

## **Nigeria and the International Covenant on Economic, Social and Cultural Rights: Straightening the Crooked Path**

**Solomon I. Ifejika**

*Department of Political Science and International Relations, Landmark University, Nigeria*

### **ABSTRACT**

As encapsulated in the Universal Declaration of Human Rights of 1948, economic, social, and cultural rights are indispensable components of the fundamental rights that the global community guarantees to all humankind, alongside civil and political rights. Specifically, the United Nations adopted the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966 to expedite the fulfillment of ESCR while imploring Member States to adopt and domesticate the same to stimulate the realization of these rights at the national level. This study examined Nigeria concerning their effort toward fulfilling the obligation to the ICESCR, which she affirmed. Depending on data derived from secondary sources and analyzed using thematic and content analysis techniques, the study found that Nigeria maintains demonstrable support for the international community in promoting the universal realization of ESCR. Nigeria has ratified and domesticated the ICESCR at the global level and the African Charter on Human and Peoples' Rights at the regional level and incorporated these rights into their extant 1999 National Constitution. Nevertheless, Nigeria's path to fulfilling its obligation to the ICESCR is crooked as it faces some underlying problems that impede its effort, including the paradox in its constitution. The study recommends, in addition to other actions, a constitutional reform to repeal Section 6(6)(c) of the 1999 Constitution of Nigeria to categorize ESCR under 'fundamental rights'

and ascribe them the status of 'enforceable' rights under the law to ameliorate these issues.

*Keywords:* Human rights, international community, international human rights treaties, socio-economic and cultural rights, state human rights obligations

### ARTICLE INFO

*Article history:*

Received: 11 November 2021

Accepted: 21 October 2022

Published: 16 June 2023

DOI: <https://doi.org/10.47836/pjssh.31.2.21>

*E-mail address:*

[solomonifejika@yahoo.com](mailto:solomonifejika@yahoo.com) (Solomon I. Ifejika)

## INTRODUCTION

Recognizing that every human being is a free-born with indistinguishable dignity and freedoms (United Nations [UN], 1949), human rights can be synonymous with the ‘essence of human existence.’ Hence, the UN Charter places responsibility on States to stimulate broad recognition and adequate regard for and protection of human rights and liberties of the human community members. Ajibabe (2006, p. 16) observes, “the underlying idea of human rights is the promotion of human dignity, freedom, and well-being, something inherent and easily connected with the fulfillment of economic, social, and cultural rights.” Besides, along with civil and political rights (CPR), economic, social, and cultural rights are integral parts of the basic rights outlined in the United Nations Universal Declaration of Human Rights (UDHR) of 1948 (Ikawa, 2020). ESCR includes, among others, the right to work and social security, the right to good living conditions, the right to marry and hold a family, the right to education, and the right to uphold and display the cultures of one’s community, which are vital to self-fulfillment and actualization of individuals’ innate potentials.

The UN’s primary interest is the promotion of every human right. Therefore, the global governing body took specific steps to express ESCR as a lawful right by adopting the International Covenant on Economic, Social, and Cultural Rights in 1966, with the committee on ESCR constituted to oversee the convention’s implementation (Udu, 2014). The UDHR

provides the incentive for the upgrading of the status of ESCR (Grigsby, 2017). The ICESCR, UDHR, and International Covenant on Civil and Political Rights (ICCPR) comprise the ‘International Bill of Rights.’ According to Shiman (n. d.), nearly all the countries in the world have demonstrably committed themselves to realize ESCR wholly by acceding to the UN worldwide treaty on these rights. Nigeria as a member of the UN is not an exception as she acceded to the ICESCR on July 29, 1993, and it took active effect in the country in October of the same year (Grigsby, 2017).

However, the full realization of ECSR in Nigeria has remained a dream rather than a reality due to certain impending issues. This scenario negates the fundamental rationale of the ICESCR. This paper, therefore, adopts the secondary method of data collection and the thematic and content analysis techniques of qualitative data analysis to investigate these besetting factors. The rationale is to devise adequate measures for ameliorating the problems to enable Nigeria to conveniently fulfill its commitment to the ICESCR and contribute robustly to the global community’s effort at enhancing and guaranteeing all human rights in general.

## Literature Review

Within the international community, recognition and respect for all the basic rights of the human person have long been widely acknowledged as one of the arch-pillars of global peace and harmony. Of course, the drafters of the UDHR consider the acknowledgment of the intrinsic prestige,

equality, and inviolable rights of all persons as a basic requirement for the actualization of freedom, fairness, and tranquility in the world (UN, 1949). Specifically, it is impossible to sustain peace in society if proper attention is not given to ESCR (Cahill-Ripley & Hendrick, 2018). There is an authoritative view that “human rights put people [at the] center stage” (UN, 2020, p. 2) in the scheme of things. Unsurprisingly, the preamble to UN Charter illustrates the member nations’ reassertion of faithfulness to fundamental human rights, along with the honor and value of all humans as well as according to equal rights to men and women (UN, 1945). Dugard (2020, p. 2) reminds us that:

The contemporary international human rights system was developed largely in response to the atrocities of World War II as a means to assert universally applicable human rights norms and standards and to establish binding mechanisms to hold states accountable for human rights failures and violations.

