Addressing the Impediments to the Realization and Enjoyment of Socio-Economic Rights under the ICESCR

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Abstract: The realization and enjoyment of socio-economic rights is crucial to overcoming the challenges of abject poverty. These rights offer those living in poverty access to the basic and essential things that are necessary to live a dignified life. However, it is generally agreed that the protection and enjoyment of socio-economic rights is accorded less importance amongst the comity of civilized nations. Majority of governments give priority to the protection of civil and political rights to the detriment of socio-economic rights. Despite the United Nations stance on the non-hierarchical structure within human rights classifications, there is general ambivalence towards the violation of socio-economic rights by those entrusted to protect them. Though many international and regional treaties protect socio-economic rights, which instruments have been domesticated by countries; the picture appears gloomy in terms of effective realisation and protection of socio-economic rights. Their enforcements still remain a challenge for this millennium. The impediments to the realization of these rights are the focus of this paper. Through a detailed analysis of international, regional and domestic legislative framework and jurisprudence, this study provides a systematic exposition of the obstacles that impact on the ability of states to fulfil their socio-economic rights obligations under the various and diverse instruments. The impediments that are discussed in this paper include: a proliferations of human rights; corruption and inept leadership in Africa; inadequate enforcement mechanism; poor and ineffective state reports; international sanctions; wars and conflicts; globalization; debt repayment by developing countries; difficulties of monitoring compliance by State Parties and conflict of laws. In conclusion, the paper proffers a panacea and alternative models for the realization and enjoyments of socio-economic rights.

Keywords: socio-economic rights, human rights proliferation, justiciability, and national engagement.

1. Introduction

This paper examines the genesis of socio-economic rights and traces its development to the contemporary socio-economic rights jurisprudence and treaties. The first segment of this paper considers the emergence of socio-economic rights

and examines how and why socio-economic rights and the civil and political rights are placed under two different implementation systems. The paper engages with the historical events preceding the present state of affairs. In this context, the evolution and nature of human rights and their relationship with contemporary developments will be explored.

The natural law philosophers (Locke, 1956) and the positivists (Freeman, 1999) have made various contributions to the enrichment of the concept and content of rights. Attempts have also been made by some countries to give statutory effect to the knowledge gained from the works of the proponents of both the natural law and the positive school of thoughts. Such attempts to promote human rights are contained in the British Magna Carta (1215), the US Bill of Rights (1791), and the French Declaration of the Rights of Man (1789). These documents suffered from diverse shortcomings and were unable to achieve their full potentials. In addition, they were not recognised as universal instruments (Bello, Odusote, 2013).

It was the advent of international trade that brought some awareness of socio-economic rights unto the international level, particularly with respect to labour rights. International trade had encouraged comradeship between workers and labour unions across the globe. The newly found comradeship among the labour unions encouraged and promoted uniformity of labour standards and practice among civilised countries (Eide, 2002). The scope and content of the Conventions that followed was limited to Europe.

The League of Nations, established the International Labour Organisation in 1920. The ILO has since been the vanguard of labour rights, an essential part of socio-economic rights. The first attempt at giving global recognition to socio-economic rights was made by the ILO through its many declarations that aim to abolish maltreatment of workers. The ILO, through these declarations, aims to promote humane and just conditions of work. The first attempt was made in 1919. It promoted various workers' rights that had stood the test of time: right of workers to trade union; abolition of slave workers; holiday pay; maximum hours of work and employment related insurance. At the time, these rights were not recognised as socio-economic rights but purely as labour rights.

The United Nations Charter of 1945 is the first international instrument to recognise human rights as such. Though its content is worded in general form, it gives recognition to human rights generally and to socio-economic rights in particular.

Next is the Universal Declaration of Human Rights (UDHR), which defines the emergence of socio-economic rights in their present form on the international scene. The UDHR incorporates the recommendations of the American Law Institute Committee on the international Bill of Rights, which contains several

socio-economic rights. The Bill of Rights was drafted in 1944. This was with the active support of Mrs Eleanor Roosevelt, wife of Franklin Roosevelt, President of the US from 1933-1945. 'Third World countries endorsed the proposal, but there was opposition from governments in Europe, which were undergoing post-war reconstruction, so a more modest statement rather than a binding treaty emerged' (Hass, 2008).

When the UN was formed, the Commission on Human Rights received the mandate to draft a bill of rights which would be binding on all sovereign members of the UN and be capable of being implemented. The resolution for the bill was adopted by a vote of 48 with no opposition and 8 abstentions by the members of the General Assembly on the 10th of December, 1948, (UN General Assembly Resolution 217A (III). It contained both civil and political rights and socio-economic rights. It thus became the first universally agreed instrument to give explicit recognition to socio-economic rights. The UDHR was received by world governments with mixed feelings, (UN, GA Official Records, Plenary Meetings, 1948). The aim to recognise and protect human rights and freedoms was realised, but the objective to propose an implementation strategy for human rights was not realised.

In the post-war landscape, the UDHR suffered a serious setback arising from the suspicion between the United States and the Soviet Union, by reason of their political and ideological differences, along the lines of capitalism and communism.

Eventually, in 1965, the UN Commission on Human Rights proceeded to draft two treaties: the International Covenant on Civil and Political Rights (ICCPR) and its optional Protocol, and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights, (Alston, 2007).

Officially, three main reasons, all hinged on differences in implementation strategies, have been adduced to explain the decision to produce two covenants out of the UDHR:

(1) Economic and Social rights are objectives to be achieved progressively; therefore, a much longer period of time is contemplated for the fulfilment of the objectives. For civil and political rights, States ratifying the covenants will immediately be subjected to an obligation to give effect to the rights.

(2) The enactment of legislation is generally sufficient to effect the enjoyment of civil and political rights, while legislation is not sufficient for the attainment of socio-economic rights. Very much depends on the economics of the State.

(3) The machinery of complaint, the Committee on Human Rights envisaged for civil and political rights, is not a suitable body for dealing with economic and

social rights, since they can only be achieved progressively as obligations of members with respect to them are not as those for the other set of rights, (General Assembly Official Records 6th Session P.504).

