art. 30); right to housing (Part II, Art. 31); right to protection in cases of termination of employment (Part II, Art. 24). Interestingly, the revised framework, which is gradually replacing the initial 1961 treaty, is being increasingly relied upon in adjudicating significant socioeconomic rights cases in Europe. For instance, in *International Federation of Human Rights Leagues (FIDH) v* France (European Committee on Social Rights, 2004), the European Committee on Social Rights held France to be in violation of Art. 17 of the European Social Charter (revised), which recognizes the right of children to protection.

The American Declaration of the Rights and Duties of Man (Bogota Declaration, 1948), on the other hands, adopts the same approach as the UDHR – or vice versa. An often glossed-over fact is that the Bogota Declaration predates the UDHR, having been adopted on May 2,1948, six clear months before the latter, which was adopted December 10, 1948. It is noteworthy that unlike other Declarations in international law, the American Declaration of the Rights and Duties of Man imposes binding legal obligations upon States Parties that are yet to ratify the American Convention on Human Rights (Pact of San Jose, 1969) such as Bahamas, Cuba, Canada and the United States. Aside from securing traditional CIPO

rights, the Declaration equally guarantees socioeconomic rights, including the rights to health (Art. XI), education (Art. XII), culture (Art. XIII), work (Art. XIV), social security (Art. XVI) and so forth. Similarly, the American Convention on Human Rights does not reserve any special treatment to any genre of rights. Instead, Chapter II of the Convention is explicitly devoted to recognizing CIPO rights whilst Chapter III specifically deals with socioeconomic rights. Aside from unambiguity in vesting jurisdiction regarding "matters relating to the fulfillment of the commitments made by the States Parties to [the] Convention," including human rights stipulations, to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (Art. 33), the framework leaves no room for doubt as to the nature of human rights required to be promoted and adjudicated by the two bodies. Art. 41 was quite specific, requiring the Commission to "promote respect for and defense of human rights" whereas Art. 63, mandates the Court to entertain matters involving a "violation of a right or freedom protected by [the] Convention . . ." In absence of any language specifying any form of justiciability-centered distinction between CIPO and socioeconomic rights in the two instruments governing human rights protection in the Inter-American human rights system, the conclusion must be that the regional system does not favor bifurcation of human rights.

Aside from the American Declaration and Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador, 1988) also guarantees socioeconomic rights. In what seems like a preemption of bifurcation-centered objection, the Protocol of San Salvador, declares:

> Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified . . . (Protocol of San Salvador, 1988, *Prmbl*. para 4).

In line with this oneness or unity (of human rights) approach, the Protocol of San Salvador bestows recognition upon a gamut of socioeconomic rights as worthy of protection in the Inter-American regional human rights systems. Amongst them are the rights to work (art. 6), social security (art. 9), health (Art. 10), healthy environment (Art. 11), food (Art. 12), education (Art. 13), and so forth.

To properly wrap up discussion on the position of international law regarding justiciability of socioeconomic rights, two things are necessary. First, it is fitting to consider two of the most widely ratified international human rights regimes, namely, the Convention on the Rights of the Child (CRC, 1989) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979). The provisions of the CRC, which is the first child-rights centered legally binding human rights framework to be adopted under the aegis of the UN and also the most widely ratified international human rights treaty – 196 States Parties as of November 2022 (CRC Ratification, 2022) are

consistent with cosmopolitan approach to human rights interpretation. In addition to core CIPO rights such as the rights to life (Art. 6), freedom of expression (Art. 13), freedom of thought, conscience and religion (Art. 14) and freedom of association and assembly (Art. 15), the CRC incorporates also a number of socioeconomic rights including, *inter alia*, the rights to health (Art. 24), social security (Art. 26), education (Art. 28) and rest and leisure, and to participate freely in cultural life and the arts (Art. 31). Similarly, CEDAW, the second most widely ratified human rights treaty – 189 States Parties as of November 2022 (CEDAW Ratification, 2022), does not compartmentalize its rights into any distinct group but equally recognizes both CIPO and socioeconomic rights. There is no language in either regime ascribing justiciability to one class of rights whilst denying same imprimatur to the other. To the contrary, CEDAW was quite explicit, noting that States Parties to the international human rights instruments are under an obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights(CEDAW, *Prmbl.* para. 4).

The second worthy pre-conclusory item of this section is an interrogation of the foremost international human rights instrument on socioeconomic rights, namely, the ICESCR, which was ratified without reservations by Nigeria on July 29, 1993, and, therefore, binding upon the country. It is trite that the ICESCR enshrines all the globally recognized socioeconomic rights and, therefore, needs no further elaboration. Critical to appreciating the reach of the covenant, however, are the general comments adopted by the Committee on Economic, Social and Cultural Rights (Committee on ESCR) – the body responsible for implementation of the provisions of the ICESCR. Like other treaty monitoring bodies, the Committee on ESCR publishes authoritative documents on the ICESCR called "general comments." These documents are useful interpretations of distinct provisions of the instrument, aimed at guiding States Parties on the requisite strategies or measures to be adopted and implemented in order to fulfil extant obligations.