It is in view of this that international legitimately mandatory covenants and supervisory bodies within the United Nations provide extensive statutory instruments to prevent discriminatory practices at the national level (Lougarre, 2020).

From its inception, the UN has exalted the place of human rights in achieving its mandate and hence prioritizes and champions the universal advocacy for

the defense of every individual right. The latter, ESCR is a component of the entire framework of human rights law that evolved in and sequel to World War II (CESR, n. d.). Like other rights, international efforts at promoting and safeguarding ESCR at regional, sub-regional, and national levels are being catalyzed by the UN, which recognizes these rights in most of its human rights legal instruments. Meanwhile, UN Charter is the foundation of all its human rights instruments. Article 55(3) of the Charter, as Lougarre (2020) notes, forms the basis for drafting the organization’s main human rights agreements. Nevertheless, the UDHR sets out the international accord on universally accepted human rights norms or principles, inclusive of ESCR, and no State has categorically discredited the UDHR (Dugard, 2020).

It is argued that “human rights instruments are ‘living instruments’...” (Smith, 2020, p. 224). In its UDHR, the UN had emphasized ESCR under Articles 16 and 22 to 29 before adopting the ICESCR in 1966. Article 16 confers rights on every grown person, male and female, to marry and keep a household, provided that the intending couples freely and fully agree. It regards the family as the instinctive and indispensable part of society, which the State and society are obligated to protect (UN, 1949). Article 22 equivocally entitles all members of the society to the right to social security, which is to be realized through national effort and transnational collaboration consistent with the formation and resources of every State and the ESCR imperative for their dignities

and unconstrained personal advancement (UN, 1949). Articles 23 to 29 embody other elements of ESCR, including the right to work, the right to rest and leisure, the right to a decent standard of living, the right to education, and the right to engage in cultural activities of one's people (UN, 1949), among others. In an effort to facilitate the achievement of ESCR, the UN further decided on December 16, 1966, to adopt the ICESCR. The convention became effective on January 3, 1976, until July 2020, 171 State entities ratified it (Ikawa, 2020). The UN acceded to the Optional Protocol to the ICESCR (OP-ICESCR) on December 10, 2008, but it took effect on May 5, 2013, and several State parties have ratified it (Langford et al., 2016).

The Scottish Human Rights Commission (2020) canvasses the idea that the absence of appropriate and potent remedies for ESCR in nations creates the impression that social policies are welfare measures instead of a part of the obligation to guarantee the attainment of universal human rights requirements. As a result, from the time it was adopted, the UN Economic and Social Council (ECOSOC) has successively saddled three varying bodies with the responsibility of monitoring the implementation of the ICESCR by Member States, namely, "the Sessional Working Group on the Implementation of the ICESCR; the Sessional Working Group of Governmental Experts on the Implementation of International Covenant; and, from 1985, the CESCR, consisting of 18 members who [are]...experts with recognized competence in the field of

human rights..." (Ikawa, 2020, p. 14). The CESCR had initially utilized only two measures to spell out the duties of States and to make States answerable to these duties. Concerning the first mechanism, the Committee carries out seasonal scrutinization and analysis of States' reports on the application of the treaty, which is presented every five years, accompanied by negotiations with the States' delegates at a reserved session of the Committee. The final opinions regarding positive actions, undertakings, and suggestions are also approved at this session. The second mechanism involves the Committee developing and adopting general statements or remarks that present detailed clarifications of the pact and give States and other parties guidance on requirements for adherence, both in respect of specific rights and interconnecting tenets (Ikawa, 2020). All these undisputedly portray that the international community has been making relentless and pragmatic efforts toward guaranteeing the protection, actualization, and enjoyment of ESCR by all members of human society.

### **Theoretical Choice**

This study employs the Monism theory in international law as its basic analytical tool. Monism, or the Monistic theory, is one of the dominant theories often used to depict the interrelation between international and municipal laws. The most prominent proponent of Monism is Hans Kelsen. The central argument of the theory is that all laws, international law and domestic

laws of States, form an integrated legal system (Dubay, 2014). The Monistic theory postulates that transnational laws and the State's frameworks of law are to be conceived as an incorporated and undivided arrangement of precepts just as one regards the State's organization of law (Kelsen, 1992). Impliedly, the Monistic theory does not regard international and national laws as distinct legal structures but as one whole system. Monists posit that all the domestic and international binding laws that a State has approved say in an accord decide whether an action is lawful (Kooijmans, 1994).

The Monism theory, therefore, holds a contrary view to that of the Dualism theory, which separates international law from municipal law, and with the affirmation that States necessarily need to domesticate international laws via legislative procedure before they can affect rights and responsibilities at the national level. For Monism, having accepted international law, States naturally incorporate such law into their local legal systems, considering it a component of the broad national legal arrangement (Dubay, 2014). Concisely, Monism as a perspective on the implementation of transnational rule centrally necessitates the immediate adherence to global legislation as a segment of States' laws without necessarily adapting the supporting compact. The pact thus applies as the origin of laws of State parties from the moment they sign and consent to it (Mutubwa, 2019). Within the monism doctrine, international laws serve not only

as a template for interstate interactions on the global stage but also as a source of laws merged with and supreme to national laws (Dubay, 2014). States are consequently not to place or prioritize their narrow-focused municipal laws above international rules laws, which serve to protect the interest of the entire human family.