The ICCPR focuses on such issues as the right to life, freedom of speech, religion and voting. The ICESCR focuses on such issues as food, education, health, and shelter. 'Both covenants trumpet the extension of rights to all persons and prohibit discrimination, (Shiman, 1993). They both prohibit discrimination on the ground of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status. The two treaties also offer protection for both individual and collective rights. Both the ICCPR and the ICESCR were adopted in 1966 and entered into force in 1976. The two treaties make reference to the UDHR and acknowledged the need to protect human rights at the international level. They both established protection and implementation schemes, (Lauren, 1998). However, the mechanisms of protection offered by the two treaties are different.

The implementation scheme under the ICCPR was designed to have judicial remedy. The ICCPR was drafted in a manner to make it amenable to a complaint mechanism. The rights protected are also essentially negative rights. Individuals whose rights are violated under the ICCPR are entitled to seek remedy by way of petition under the Optional Protocol. The Human Rights Commission was charged with the responsibility of supervising and implementing the civil and political rights, (Article 28 ICCPR). The implementation scheme for the ICESCR was designed to be programmatic. This is because of the language employed by the drafters of the Covenant. The ICESCR provides for a report system only, (Part IV ICESCR). The Economic and Social Council (ECOSOC) was set up to consider State Parties reports',(Article 16 (2)(a). ECOSOC delegated this duty to a Committee of experts known as the Committee on Economic, Social, and Cultural Rights (CESCR).

The ICCPR 'established an international supervision mechanism within the United Nations system that is more developed than the mechanisms created under the socio-economic rights treaty. Additionally, the ICCPR imposed on states an immediate duty of implementation, whereas the ICESCR created a duty upon the state to take steps, to the maximum of their available resources, with a view to achieving progressively the full realization of these rights.'(Barak-Erez, Gross 2007 p.4)

Thus, while civil and political rights are being protected and enjoyed across the globe, same cannot be said of socio-economic rights. Against this background, this paper examines the nature and impediments to the realization and enjoyment of socio-economic rights across the globe. Though many international and regional treaties protect socio-economic rights, which instruments have been domesticated

by countries; the picture appears gloomy in terms of effective realisation and protection of socio-economic rights. Their enforcement still remains a challenge for this millennium. This paper contends that the obstacles to the realization of these rights are multi-faceted and that a multi-dimensional approach is required to improve the realization of these rights.

2. The Nigerian Position and Nigerian Constitutional Impediments

Chapter II of the Nigerian Constitution provides for socio-economic rights. These rights are listed as Fundamental Objectives and Directive Principles of State Policy. This is a replica provision in the Indian Constitution and the International Covenant on Economic, Social and Cultural Rights. There are also equivalent provisions under the African Charter on Human and Peoples' Rights, (Articles 14-17).

The fundamental objectives and directive principles of state policy impose a positive duty on the government to uplift the standard of living of every Nigerian. The motive behind this concept is to provide for the attainment of a welfare state and good governance in Nigeria. S. 14 (2) provides that, it is the duty of the government to provide security and ensure the welfare of the people. This Chapter contains programmatic provisions, which are not justiciable. Socio-economic rights are couched as political, economic, social, educational, foreign and environmental objectives. The court agreed with this view when it held in *Archbishop Anthony Okogie v Attorney General of Lagos State*, (1981, 1 NCLR 218) that the legislature and the electorate are the custodian of Chapter II; if the electorates are not happy with the level of compliance by the government, then the government should be voted out in the next election. They are progressive rights that cannot be enforced in a court of law. S. 6 (c) States: *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 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 is one of the main impediments to the realization and enjoyments of socio-economic rights in Nigeria. It stifles the development of socio-economic jurisprudence at the National level, (Onyekpere, 1997). It forecloses the rights of the individuals and groups to redress any violation of their socio-economic rights in a court of law. However, the recent decisions in *Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria and Universal Basic Education Commission*, (ECW/CCJ/APP/12/7) have the potential to remedy this situation. The ECOWAS court held that, if the right to education (a socio-economic right) was arguably non-justiciable in domestic constitutional or

statutory law, it is justiciable under Article 17 of the ACHPR. The court relied on Article 9(4) of the Supplementary Protocol to the treaty establishing the Court and Article 4(g) of the Revised Treaty of ECOWAS to the effect that "it is well established that the rights guaranteed by the African Charter are justiciable before this Court." The Supreme Court also held in *Abacha v Fawehinmi* (2001, 51 WRN) that the provisions of the ACHPR have become part of the Nigerian domestic law and therefore justiciable in Nigeria

Apart from the Constitutional impediments discussed above there are other impediments to the realization and enjoyments of socio-economic rights in Nigeria. Next, this paper makes enquiries as to why impediments to the realisation of socio-economic rights exist and the nature of these impediments with a view to determining whether there exists a panacea to the impediments.

3. Impediments to the Realization of Socio-Economic Rights

Article 2(1) of ICESCR, which is the main instrument for the protection of socio-economic rights, provides that 'each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'. The progressive element in the definition of socio-economic rights is one of the major impediments to their realization, (Gittleman, 1982). The lack of precise definition has made it easy for some State Parties not to include them as enforceable rights in their constitutions. Hence, there is lack of adequate legislative framework within which to prosecute the violation of these rights.

There is an obvious lack of clarity as regards the content of the rights specified within Article 2(1). Asbjorn Eide described a state's obligation as the obligation to respect, protect, and fulfil human rights, (Eide, 2002). This implies the Covenant is unable to place specific duties on the state, particularly a duty that is capable of being measured and accurately stated. These rights are merely aspirational. Implementation is conditional on the resources of the State Party. By reason of this, implementation of these rights cannot be measured by the same universal standard. It then becomes a problem to have an international complaint mechanism to implement and monitor the protection of these rights. For example, Western countries have commendable socio-economic systems which are hundreds of years ahead of African countries. It then becomes difficult to subject State Parties from these different parts of the world to the same measurement.

Moreover, violations of socio-economic rights are more subtle and do not easily draw attention from the NGOs and other watchdogs, except where such violation

has become rampant and sustained over a long period of time. This might be because it is far easier to detect violation of civil and political rights which are more of negative rights than socio-economic rights which are more of positive rights. Civil and political rights have a universally recognisable standard, whereas social, economic and cultural rights are sometimes relative to the cultural values of the country. For example, in most Islamic countries, a woman must seek the approval of her husband before travelling abroad to study, (CESCR on Iran E/C.12/1993/7, 1993, para 4), whereas this might be seen elsewhere as a violation of the right to education and the principle of non-discrimination. How will this type of violation be measured and what remedy will be available to the victim? This is one of the fundamental problems confronting the implementation of socio-economic rights.