Aside from the first two general comments, which explores the reporting obligation of States Parties (General Comment 1) and the critical nature of international technical assistance measures required to actualize socioeconomic rights (General Comment 2), the rest of the general comments are dedicated to in-depth examinations of issues that are critical to operationalizing socioeconomic rights both on the international plane and domestically:

(a) General Comment No. 3, Nature of States Obligation under the ICESCR (General Comment No. 3, 1990).
(b) General Comment 4, The Right to Adequate Housing(General Comment No. 4, 1991).
(c) General Comment No. 5, Persons with Disabilities (General Comment No. 5, 1995).
(d) General Comment No. 6, The Economic, Social and Cultural Rights of Older Persons (General Comment No. 6, 1996).
(e) General Comment No. 7, Forced Evictions, and the Right to Adequate Housing(General Comment No. 7, 1998).

(f) General Comment No. 8,The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights(General Comment No. 8, 1997).
(g) General Comment No. 9, The Domestic Application of the Covenant(General Comment No. 9, 1998).
(h) General Comment N0. 10. The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights(General Comment No. 10, 1998).
(i) General Comment No. 11, Plans of Action for Primary Education(General Comment No. 11, 1999).
(j) General Comment No. 12, Right to Adequate Food (General Comment No. 12, 1999).
(k) General Comment 13,The Right to Education (General Comment No. 13, 1999).
(l) General Comment 14,The Right to the Highest Attainable Standard of Health(General Comment No. 14, 2000).
(m) General Comment No. 15,The Right to Water(General Comment No. 15, 2003).
(n) General Comment No. 16, Art. 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights(General Comment No. 16, 2005).
(o) General Comment No. 17, The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of which He or She is the Author(General Comment No. 17, 2006).
(p) General Comment No. 18, Art. 6: The Right to Work(General Comment No.18, 2006).
(q) General Comment No. 19, The Right to Social Security (Art. 9) (General Comment No. 19, 2007).
(r) General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2) (General Comment No. 20, 2009).
(s) General Comment No. 21, Right of Everyone to Take Part in Cultural life (General Comment No. 21, 2009).

These general comments provide a pathway, an explanatory vernacular for concretizing the ideals of the ICESCR. In this sense, they are dispositive of the concern expressed in 1987 regarding the usefulness of according the status of right to a claim "if its normative content could be so indeterminate as to allow the possibility that the right holders possess no particular entitlement to anything" (Alston, 1987, p. 332). By injecting clarity and precision to the language and terms of the covenant, the general comments refine the normativity of the provisions, thereby contributing to the development of the jurisprudence on socioeconomic rights and, *a fortiori*, their justiciability.

5. Conclusion: Fidelity to the Indivisibility Paradigm of Human Rights

A reflective and thoughtful conclusion that must be drawn from the various assumptions, claims, postulations and analyses of this paper must be that international law

clearly charts a path to be followed by States in navigating the contours of human rights. Whilst yesteryears, the terrains might have been murky, in the sense of vacuousness of socioeconomic rights jurisprudence; today, explicitly worded guidance are available on how to approach justiciability of socioeconomic rights. Regarding the question, whether bifurcation or compartmentalization of human rights into distinct genres is consistent with international law, the response is resoundingly negative. Although at different historical epochs in the evolution of contemporary human rights norms, there were visible marks of variegated strands of conceptualization, the last three decades have witnessed a coalesce of these strands into a common understanding. This understanding known as the "indivisibility paradigm of human rights," acknowledges that "all human rights and fundamental freedoms are indivisible and interdependent," and, therefore, "equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights" (Limburg Principles, 1986, para. 3). This idea, first espoused in the Limburg Principles of 1986, sculpted the path that have come to define contemporary global approach to human rights praxis. Subsequent documents such as the Vienna Declaration have been even more audacious in expounding the idea:

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms (Vienna Declaration, 1993, para. 5).

In other words, not only are all human rights universal, indivisible, interdependent and interrelated, the rights must be accorded the same treatment in terms of operationalization. The "duty of States . . .to protect" human rights (Vienna Declaration, 1993, para. 5) requires protection of "individuals and groups against human rights abuses," and this duty extends to all human rights. Therefore, international and domestic policy makers are not at liberty to cherry-pick which of the rights to implement or enforce and vice versa. The same is true of human rights adjudicatory bodies; the duty to protect human rights applies, with equal force to both CIPO as well as socioeconomic rights. As Maastricht Guidelines emphasize:

> It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, [S]tates are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights (Maastricht Guidelines, 1997, para. 4).

By holding states accountable for shortcomings in the protection of socioeconomic rights in much the same way as they are for infringement of CIPO rights, a very clear message is sent, *to wit,* according primacy to one category of rights over another, for whatever reason, is impermissible. It is a violation of international law. This is of critical importance to the advancement of human rights, for as the Office of the UN High

Commissioner for Human Rights (OHCHR) postulates, "[t]he improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others" (OHCHR, 1996- 2022). This is clearly a reason and an argument against pigeon-holing human rights into different compartments, with some being justiciable but not others, especially where, as in Nigeria, there are clear constitutional and statutory authorities rendering the entire gamut of socioeconomic rights justiciable.

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