Considering its basic thrust, this theory is considered ultimately suitable in interrogating the topical issue of this study that sees the Nigerian legal context as an integral part of the universal system of law embodying rights and obligations, and hence its adoption. As Mutubwa (2019) explains, an exhibition of the monist practice by States can be both by straightforward implementation or categorical stipulations in their constitutions that declare international statutes as sources and parts of States laws. It undoubtedly is the case with Nigeria. Apart from ratifying the ICESCR, Nigeria has integrated the ESCR component into its national constitution. By taking these steps, the country is duty-bound to join the international community in the struggle for the promotion and protection of ESCR in the world by enhancing the realization of these rights within its national borderlands. Moreover, being a part of the universal human society in whose interest the ICESCR is made, the circumstances surrounding the ESCR of Nigerians, positive or negative, would have a far-reaching impact on the global community's effort at advancing the attainment of the goals of ESCR in the world. Therefore, guided by the norms of the ICESCR embedded in its municipal

law, Nigeria is obliged to complement the international efforts at actualizing ESCR universally.

## **MATERIALS AND METHODS**

It is a qualitative study that examines Nigeria in relation to the ICESCR. The study depends on secondary data sources, including books, journals, and publications of relevant international and national bodies, such as the UN and its human rights agencies and the National Human Rights Commission of Nigeria (NHRCN). The thematic and content analysis methods of qualitative data analysis were used as the basic data analysis tools. These methods enhanced adequate and systematic identification, examination, extrapolation, elucidation, and elicitation of meaning and drawing of realistic conclusions from the contents of the qualitative-secondary data collected.

## **RESULTS AND DISCUSSION**

This study presents its discussion thematically below, in consistency with the following summary of findings.

### **Summary of the Findings**

Nigeria has taken some major steps in support of the international community's effort towards advancing the realization of ESCR universally through their ratification and domestication of the ICESCR at the global level, the African Charter on Human and Peoples' Rights at the regional level, and recognition of economic, social

and cultural issues in the 1999 National Constitution. Regardless of these sagacious steps, however, Nigeria is faced with some problems that plague its effort toward fulfilling its obligation to the ICESCR, which has been ratified.

### **Nigeria's National Efforts at Promoting the Realization of ESCR**

Considering the major supposition of the Monist theory that is employed in this study, Nigeria exhibits behavioral patterns that depict its perception and acceptance of its domestic legal structure as a component of the international system of law, specifically concerning the ICESCR as evident in the country's recognizable commitment to the treaty. The fact that Nigeria ratified the ICESCR in 1993 indicates that the country is committed to ensuring that its citizens are guaranteed the rights embodied in the pact (Kutigi, 2017). Article 2 of the ICESCR lays the burden on States parties to the agreement to implement plans and programs to facilitate maximum achievement of the ESCR of all individuals. With this, Nigeria is saddled with the duty to take action, particularly by adopting legal mechanisms to fully harness and deploy the resources at their disposal steadily towards the optimal actualization of the rights contained in the treaty (United Nations, 1966). In compliance, Nigeria has resorted to legally binding regional and national frameworks to promote ESCR. On the regional front, the African Charter is part of Africa's Human Rights structure, and the African Union (AU) ensures that the State members recognize all the rights to achieve

development (Olaniyi, 2019). Nigeria has in 1983 endorsed, certified, and domesticated the African Charter on Human and Peoples' Rights (ACHPR), otherwise called the African Charter (Ibe, 2010; International Justice Resource Centre [IJRC], 2017; Kutigi, 2017).

Upon ratification, Nigeria naturally makes the ACHPR a component of the national law (Kutigi, 2017). It is because the ACHPR obliges member States to incorporate into national legal frameworks certain safeguards for ESCR (Ibe, 2010). As Kutigi (2017) states, the ACHPR recognizes ESCR as a fundamental right, thereby resulting in the acknowledgment of ESCR as a basic right within Nigeria. In guaranteeing their protection, Article 45 of the Charter affirms the justiciability of all rights, including the ESC rights, before the African Commission on Human and Peoples' Rights (Grigsby, 2017; Ibe, 2010). The Commission supervises Nigeria's human rights programs and actions, re-evaluates the nation's reports on its human rights conditions and resolves accusations of suspected rights abuses. Nigeria has, expectedly, periodically presented reports on the country's human rights circumstances to the Commission. At the same time, the Commission has severally embarked on assignments to Nigeria, such as their promotional missions in 1997 and 2009, respectively, coupled with a 2001 mission undertaken regarding women's rights (IJRC, 2017). Importantly, "Nigeria has accepted the jurisdiction of the African Court on Human and Peoples Rights to hear complaints presented by the

Commission, African intergovernmental organizations, and States parties to the African Charter" (IJRC, 2017, p. 1). The Economic Community of West African States (ECOWAS) Court of Justice has also certified that all rights subscribed to by the ACHPR are enforceable before it (Ibe, 2010).