Still on the universal nature and relativism of socio-economic rights, Wasserstrom, (1964) opined that socio-economic rights are not human rights because they are not applicable to all without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. For instance, illegal immigrants should be able to freely work and settle in a country of their choice without any form of hindrances if socio-economic rights are human rights. This view is incorrect; the UN has recognised socio-economic rights as human rights in a plethora of treaties before and after Wasserstrom's assertion. The simple answer to this is that no right is absolute. Every state party is entitled to a margin of appreciation, (Article 4 ICESCR), in controlling its borders, and establishing procedures for acquisition of citizenship and social entitlements within available resources. Socio-economic rights are human rights but of a different nature to civil and political rights. Even the civil and political rights have their limitations. For example, my freedom of movement does not give me access or privilege to trespass on another's property. 'The State party is only charged with the responsibility that its application of resources and conditions attached to qualifications to the rights to work are not discriminatory (Apodaca, 2007 p.167).

Taking all the issues raised above into consideration, it is quite difficult to subject the violation of all socio-economic rights to a complaint mechanism.

4. Political and Economic Factors

In this segment, this paper considers some political and economic factors that inhibit the realisation and enjoyment of socio-economic rights.

4.1 Proliferation of Human Rights

Williams is one writer who has asserted that the concept of human rights has generated so much controversy that much more attention is being paid to determining the scope, nature and extent of the concept than its realization. In the contemporary world, the judiciary is finding it increasingly difficult to interpret the statutory framework underpinning substantive human rights principles, (Williams, 2007). The legislatures appear not to have a common ground on their meaning and realization, while the academics engage in the battle of defining what is and what is not 'human right' rather than on its realization, (Liebenberg, 1986). There is so much uncertainty as to the nature of human rights. The concept is in danger of becoming devalued or losing its usefulness, (Cranston, 1973). 'The rhetoric of human rights is becoming subject to an elasticity that stretches their purchase to the limits, (Wesson, 2004).

Aside from the failure of generally acceptable meaning of the concept of human rights by the human rights community, a major obstacle is the proliferation of human rights, (Carolyn, Marks, 2006) Overstretching human rights is definitely alienating and undermining the effectiveness or the value of human rights, (Tomuschat, 2003), and it can be argued that, by reason of the continuing expansion of human rights, human rights have become part of the problems of justice rather than an instrument to ameliorate suffering, (Roodt, 2008). The vulnerable people who are supposed to benefit from these rights are not even aware such rights are available to them. The whole system of human rights has become complex and difficult to understand by the very people that it should be protecting.

A.T Williams observes that the only way human rights can come out of the shackles of ineffectiveness, derived from boundless invention of human rights, is to engage in the proposition that any form of suffering that is common to human beings needs immediate action. He argues that suffering induces rights. He further observes that the legal mechanism as it presently stands is inadequate to protect human rights, (Williams, 2007, p. 146). This paper is in agreement with Williams. New human rights must emerge to protect new and imminent human problems. However, emerging human rights need to be clearly defined and their content generally agreed. There must be proper co-ordination among human rights bodies to make their realization more effective. For example, human rights advocates are beginning to canvass for human rights to a clean environment, human rights to water, and human rights to sustainable development, etc.; as long as these human rights seek to protect legitimate human interests and are generally recognised by civilised nations and perhaps the UN, they constitute human rights. However, for any of these rights to be amenable to a complaint mechanism, it must satisfy the test of justiciability, otherwise it has to be subjected to an alternative form of protection, different from adjudication.

Proliferation of human rights treaties is a major impediment to the effective realisation of human rights. These rights tend to overlap, (Ferreira, 2008). 'There is a danger in the sudden proliferation of rights claims. When a concept is used in so many different circumstances, its meaning may become confused, (Kingsbury, 1991). The effectiveness of human rights does not lie in the number of times it has been inserted in various treaties. The text is not the engine of effectiveness but the means of achieving the effectiveness.

Proliferation of human rights invariably leads to a proliferation of treaty bodies, which has the tendency to produce fragmented jurisprudence, (Shahabuddeen, 1995). For example, the right to education, the rights relating to work and the rights to non-discrimination are protected by more than one UN bodies. The right to education for instance is being protected at both the regional level and international level. On the international level the following bodies have overlapping jurisdiction: UN Human Rights Committee; CESCR; Committee on the Right of the Child; United Nations Educational, Scientific and Cultural Organisation (UNESCO); and the International Labour Organisation. Education is also protected by other legal instruments. This type of overlap may produce contradictory jurisprudence. For example: 'It has been seen that the legal obligation of the ICESCR concerning primary education in article 13 (2) (a) is stronger than that of the CRC article 28 (1) (a). It has also been seen that ICESCR obliges states parties to progressively introduce free education at the secondary and higher levels in article 13 (2) (b) and (c) but that the obligations of the CRC on the same issue in article 28 (1) (b) and (c) are much more lax. One may add that the ICESCR protects the right of parents to choose the school their children should attend in article 13 (3), while the CRC is silent in this regard' (Beiter, 2006). This kind of scenario will not promote rich and uniform jurisprudence on the international level. The jurisprudence will produce fragmented outcomes on human rights decisions.

4.2 Corruption and Inept Leadership

The root of most problems besieging the developing countries is the result of outright disregard of socio-economic and cultural rights, misplacement of priorities, corruption and armed conflicts. In particular, corruption among the leadership of the developing countries constitutes a major impediment to the realisation of socio-economic rights. In a climate where poverty, starvation, and underdevelopment are induced by corruption, evidence suggests that the enforcement and protection of human rights become a mirage. For example, 'the root causes of the civil war that devastated Liberia between 1989 and 2003 were poverty, corruption and inequality'(Schmid, 2009). The government, which more often is the major violator of human rights, continues to tyrannize its civil populace that is economically disempowered and unable to seek redress for such violations. Moreover, in such atmosphere of induced poverty, ignorance, and disease, the civil

populace increasingly becomes alienated from the State and its machinery such as the courts and police. The consequence is human rights become irrelevant to the people's daily struggles and greatly undermined.