Chinwo (2006) agrees that a constitution is a supreme document that should contain a nation's goals, aspirations, and philosophies. Oluwadayisi (2014) believes this viewpoint brought about the idea of including DPSP in the Constitution. Resultantly, following the footsteps of countries such as Spain, Ireland, and India along with various emerging democratic systems, Nigeria embedded in the 1999 Constitution a category of aims and objectives defined as Directive Principles of State Policy (DPSP) that encompasses ESCR (Oluwadayisi, 2014). In other words, on the national or domestic front, the Nigerian 1999 Constitution well-incorporates human rights safeguards, which seek to protect all rights, and theoretically, the Nigerian courts reserve the legitimate jurisdiction to probe into abuses of ESCR of the citizens (Grigsby, 2017). It is pertinent to note that it was in Nigeria's 1979 Constitution that DPSP was initially instituted before it appeared in the 1989 and the current 1999 Constitutions, respectively (Oluwadiyisi, 2014). Specifically, in Chapter II, which contains the DPSP, Nigeria's 1999 Constitution provides for ESCR, while CPR is enunciated in Chapter IV under the subject 'Fundamental Rights' (Federal Republic of Nigeria [FRN], 1999).

It would be insightful to succinctly mention a few of the provisions in the constitution under which these rights are enshrined. As regards economic rights, Section 16(1) (b & d) of the constitution enjoins the State to:

- a. control the national economy in such manner as to secure the maximum welfare, freedom, and happiness of every citizen on the basis of social justice and equality of status and opportunity; and (d) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

Concerning social rights, the constitution in Section 17(1), (2) (a), and (3) (a) requires that:

The State social order is founded on ideals of Freedom, Equity, and Justice; every citizen shall have equality of rights, obligation[s] and opportunities before the law; all citizens, without discrimination on any group whatsoever, have the opportunity for ensuring adequate means of livelihood as well as adequate opportunity to secure suitable employment.

Section 18(1) (2) (3) is directly related to the right to education, where the constitution holds as follows:

Government shall direct its policy toward ensuring that there are equal and adequate educational opportunities at all levels. Government shall promote science and technology. Government shall strive to eradicate illiteracy, and to this end, Government shall, as and when practicable, provide: free, compulsory, and universal primary education; free secondary education; free university education; and [a] free adult literacy program.

Recognizing the cultural richness of Nigeria and the multiethnic configuration of the country and, of course, the fact that Nigerian communities are closely tied to and deeply enmeshed in their cultures, the constitution, concerning cultural rights, unequivocally instructs the State in Section 21, to:

- a. protect, preserve, and promote the Nigerian cultures, which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter; and (b) encourage [the] development of technological and scientific studies which enhance cultural values.

The DPSP directs the government of the day to meet the citizenry's demands regarding political, economic, social, educational, and other issues (FRN, 1999). Section 13

saddles every organ of the government and every authority and person wielding capacities to formulate, implement and interpret laws, adhere to, recognize, and exercise the stipulations of chapter two of the constitution (FRN, 1999). It shows that Nigeria, by ratifying the ICESCR and ACHPR at global and regional levels, respectively, understands that it has an all-important obligation to use legislation to advance the protection and actualization of the ESCR of the citizens. In this vein, the preamble to the Constitution of Nigeria also outlines the country's political antecedent and sets the carriage for a transformational spotlight on enhanced living conditions for the entire citizens and for exploring the potential of every individual (Ngang, 2014).

### **Impediments to the Actualization of ESCR in Nigeria**

This study believes that, without a doubt, Nigeria has made some noteworthy efforts in supporting the global community's goal of protecting and actualizing ESCR, particularly through legislation, both at international, regional, and national levels. Nevertheless, there are underlying factors that impede the country's attempts at fulfilling its obligations to the ICESCR, which include the following:

#### **Contradictions within Nigeria's National Legal System**

The biggest obstacle to Nigeria's fulfillment of its obligation to the ICESCR is the

paradox with economic, social, and cultural issues in the country's 1999 Constitution, which is the basis of its corporate existence, and a major determinant of its actions. This paradox lies in the fact that the same 1999 Constitution of the Federal Republic of Nigeria that provides for CPR in Chapter IV and unequivocally makes this set of rights justiciable provides for ESCR in Chapter II but does not regard these rights as fundamental rights nor makes them justiciable in the court of law. At best, the constitution describes and treats ESC issues as objectives of the State [under DPSP] instead of as rights, despite how critical ESCR is to the existence and well-being of the country's citizens (Oluwadayisi, 2014).