The virus of corrupt practices is devastating; its adverse effect is felt on every aspect of the economy, (Stevenson, 2003), it promotes authoritarian and oligarchic rule because wealth and power are concentrated in the hands of a few when several millions of people suffer untold hardship. The future of generation unborn is compromised. There is total breakdown of educational infrastructure; no access to water, energy and housing; several millions of people are rendered homeless and become destitute. The effect of corruption was summed up in the words of the Minister of Justice of Kenya: "Corruption ... has ruined our schools and hospitals,' It has destroyed our agriculture and industries. It has 'eaten up' our roads and jobs. ... It has destroyed our society."

In consideration of Angola's periodic report, the CESCR noted that corruption and lack of strong will to tackle it has adversely affected the realization of socio-economic rights in Angola. The CESCR noted with concern also that Angola 'has not yet adopted strong and efficient measures to combat corruption and impunity, despite the fact that the State party is a country with a high level of corruption. It regrets the lack of concrete information regarding the cases of politicians, civil servants, judges and other officials having been prosecuted and sanctioned on charges of corruption'(E/C.12/AGO/CO/3 Para 10).

In its consideration of Albania's report, the CESCR noted that 'the Committee is deeply concerned that the State party has not been able to effectively address the widespread and serious problems of corruption and preferential treatment based on family ties within all areas of government and public administration'. The CESCR observed that for this reason the people are being deprived the enjoyment of socio-economic rights, (E/C.12/ALB/CO/1 Para 17)

4.3 International Sanctions

International sanctions are widely recognised as an instrument for coercion which functions between diplomacy and war. It is used particularly against oppressive and authoritarian regimes. However, if not properly managed, the adverse effects affect the majority of ordinary people rather than the leaders being targeted. There are several forms of international sanctions; trade embargoes; freezing of government assets and assets of individuals closely connected with government; suppression of loans; suppression of grants and aids. The effect of these sanctions will almost certainly lead to the violation of socio-economic rights of the majority of the people and the government will always use that as an excuse not to protect the enjoyment of socio-economic rights. It is however in doubt whether trade embargoes have direct adverse effect on those being targeted. Those that are

severely affected are the vulnerable in the society including the farmers, artisans, students, civil-servants and other low income earners.

It cannot be reasonably argued that the use of sanctions should out rightly be eradicated. However, it can be effectively managed to have the desired result on specific targets. The use of trade sanctions and investment sanctions should sparingly be used and the UN and other regional authorities should consider the use of financial sanctions more. This will target specific people and their overseas interests, combined with travel restrictions; these may have the desired effect.

The CESCR notes with concern that 'during the 1990s the Security Council has imposed sanctions of varying kind and duration in relation to South Africa, Iraq/Kuwait, parts of the former Yugoslavia, Somalia, the Libyan Arab Jamahiriya, Liberia, Haiti, Angola, Rwanda and the Sudan. The impact of sanctions upon the enjoyment of economic, social and cultural rights has been brought to the Committee's attention in a number of cases involving States parties to the Covenant, some of which have reported regularly, thereby giving the Committee the opportunity to examine the situation carefully' (U.N. Doc. E/C.12/1997/8, Seventeenth session, 1997 Para 2).

It has also been established that 'while the impact of sanctions varies from one case to another, the Committee is aware that they almost always have a dramatic impact on the rights recognized in the Covenant. Thus, for example, they often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work. In addition, their unintended consequences can include reinforcement of the power of oppressive élites, the emergence, almost invariably, of a black market and the generation of huge windfall profits for the privileged élites which manage it, enhancement of the control of the governing élites over the population at large and restriction of opportunities to seek asylum or to manifest political opposition. While the phenomena mentioned in the preceding sentence are essentially political in nature, they also have a major additional impact on the enjoyment of economic, social and cultural rights.

4.4 Wars and Internal Conflicts

While it has been established that deprivation and violation of socio-economic rights is one of the many factors that lead to internal armed struggle and rebellion, it is also the case that when conflicts break out there are massive violations of socio-economic rights; either way the majority of the people suffer deprivation, (Thoms-Oskar, Ron James, 2007). The UN Secretary General observed: *Hunger and conflict are closely linked in that, in both internal and intra-state wars, the control or disruption of food sources and supplies is often used as a means of*

waging war and/or as a means of starving out civilians from the opposing groups (e.g., Angola, Sudan, Mozambique and Sierra Leone). Food production and supplies are among the first casualties of a conflict situation. In addition, displacement prevents people from engaging in normal food production/acquisition activities. When there is conflict, there is an immediate increase in food insecurity, which makes the task of overcoming the root causes of conflict more difficult. Recent conflicts and farm invasions in southern African countries and the struggles between pastoralists and sedentary farmers in eastern Africa underline the importance of access to land-based resources by the poor as a basis for peace and sustainable development. Similarly, land concentration, coupled with poverty in Latin America, is one of the key issues underlying long-term conflict in that region. Where the need to meet family food requirements forces people to deplete natural resources or rely on degraded natural resources.(UN Doc. A/55/985–S/2001/574)

The CESCR confirms this view in its Concluding Observation of Yemen in recognising that Yemeni encountered 'serious difficulties relating to its obligations under the Covenant as a result of the civil war of 1994 and of the Gulf war of 1990-1991, which forced about a million Yemen migrant workers to return home, leaving behind most of their belongings' (CESCR, 2004 Yemen Para 350 CESCR E/2004/22). In a similar vein, the CESCR acknowledges that the efforts of Senegal 'to comply with its obligations under the Covenant are impeded by the internal conflict prevailing in the Casamance region and by the effect of some aspects of the structural adjustment programmes it has adopted and the repayment of its external debts', (CESCR, 2001Senegal Para 10 E/C.12/2001/SR.32 and 33).

Aside from food shortages, schools are shut for an indefinite period of time, industries are closed down, children are turned into soldiers, women raped and there is a general break down in the provision and enjoyments of socio-economic rights. These problems are more pronounced in Africa, but have global effect in terms of their by products in money laundering and increase in the number of refugees around the world. The UN and other developed countries should therefore take proactive steps in the prevention of armed struggles and conflict in African States. The first step to take is to ensure that arms and ammunition are not sold to rebels and oppressive regimes. Mediation through friendly dialogue is another alternative that could be explored by the UN to prevent wars and internal conflicts.

4.5 Globalization

Globalization, in the context of this discourse, refers to the integration of the World economies through liberalization of trade regimes; free trade, foreign technology transfer, direct and portfolio investments, migration and capital flows. The examples of China and India are the most commonly cited, perhaps because of the supposed prosperity and advancement it has brought to the respective countries, which claims often ignore the price human rights and, more particularly, socio-

economic rights have to pay. Lands are unlawfully taken away from people and residential areas are turned into industrial estates without due regard to their rights to adequate housing. One of the reasons for Indian outsourcing is the availability of cheap labour, which has double disadvantages. Indian workers are not adequately remunerated, which amounts to a violation of Article 6 and 8 of ICESCR, while the workers in the home countries are deprived of work that ought to be available: this amounts to a violation of Articles 6, 8, and 11 of the ICESCR.

Besides, there are other developing countries that suffer a violation of their socio-economic rights more but are less discussed. China has been accused of unethical practices by reason of the method she adopts in sourcing her raw materials, particularly from Zimbabwe. Other African countries, like Nigeria, sell their crude oil only to buy it back at extortionate prices when refined and sold to her citizens at unaffordable prices. There is an ongoing debate as regards the benefits and otherwise of this concept. This paper is only concerned with the adverse effect of globalization on socio-economic rights across the world. The adverse effect on the poor and the low-income earner is phenomenal. Globalization has further widened the gap between the rich and the poor. 'The impact of these disparities on the lives of people especially the poor is dramatic and renders the enjoyment of economic, social and cultural rights illusory for a significant portion of humanity', (Flinterman, Westendorp, 1998).

It is because of the reasons discussed above that the UN commissioned J. Oloka-Onyango and Deepika as Special Rapporteurs to study the full impact of globalization on the enjoyment of human rights. The jointly prepared report was titled 'Globalization and its impact on the full enjoyment of human rights'. Their findings reveal that: *The negative impact of globalization - especially on vulnerable sections of the community - results in the violation of a plethora of rights guaranteed by the Covenants. In particular, the enjoyment of fundamental aspects of the right to life, freedom from cruel, inhuman or degrading treatment, freedom from servitude, the right to equality and non-discrimination, the right to an adequate standard of living (including the right to adequate food, clothing and housing), the right to maintain a high standard of physical and mental health, and the right to work accompanied by the right to just and fair conditions of labour, freedom of association and assembly and the right to collective bargaining, have been severely impaired. Developing States are, more often than not, compelled by the dynamics of globalization to take measures that negatively impact on the enjoyment of those rights. The result is that States cannot fulfil their international human rights obligations, even if they are desirous of improving the human rights situation in their countries. The critical question is the following: Can international economic forces that are engineered by both State and private actors be unleashed on humanity in a manner that ignores international human rights law?* (E/CN.4/Sub.2/1999/8)

Another side to the rapid growth of industries in China, India and other developing economies around the world is that such development is accompanied by massive violations of socio-economic rights, food shortages, depression, inflation and entrenchment of inequalities. "At the same time, the rapid processes of change and adjustment have been accompanied by intensified poverty, unemployment and social disintegration. Threats to human well-being, such an environmental risk, have also been globalized. Furthermore, the global transformations of the world economy are profoundly changing the parameters of social development in all countries. The challenge is how to manage these processes and threats so as to enhance their benefits and mitigate their negative effects upon people.

This paper is not in any way suggesting that globalization is entirely undesirable, rather, that the principles of globalization should be made to accommodate and respect human rights and human dignity. Globalization should not in any way constitute an impediment to the enjoyment of socio-economic rights. There is an urgent need to conduct human rights impact and due diligence for every transfer of technology and industrial development.

4.6 Debt Repayment by Developing Countries

The debt of the developing countries is enormous. It grows each year. The poor countries are forced to privatise their healthcare, education, energy, water through IMF and World Bank policies. This makes the enjoyment of socio-economic rights the exclusive privilege of the upper class in most developing countries. This is because the enjoyments of these rights have been priced away from the majority of the people. The World Bank and other international financial organisations are to share in the blame of the failure by State parties to give effect to the protection of socio-economic rights. The International Monetary Fund has introduced various programmes to the developing countries that are not compatible with the obligations of State Parties to protect the enjoyments of socio-economic rights. These programmes, for instance, the Structural Adjustment Programmes, require developing countries to dedicate substantial amount to debt servicing. They further require developing countries to cut subsidies on education, health, housing and other social services. In such atmosphere, it becomes impracticable for the developing countries to fulfil their obligations under the human rights Covenant. 'It is well known that the debt repayment obligations of many developing countries exceed by far their economic possibilities. At the same time, most of these countries have high poverty rates and face many serious social problems. From a moral and humanitarian perspective, it might then be asked whether it can be justified that a country dedicates resources to the repayment of foreign debts while large parts of the population live below the poverty line and have even the fulfilment of their basic needs, such as food, shelter and health care, frustrated', (Michalowski, 2008, P. 35). It is generally agreed that that the repayment of

external debt by developing countries absorbs a significant part if their export earnings. This has the potential to negatively affect the ability of the governments to allocate sufficient resources to the social sector.

In response to general outcry and pressure from the NGOs, the World Bank and the IMF in 1996 introduced the Heavily Indebted Poor Countries Programme to solve the problems of heavily indebted countries. There are conditions attached to this programme. The country seeking debt relief must implement IMF and World Bank recommended programmes and the country must meet recommended targets. The country must also withdraw government subsidies on public utilities and privatise public enterprises. These programmes will weaken the country's social services, increase the gap between the rich and the poor, provide opportunity for transnational companies to acquire ownership of public companies and impose tariffs beyond the reach of the majority of the people. The debt ridden country will also have to spend more on debt servicing.