Kutigi (2017) elaborates on this scenario thus:

...in spite of the recognition given to these issues in the Constitution (and the establishment of certain public institutions and laws to ensure that socio-economic rights enshrined in welfare laws are enforced), the same constitution does not accord these ESC rights the status of fundamental human rights, while at the same time doing so in the case of the CP rights guaranteed in its Chapter IV. (p.135)

The distinction in the legal nomenclatures and statuses of CPR and ESCR are further marked by differing enforceability status for every two sets of rights in the constitution, which does not

permit the courts to adjudicate matters bothering ESCR (Olaniyi, 2019). This means that “economic, social and cultural rights are not enforceable as stand-alone rights under the 1999 Constitution” (National Human Right Commission of Nigeria [NHRCN] 2009, p. 7).

In Section 6(6) (c), the 1999 Constitution of Nigeria stipulates as follows:

The judicial powers 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 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 provision remains the biggest clog in progress toward achieving ESCR in Nigeria. To the extent that the constitution denies justiciability to ESCR, it becomes paradoxical the fact that the same constitution in its “section 13 imposes a ‘duty and responsibility’ on ‘all organs of government, and...all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply’ the provisions of Chapter II” (Kutigi, 2017, p. 134). Apart from being a major legal contradiction, the relegation of ESCR by the Nigerian constitution indicates that the country prioritizes CPR over ESCR,

and this situation besets the whole effort at protecting and actualizing the ESCR of the country’s citizens, and by extension, this invariably impacts negatively on efforts at the global level. In short, it is correct to state, given the argument of Grigsby (2017), that Nigeria has derailed its obligation as a State party to the ICESCR.

### **High Incidence of Official Corruption**

The National Human Rights Commission of Nigeria unreservedly reveals how corruption among government officials in Nigeria hampers citizens’ realization and enjoyment of ESCR. As it posits: “Corruption by public officials and corrupt national institutions has negatively impacted the provision and availability of important infrastructures and other social and economic facilities. This has therefore affected the realization of economic and social rights in the country” (NHRCN, 2009, p. 7). Similarly, Ola et al. (2014) maintain that corruption in Nigeria has had many adverse consequences for governance and overall social arrangement as it has paralyzed the country’s ability to provide social and economic rights, even at a minimal level, including health and education, for the enjoyment of the citizenry. These observations amply validate the position of the United Nations Office on Drugs and Crime [UNODC] (2020) that corruption’s effect is particularly noticeable regarding ESCR. It further asserts that state officials generally consider ESCR to involve a larger outlay of government resources than civil and political rights would require, as the latter only demands that the state

refrains from inhibiting persons' freedoms (UNODC, 2020).

This standpoint finds proper expression in Nigeria, where State officials usually conceal and divert to their purses such monies and resources that ought to be earmarked and used for executing concrete projects and programs that can improve the welfare of the citizens (Olaitan & Oyeniya, 2015). Corruption in government is the major reason most Nigerians live below the poverty line, whereas their country is endowed with enormous resources that could improve their lives. Poignantly, "poverty in Nigeria is a contradiction because it has been growing in the context of an expanding economy where the benefits have been reaped by a minority of people and have bypassed the majority of the population" (Mayah et al., 2017, p. 13). Precisely, corruption in government has subjected 54 percent of Nigerian citizens to abject poverty because the menace has prevented Nigeria from utilizing its resources to stimulate social good since privileged private individuals pocket these resources (Grigsby, 2017).

Corruption is also the cause of mass unemployment and the inability of citizens to access and enjoy other essential things of life, including shelter, healthcare services, and quality education, among others. Indeed, as Olaitan and Oyeniya (2015, p. 157) put it, "in Nigeria, corruption is an obstacle to implementing the right to development, employment, education, health care, and progress." It is because, through corruption and mismanagement,

as much as 40 percent of the country's \$20 billion yearly revenue from oil could have been utilized to better the lots of the citizens is squandered (Ola, Mohammed & Audi, 2014). It is, therefore, clear that corruption constrains social and economic development in Nigeria in virtually every aspect of the country's national life (NHRCN, 2009), thereby making it difficult for the citizens to enjoy economic and social rights.

### **Limited Education and Awareness Among Citizens**

Ifejika (2021) has rightly alluded that the low literacy level in Nigeria is one of the main challenges to advancing, protecting, and enjoying human rights in general in the country. The CESR (n. d.) observes that all human rights, including ESCR and CPR, are firmly knit together, in that, for instance, the right to speak freely cannot be maximized if individuals lack basic education, the right to vote would mean little or nothing if one is facing deprivation and hunger. Likewise, the right to work would be meaningless if persons were restricted from meeting and assembling in the congregation to engage in discussions concerning conditions of work (CESR, n. d.). It presupposes that it takes an educated and well-informed citizenry to know what constitutes their rights and privileges and how to claim such rights. According to Olaitan and Oyeniya (2015, pp.162-163), "through education, people have adequate knowledge about their health, the economy and the running of government. Educated people are aware of their rights and can hold the government

accountable for any lapse in the country's affairs".