The Heavily In-debted Poor Countries (HIPC) initiative set up in 1996 by the rich nations through the IMF and World Bank calls for the reduction of external debt through write-offs by official donors. It was set up for the poorest of nations, for whom, according to the World Bank, the debt of the HIPC countries was, on average, more than four times their annual export earnings, and 120 percent of GNP. But the HIPC initiative has been met with a lot of criticism for not actually helping the countries it is supposed to be helping (the indebted nations) while helping those it wasn't necessarily meant to (the rich nations):

The most glaring problem with the Heavily Indebted Poor Country (HIPC) initiative for debt relief is that it will not provide lasting relief from debt for the highly indebted countries of the south. The HIPC process is aimed not at canceling debts, but at ensuring that they can be repaid. It has little to do with enhancing human development, reducing poverty, or even increasing economic growth in the debtor countries. Rather, it is designed to massage debt figures down to a level where they would be deemed "sustainable" again according to the criteria of the International Monetary Fund (IMF), (Leipziger, M.Allen, 2008)

The CESCR buttresses this point when it expresses concerns in its Concluding Observation on Cameroun that 'the Government's economic reform programme for 1998/99, which implemented the Structural Adjustment Programme in Cameroon approved by the International Monetary Fund, the World Bank and the *Caisse française de développement*, while increasing the real GDP growth rate has impacted negatively on the enjoyment of economic, social and cultural rights by increasing poverty and unemployment, worsening income distribution and causing the collapse of social services.', (CESCR, 1999, E/1999/5/Add.16.21)

This paper contends that one of the ways by which socio-economic rights could be better protected is for the developing countries to set their efforts in realising socio-economic rights as a defence to their inability to pay their debts. It has been argued by *Foreign Policy in Focus*, that for socio-economic rights to be realised more efficiently in the developing countries there must be an immediate cancellation of their debt burden, a situation where a country has since paid up her principal debt but still forever in the shackles of ever growing interest should not be allowed because the people that actually suffer are not the leaders but the majority of the people that are low income earners. A UN independent International body must be set up to determine the legitimacy and the actual debt to be paid back if any, and if there is any debt to be paid back the possibility of using the debt to set up programmes in furtherance of the realization of socio-economic rights should be considered. Roads should be constructed, industries built, schools and educational facilities put in place, and the general socio-economic condition improved.

University of Vienna economist Kunibert Raffer has suggested a process for recognizing partial insolvency of national governments. Raffer cites provisions in U.S. law permitting debts of local governments to be treated like those of a company or an individual who has gone bankrupt, while guaranteeing that essential services provided by the municipality are not affected. His recommendation is echoed by a November 2001 report issued by an "emerging markets eminent persons group" of widely respected former finance ministers of South Korea, India, and Ghana, and the former head of Chile's central bank. Although Raffer maintains that this process could occur without the creation of a new international agency—he suggests a panel of arbitrators with equal creditor/debtor representation—it is hard to imagine that the World Bank and the IMF would have adequate incentive to participate without the creation of some new regimen. This would require that the United Nations or World Court establish a body with authority over the IFIs and both creditor and debtor government. (Raffer, 2012)

There should also be an outright cancellation of debt incurred for white elephant and failed projects. There have been instances where loans are taken from these bodies and diverted into private overseas accounts of the leaders and there are other instances where loans are tied to the implementation of certain economic programmes recommended by the loan provider. This should be investigated by the UN Independent body to be set up and, in instances where such recommended programmes have failed, the debtor country should be relieved of the debts.

5. Physical Resources Factors

In this segment, this paper considers some physical resources factors that inhibit the realisation and enjoyment of socio-economic rights

5.1 Inadequate Enforcement Mechanism for Socio-Economic Rights

I will start by examining the enforcement mechanisms for civil and political rights, and thereafter I will examine the implementation mechanisms for socio-economic rights.

The implementation of civil and political rights is adequately included in the ICCPR. The responsibility for enforcing the civil and political rights lies with the Human Rights Committee. It consists of experts in charge of implementation of the ICCPR. 'The Committee shall study the reports submitted by the State Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the State party…'(Article 40 (4) ICCPR)

State parties are obliged to submit to the Committee measures taken to give effect to the rights contained in the Covenant and highlight the progress made in respect of the rights contained in the Covenant. There are presently three mechanisms being deployed by the Committee to implement State Parties' obligations; the reporting procedure, inter- state complaints procedure and the individual complaints procedure.

The reporting procedure identifies three types of reports; initial (must be submitted after one year of entry), supplementary (where the Committee seeks more clarification, it may seek a supplementary report) and the periodic reports (every five years), (UN Doc. CCPR/C/19/Rev.1). The reporting procedure is statutorily required. However, its limitations are that States Parties often delay their reports and most of the time the reports are incomplete. Unfortunately, no sanction is attached to non-compliance.

Articles 41 and 42 of the ICCPR provide for an inter-state complaints mechanism. The limitation of this procedure is that a state party may decide to opt out of the inter-state complaint procedure. 'Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration', (Article 41 ICCPR).

A further weakness of this mechanism is that the recommendations of the Conciliations Committee are not binding. It is noteworthy that this mechanism has never been used.

Individual Complaint Procedure: The first Optional Protocol provides for the individual complaint mechanism which is by far the 'most significant', (Rehman, 2003). The Optional Protocol came into force the same day as the ICCPR, but could not be incorporated in the Convention by reason of divergent opinions amongst the Committee members.

Article 1 of the Protocol provides: *A state party to the Covenant that becomes a party to the present Protocol recognises the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present protocol*.

The Communication is to be sent to the Secretariat of the Office of the High Commissioner for Human Rights in written form. There is no designated official language. There is no time limit for submission of Communication after the exhaustion of domestic remedies. The Communication must include the address, name, and nationality of the author and victims. The State Party against whom the complaint is being lodged must be stated in the Communication. The obligation breached must be stated as well. The Communication must be dated and signed.

On receipt of the Communication a member of the secretariat of the Office of the High Commissioner will screen it for admissibility. If it has a prima facie case, it will be forwarded to the working group on Communications which has six months within which to communicate to the aggrieved parties.

One essential feature of the Individual adjudication system is that domestic remedies must be exhausted before a Communication could be lodged with the Commission, except where domestic remedies are ineffective, unreasonable in nature or excessively onerous, unduly prolonged, no longer open or unavailable, *Alba Pietraroia* v *Uruaguay,* 44/179.

On receiving the Communication, the Committee, if necessary, might make interim orders to avoid irreparable damage to the victims. However, unlike the European Court of Human Rights, the Committee does not have the power to impose sanctions and its views are not binding. The absence of power to impose sanctions means the full potential of the Committee could not be realised.

The Committee suffers from a substantial crisis of personnel and funding, as a result it is battling with a backlog of at least three years, (Steiner 2000)

Not only do the difficulties in delineating the nature of the substantive rights make it difficult to have an effective adjudicative system for the ICESCR, the present mechanism for implementation under the ICESCR is grossly inadequate. Article 16(1) and (2) (a) of the ICESCR provides the only means of implementation:

The States Parties to the present Covenant undertake to submit, in conformity with this part of the Covenant, reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant.

The complaint procedure for the ICSECR was only adopted in December, 2008. This is due largely to the nature of the rights under the ICESCR. Article 16-25 provide the basis for the reporting procedure. However, the ICESCR does not contain the form or the content to be included in the reports. The ECOSOC is charged with this responsibility. The ECOSOC (Economic and Social Council) in turn has delegated this responsibility to the Committee on Economic Social and Cultural Rights.

The imperative to subject ICESR to individual and collective adjudication similar to that of civil and political rights led the Committee to constitute the open-ended working group for the purpose of drafting an optional protocol to the ICESR. This is being done, notwithstanding that the proposal for a petition procedure was outrightly rejected at the time of drafting the Covenant. The Optional Protocol is to be fashioned after the first Optional Protocol to the ICCPR. The decision to facilitate a petition procedure by the Committee was made in response to call by commentators, scholars and advocates of human rights. (Alston, 1987)

Proponents of the petition procedure that will accommodate individual and collective complaints have argued that, to protect socio-economic rights there must be an effective adjudication system. It will 'vastly increase the level of national and international awareness of both the Covenant and the Committee…it will enable the Committee to increase the effectiveness of the supervision system in a way not otherwise possible… it will provide the Committee with the ability to develop the normative content of rights in specific and tangible manner'. (Dennis, Stewart 2004, p. 462).

Despite the lofty arguments in favour of an adjudication system for socio-economic rights, Dennis and Stewart have questioned the practicability of enforcing socio-economic rights through an international petition procedure. They queried: 'Are these real rights, or does it merely set forth hortatory goals, programmatic objectives or utopian ideals? Is it 'soft law'? How can rights (or obligations) that depend on the availability of scarce or unpredictable resources in fact be rights (or obligations) in any meaningful sense? How does one calculate the 'maximum extent of available resources,' and what does 'progressive realization' mean? Can ESCR ever be fully achieved? How can they best be enforced?'

Finally, Dennis and Stewart lay down the test that must be satisfied by a binding individual complaint system:

Whether the treaty obligations assumed by the states parties under the ICESR can in fact be measured, quantified, and applied in a meaningful way;

Whether such standards can be the same for all countries (regardless of their levels of development) and, if not, how the distinctions will be made;

How member states would be able to demonstrate their levels of achievement or failure in response to individual's complaints;

Whether and how a complaints mechanism under the ICESR would add meaningfully to the mechanisms and procedures already available in other international organizations.

It remains to be seen whether the adoption of a petition procedure will lead to the realization of ESCR and whether by reason of the adoption of an individual complaint system there will be a more effective means of implementing ESCR than is obtainable under the present reporting regime. The capability of the CESCR to perform judicial duties has been severely criticized, so also is the CESCR's customary interpretative role. It has been alleged, and rightly too, that the CESCR has been acting beyond its jurisdiction of review of states' reports to giving interpretation to the provisions of the ICESR, so much as to include such items that were intentionally omitted during the drafting of the Covenant.

On the optional protocol, the CESCR had appointed an Independent Expert to examine the viability of an optional protocol and was also given an extended mandate thereafter. In his first report (2002), he urged the Commission to proceed with caution as 'the matters at issue still provoke too much doubt, uncertainty, and even out-right opposition among member States', (E/CN.4/2002/57 2002, p.10). He observed that the majority of the states have 'misgivings' about the proposed petition procedure and, while civil and political rights are viewed as 'obligations of results, obligations which are measurable by their very nature and hence not subject to shades of meaning', obligations under the ICESR represent 'obligations of means' rather than 'obligations of result.'

In other words States, particularly the poorest States cannot be held solely responsible for the difficulties they encounter in meeting the vital needs of the populations…How, in other words, are the provisions of the Covenant to be translated into clearly defined commitments so that individual breaches of them can give rise to remedies under the communications procedure established by the draft optional protocol?

The Independent Expert further expressed concern about accessibility, jurisdiction, procedural rules and the remedy available for successful complaints. He expressed

concerns that there may be conflict with jurisdictional issues with other specialised bodies. In his second report, submitted in 2003, he repeated his earlier recommendation that the adjudication should be restricted to 'situations revealing a species of gross, unmistakable violations of or failures to uphold' ESCR. This is vital to control overloading the adjudicators with petitions and to prevent overlapping with other specialized bodies. He approved the individual, as opposed to inter-state, complaint system.

At the Working Group debate, the old arguments as to the nature, content, and justiciability of ECSR was reignited. There were two irreconcilable groups, the proponents of adjudication and those against adjudication. Among the points raised were that ESCR are amenable to adjudication by reason of the fact that human rights are universal, interdependent, and indivisible: lack of complaints mechanism undermines both the ESCR and CPR, (Scott & Matas, 1995). However, other delegates asserted that the two rights are different in nature as well as in the obligations flowing from the covenants. Polish delegates observed that,

They were made differently not just by accident. Consequently the rights protected by the Covenant on Economic, Social and Cultural Rights were also deliberately formulated in imprecise manner. It was done so specifically to accommodate difference in levels of economic developments and in cultural and legal traditions of various countries to allow them to become parties to the Covenant nevertheless. (Scott & Matas, 1995).

Katarina Tomaseviski, in the course of the debate, opposed the 'widespread suggestions that the entire ICESCR (that is all the rights listed therein, and the whole scope of the rights as listed) be deemed suitable for any type of legal enforcement that could be envisaged in an optional protocol', (E/CN.4/2002/57 2002). She further argued that a review of the text of the Covenant is necessary to ascertain those rights that are capable of immediate enforcement and capable of being subjected to an adjudication system.

Abdessatar Grissa, a member of the Committee, argued that the protocol is 'unrealistic since certain countries, even among the most prosperous, could not implement all the provisions of the Covenant in full', (UN Doc. E/C.12/1996/SR.48. 1997, p. 8).

On the protocol, Dennis and Stewart write: *From the outset, and for good reason, economic, social and cultural rights, unlike civil and political rights, have been defined primarily as aspirational goals to be achieved progressively. The drafters of the UDHR and the two Covenants well understood the difficulties and obstacles relating to justiciability. The decision to put the two sets of rights in different treaties with different supervisory mechanisms was well considered, and the underlying reasons for those decisions remain valid today. Their different*

treatment in no way disqualified ESCR as rights or relegated them to a lower hierarchical rung. It did reflect an assessment of the practical difficulties that states would face in implementing generalized norms requiring substantial time and resources. We do not argue against taking a fresh look at these decisions or the reasoning behind them… That type of analysis, which has yet to be done is nevertheless an essential first step before any of those rights can be said to be justiciable in any meaningful sense. (Dennis & Stewart, 2004, p. 515)

During the working session, the proponents of the protocol argued that an optional protocol would rectify the seeming gap between civil and political rights and socio-economic rights, it would affirm the universality, interdependence and indivisibility of human rights, and further argued that a lack of individual complaint mechanism was the primary reason why socio-economic rights were not recognised or protected. Also, a complaint system would provide clarity to the contents of socio-economic rights.