In Nigeria, due to the high rate of illiteracy, most citizens are not even fully aware of the position of the constitution on their CPR, that is, the so-called justiciable category of rights, let alone the non-justiciable ESCR, which are almost absolutely neither talked about nor given any attention by government authorities. With this, there have not been any meaningful mass actions by Nigerian citizens to demand the government to change the status of ESCR to enforceable rights like the CPR in the country's current constitution. The alarming illiteracy rate in Nigeria is mainly due to the rife poverty among the citizens and bad management of the education sector. As Igwe et al. (2019) explain:

...the illiteracy rate in Nigeria is on the increase due to economic hardship as youth and children are forced on the street to earn a means of livelihood; education has become so expensive as privatization of primary, secondary, and tertiary institutions is on the increase, and public schools are not properly equipped and taken care of: procedures for acquiring admission in tertiary institutions have become very cumbersome and very little has been done on public enlightenment for encouraging people to engage in adult literacy programs. (p. 33)

As of today, Nigeria has not achieved the goal of universal basic education; the

United Nations Children's Fund (UNICEF) has disclosed that one-quarter of all Nigerian children (25 percent) between ages 7 and 17 lack education, and "out of these, 49 percent are from the lowest wealth quintile" (Olaitan & Oyeniya, 2015, p. 163). Given this prevailing situation, the problem of illiteracy has become transgenerational in Nigeria as most citizens, especially the young ones, have over the years been discouraged from pursuing and attaining a good educational level that would position them to vigorously demand accountability from the government regarding their rights, or specifically advocate for the implementation of ESCR enumerated in the constitution.

### **Imprint of Colonialism**

Perhaps, another factor that can be added to the preceding three major issues, which is somewhat proximate and silent, is a colonial legacy. This factor is at the root of the dichotomy in the level of importance placed on CPR and ESCR, respectively, in the Nigerian constitution. All rights classes are equally important, and none should be emphasized over others. Recall that Article 5 of the Vienna Declaration and Program of Action requires that "...the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis" (World Conference on Human Rights, 1993, p. 3). Quane (2012) corroborates that CPR is not more important than ESCR because the adequate implementation of one category influences the implementation of the other and vice versa. However,

against these facts, Nigeria, as part of its colonial legacies, inherited basic human rights provisions that were more or less completely civil and political in nature instead of socio-economic (Eze, 1984). It is for this reason that, in Nigeria, "... almost all judicial, scholarly, and other legal attention has been paid to the promotion and protection of CP rights while comparatively little attention has been focused on the legal realization of ESC rights" (Kutigi, 2017, p. 135). Therefore, colonialism has shaped the Nigerian legal system in a way that has created the impression that CPR is more important than ESCR, and hence the continuing emphasis on the advancement of CPR alone in the country up to date, an idea that directly discriminates against ESCR.

## CONCLUSION

Nigeria has shown discernible support for the international community's objective of enhancing, protecting, and guaranteeing the enjoyment of ESCR by every human through their ratification and domestication of the ICESCR at the global level, the ACHPR at the regional level, and recognition of ESCR in their national constitution. According to the Monistic theory adopted in this study, it makes the country a part of the international legal system. Notwithstanding, several challenges confront Nigeria in this regard, most notable of which stems from the contradiction in the country's constitution, increased rate of corruption in government, and disturbing trend of illiteracy among the citizens, all of which plague the country's effort in fulfilling its obligation to the United Nations ICESCR that has ratified.

## Recommendations

The challenges identified above represent the crooked path to be straightened to enable Nigeria to sail smoothly toward adequate fulfillment of its obligation of promoting, protecting, and realizing the goal of the ICESCR within its territorial jurisdiction. Considering this, the study proposes the following actions.

1. The National Assembly of Nigeria, being the main organ representing the masses of the citizens in government, needs to call for a sovereign constitutional reform to amend the 1999 Constitution of the Federal Republic of Nigeria and categorize ESCR under fundamental human rights, as well as ascribe these rights the status of justiciable rights just as it does for CPR. It implies that the clause in Section 6(6) (c) of the constitution that discriminates against ESCR by not permitting the judiciary to adjudicate cases related to this class of rights must be expunged. This way, the ESCR and CPR would be given equal attention by the constitution, thereby setting the context for Nigerians to be guaranteed proper protection for and enjoyment of all their rights.
2. The current President of Nigeria, Muhammadu Buhari, is reputed for his zero tolerance for corruption. Hence, Buhari's administration should rejig the country's anti-corruption architecture and stimulate an increase in the tempo of all the relevant institutions, especially the Economic and Financial Crimes

- Commission (EFCC) and Independent Corrupt Practices and Other Related Offences Commission (ICPC) in fighting the evil of corruption. There should be no ‘sacred cows’ as far as the current effort at ridding Nigeria of corruption. Any public officials reported to have indulged in any act of corruption should be strictly prosecuted and, if found guilty, adequately punished under the law, including outright expulsion from government service, irrespective of who they are and their political affiliations. The EFCC and ICPC should raise awareness among government officials about corruption, including giving and taking bribes, making false financial claims, and manipulating positions for personal gain. It will help officials avoid engaging in corrupt practices. All this would show the government’s seriousness in combating corruption and instill a strong sense of caution into the entire public sector, consequently reducing the rate of corruption that has ravaged the entire nation and immersed the citizens into unprecedented hardships and sufferings.
3. Given that the Nigerian government has failed to provide quality and affordable education at all levels to the citizens despite the clamors for this over the years, the only option left is for Nigerians to pay the ‘big prize’ by resorting to self-help. It ensures that they acquire the necessary education to help them live a meaningful life. Parents should ignore the increased frustration
  - in the country and take responsibility for sending their children to school, as ignorance can never be equated with the cost of acquiring knowledge. It would help reduce the country’s illiteracy level to the barest minimum and save future generations of Nigerians from the perils of ignorance. In particular, it would put the citizens in a better position to know all their rights, including ESCR, demand protection for these rights, and hold the government accountable if they are denied the privilege to enjoy them.
  4. Nigeria needs to completely purge its legal system of all colonial vestiges and orientations as a fully independent country. In this sense, every content of Nigeria’s legal framework inherited from its colonial lord must be jettisoned, and the country should conceive its philosophies, procedures, and practices based on the realities of its polity. In particular, Nigeria’s colonial thinking or idea that CPR is more important than ESCR is erroneous. It must be discarded, as all rights are equally essential to the survival and well-being of Nigerians.

#### ACKNOWLEDGEMENT

Special thanks to the God of Chosen for His help.

#### REFERENCES

- Ajibade, I. M. (2006). *Promoting economic, social and cultural rights: A critical step to achieving human security in Nigeria*. <http://dx.doi.org/10.2139/ssrn.1547424>

- Cahill-Ripley, A., & Henrick, D. (2018). *Economic, social and cultural rights and sustaining peace: An introduction*. Friedrich-Ebert-Stiftung, Quaker United Nations Office, and Lancaster University. <https://library.fes.de/pdf-files/bueros/genf/14400.pdf>
- Centre for Economic and Social Rights. (n. d.). *What are economic, social and cultural rights?* <https://www.cesr.org/what-are-economic-social-and-cultural-rights>
- Chinwo, C. A. J. (2006). *Principles and practice of constitutional law in Nigeria, (Volume 1)*. Davis Printing and Packaging.
- Dubay, C. A. (2014). *General principles of international law: Monism and dualism*. International Judicial Academy. [http://www.judicialmonitor.org/archive\\_winter2014/generalprinciples.html](http://www.judicialmonitor.org/archive_winter2014/generalprinciples.html)
- Dugard, J. (2020). The international human rights system. In J. Dugard, B. Porter, D. Ikawa & L. Chenwi (Eds.), *Research handbook on economic, social and cultural rights as human rights* (pp. 2-13). Edward Elgar Publishing. <https://www.socialrights.ca/2020/Research%20Handbook%20on%20ESCR.pdf>
- Eze, O. C. (1984). *Human rights in Africa: Some selected problems*. Nigerian Institute of International Affairs & Macmillan Publishers.
- Federal Republic of Nigeria. (1999). *Constitution of the Federal Republic of Nigeria 1999 (with amendments 2011)*. Federal Government Printer. <file:///C:/Users/OPTIPLEX%205250%20AIO/Downloads/Nigeria%20Constitution.pdf>
- Grigsby, S. M. (2017). *Enforcing economic, social and cultural rights: A stark dichotomy*. Northeastern University Law Review. [https://static1.squarespace.com/static/56a67d1e05caa777b1877b09/t/590a0a5786e6c07b8df88482/1493830232897/EL\\_Grigsby\\_Final+Draft+PDF+Version\\_05-03-2017.pdf](https://static1.squarespace.com/static/56a67d1e05caa777b1877b09/t/590a0a5786e6c07b8df88482/1493830232897/EL_Grigsby_Final+Draft+PDF+Version_05-03-2017.pdf)
- Ibe, S. (2010). Implementing economic, social and cultural rights in Nigeria: Challenges and opportunities. *African Human Rights Law Journal*, 10(1), 199-211. [https://www.ahrlj.up.ac.za/images/ahrlj/2010/ahrlj\\_vol10\\_no1\\_2010\\_stanley\\_ibe.pdf](https://www.ahrlj.up.ac.za/images/ahrlj/2010/ahrlj_vol10_no1_2010_stanley_ibe.pdf)
- Ifejika, S. I. (2021). The Nigerian state and international human rights laws in the fourth republic. *Pertanika Journal of Social Sciences & Humanities*, 29(1), 565-581. <https://doi.org/10.47836/pjssh.29.1.31>
- Igwe, O.W., Nwanyanwu, T., Amah, C., & Dua-Luke, T. G. (2019). Appraisal of the measures for the realization of economic, social and cultural rights in Nigeria. *International Journal of Innovative Legal & Political Studies*, 7(4), 22-35.
- Ikawa, D. (2020). The international convention on economic, social and cultural rights and the optional protocol. In J. Dugard, B. Porter, D. Ikawa, & L. Chenwi (Eds.), *Research handbook on economic, social and cultural rights as human rights* (pp. 2-13). Edward Elgar Publishing. <https://doi.org/10.4337/9781788974172.00009>
- International Justice Resource Centre. (2017). *Nigeria: Country factsheet series*. <https://ijrcenter.org/wp-content/uploads/2017/11/Nigeria.pdf>
- Kelsen, H. (1992). *Introduction to the problems of legal theory: A translation of the first edition of the Reine Rechtslehre or pure theory of law*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780198265658.001.0001>
- Kooijmans, P. H. (1994). *International publiekrecht in vogelvlucht* [Public international law in a nutshell]. Wolters-Noordhoff.
- Kutigi, H. D. (2017). Towards justiciability of economic, social and cultural rights in Nigeria. A role for Canada-Nigeria cooperations? *The Transnational Human Rights Review*, 4, 125-145.

- Langford, M., Porter, B., Brown, R., & Rossi, J. (2016). Introduction. In M. Langford, B. Porter, R. Brown, & J. Rossi (Eds.), *The optional protocol to the international covenant on economic, social and cultural rights: A commentary*. Pretoria University Law Press. <https://www.corteidh.or.cr/tablas/31393.pdf>
- Lougarre, C. (2020). The protection of non-nationals' economic, social and cultural rights in UN human rights treaties. *International Human Rights Law Review*, 9, 252-290. <https://doi.org/10.1163/22131035-00902008>
- Mayah, E., Mariotti, C., Mere, E., & Odo, C. O. (2017). *Inequality in Nigeria: Exploring the drivers*. Oxfam International. [https://www-cdn.oxfam.org/s3fs-public/file\\_attachments/cr-inequality-in-nigeria-170517-en.pdf](https://www-cdn.oxfam.org/s3fs-public/file_attachments/cr-inequality-in-nigeria-170517-en.pdf)
- Mutubwa, W. (2019). Monism or dualism: The dilemma in the application of international agreements under the South African Constitution. *Journal of Conflict Management and Sustainable Development*, 3(1), 27-37.
- National Human Rights Commission of Nigeria. (2009). *Report on state of compliance with international minimum standards of human rights by Nigeria under the universal periodic review mechanism*. <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=556&file=EnglishTranslation>
- Ngang, C. C. (2014). Judicial enforcement of socio-economic rights in South Africa and the separation of powers objection: The obligation to take 'other measures'. *African Human Rights Law Journal*, 2(16), 655-680.
- Ola, A. S., Mohammed, A., & Audi, M. S. (2014). Effects of corruption on economic development in Nigeria. *Global Journal of Interdisciplinary Social Sciences*, 3(3), 209-215. <https://www.walshmedicalmedia.com/open-access/effects-of-corruption-on-economic-development-in-nigeria.pdf>
- Olaitan, O. & Oyeniyi, A. (2015). Realizing the right to development in Nigeria: An examination of legal barriers and challenges. *Journal of Sustainable Development, Law and Policy*, 6(1), 145-168. <https://dx.doi.org/10.4314/jstdlp.v6i1.7>
- Olaniyi, O. F. (2019). Implementing the socio-economic and cultural rights in Nigeria and South Africa: Justiciability of economic rights. *African Journal of International and Comparative Law*, 27(4), 564-587. <https://doi.org/10.3366/ajicl.2019.0291>
- Oluwadayisi, A. O. (2014). Economic and socio-cultural rights in the democratic governance of Nigeria: Enforcement mechanisms beyond justiciability. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 5, 105-117.
- Quane, H. (2012). A further dimension to the interdependence and indivisibility of human Rights?: Recent developments concerning the rights of indigenous people. *Harvard Human Rights Journal*, 25, 49-83.
- Scottish Human Rights Commission. (2020). *Adequate and effective remedies for economic, social and cultural rights: A background briefing paper for the National Taskforce on Human Rights Leadership, December 2020*. <https://www.scottishhumanrights.com/media/2163/remedies-for-economic-social-and-cultural-rights.pdf>
- Shiman, D. (n.d.). *Economic and social justice: A human rights perspective*. <http://hrlibrary.umn.edu/edumat/hreduseries/tb1b/Section1/tb1-2.htm>
- Smith, T. (2020). Scientific purpose and human rights: Evaluating general comment no 25 in light of major discussions in the *travaux preparatoires* of the universal declaration of human rights and international covenant on economic, social, and cultural rights. *Nordic Journal of Human Rights*, 38(3), 221-236. <https://doi.org/10.1080/18918131.2021.1882757>

- Udu, E. A. (2014). The imperative of economic, social and cultural rights in the development of nascent democracies: An inter-jurisdictional view. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 5, 27-41.
- United Nations. (1945). *Charter of the United Nations and Statute of the International Court of Justice*. <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>
- United Nations. (1949). *Universal declaration of human rights 1948*. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- United Nations. (1966). *International covenant on economic, social and cultural rights*. <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>
- United Nations. (2020). *Covid-19 and human rights: We are all in this together*. [https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un\\_-\\_human\\_rights\\_and\\_covid\\_april\\_2020.pdf](https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf)
- United Nations Office on Drugs and Crime. (2020). *Impact of corruption on specific human rights*. <https://www.unodc.org/e4j/en/anti-corruption/module-7/key-issues/impact-of-corruption-on-specific-human-rights.html>