However, Sir Samuel Hoare, representative of the United Kingdom, had earlier argued:

If the human rights committee procedure were to be applied to the economic, social and cultural rights, the main issue before the committee could only be the rate at which progress had been made towards ensuring the full realization of those rights. In particular, the question would arise whether the maximum available resources had been used, and that would involve consideration of the distribution of the domestic budget. No democratic State could predict the attitude of its parliament on the subject of the distribution of expenditures or the priority to be given to various government programmes. That was a detriment which States were certainly not prepared to submit to the consideration of the human rights committee, (UN Doc. E/CN.4/SR.432, 1954, p. 9)

As regards the UDHR, the same arguments were canvassed for and against the inclusion of socio-economic rights in the UDHR. In resolving the issues, the General Assembly accepted the proposal of Rene Cassin that the Commission 'should follow the example to be found in all constitution adopted in recent years, and should treat those rights separately from the rights of the individual' and this is reflected in the preamble that everyone is entitled to realization of the socio-economic rights enumerated below, in accordance with the organization and resources of each state, through national effort and international cooperation.

However, the Soviet Union's suggestion that the state's duty to 'take all necessary steps, including legislation, to ensure' the implementation of all rights set forth in the UDHR' should be included in Article 22 was emphatically rejected by the General Assembly:

Eventually 'in drafting the specific undertakings that came to form the basis of ICESCR Articles 6 to 15, the Commission for the most part followed the recommendations of the specialized agencies. For example, the ICESCR's provisions on labour (Articles 6 to 11 (1) were cast in general terms, at the specific request of the International Labour Organization (ILO). Similarly, the provision on health (ultimately, ICESCR Article 12) was based upon a proposal by the director-general of the World Health Organization (WHO), and the provisions on education and culture (ICESCR Articles 13 to 15) were based upon proposals by UNESCO's director-general, (UN Doc. E/CN.4/669).

There are some pertinent issues to be addressed in giving efficacy to the optional protocol. As the representative of India observed, there is inherent difficulty in measuring the obligation contained in a state's obligations as contained in Article 2(1), how will an adjudicator measure the breach of 'progressive realization' based on the 'maximum of its resources'.

While the proponents of the Optional Protocol, Milkern and Sherren, Craven, urge reliance on the wide interpretation given to Article 2 (1) by the CESCR, others argue that the CESCR's view lacks statutory potency and that the CESCR had merely expressed its personal views that cannot form the basis of judicial reasoning. The CESCR's interpretation in the General Comment has been classified as an undue interference in the affairs of the legislature (Steiner, 2000). The CESCR lacks the legal authority to make legally binding interpretations of the ICESCR. Only a state party to a treaty can make such interpretations except where the statute under consideration contains a provision to the contrary. However, the CESCR's General Comments and Concluding Observations are persuasive authorities.

In the Committee's view, Article (2) (1) is capable of judicial adjudication, notwithstanding the express provision to the contrary. The Committee asserts that the content of Article 2 contains 'minimum core obligations', 'minimum essential levels' that is non-derogable i.e. 'access to basic shelter, housing and sanitation, and an adequate supply of safe and portable water'. Dennis and Stewart observed that 'the Committee has overridden the decisions of the negotiators and taken positions inconsistent with the views of the sates' by reason of the fact that the committee is insensitive to the historical antecedents, (UN Doc. A/CONF.198/3,2,2, 2002) of the ICESR. Nowhere within Article 11 (1) is the word 'non-derogable obligations' used nor does the Article speak expressly of the right to food, water, clothing and housing. Likewise, the CESCR's view that States are obliged to provide essential drugs with immediate effect is contrary to the provisions of Article 12 and the spirit of progressive realization under Article 2.

A look at the UN General Assembly's Millennium Declaration suggests that it is not the intention of the state parties to make all ICESCR provisions immediately

enforceable. The Millennium goals consist of some of the items the Committee had pronounced as immediately enforceable (solving the problem of lack of access to drinking water, reducing diseases, provision of primary education). The Millennium goals are to be achieved by 2015. Even at that, it is still a very challenging task to achieve the set goals in the face of dwindling resources.

It is noted that some of the rights contained in the ICESR are adapted from specialised agencies. These bodies already have settled implementation and interpretation systems. The fear is now that there may be a risk of conflict and inconsistencies in the interpretations of these rights by reason of the proliferation of treaty bodies engaged in the interpretations of treaties.

In the longer term, it seems inevitable that instances of normative inconsistency will multiply and that significant problems will result. Among the possible worst-case consequences mention may be made of the emergence of significant confusion as to the 'correct' interpretation of a given right to the undermining of the credibility of one or more of the treaty bodies and eventually a threat to the integrity of the treaty system. While it is hoped that none of these scenarios will eventuate, the possibility exists that they might be sufficient to cause the international community to hesitate before creating new treaties beyond those already in the pipeline. It is also an important reason to consider long-term measures towards the rationalization of the present system, (Alston, 1989).

Other issues that need to be addressed include the cost of running the complaint adjudication system. The Committee does not enjoy adequate and sufficient funding. The adjudication system will require much more funding.

The Working Committee might also need to pay attention and devise a means of handling huge volume of petition from all over the globe. The usual clause encouraging exhaustion of local remedies may not be sufficient in the circumstance. The adjudication system should be limited to cases of gross violation or extreme violations of conventional rights 'situations revealing a species of gross, unmistakable violations of or failures to uphold any of the rights set forth in the covenant', (Independent Expert Report, 2002, Para 34) in way that the adjudication system itself will not be guilty of discrimination.

Finally, having shown that the implementation of the ICESCR, as presently constituted, is inadequate and that the new Optional Protocol on the implementation of all socio-economic right appears equally inadequate, I will propose that only a selective or severance approach will be effective in the protection and realization of ICESR. While the justiciability of some ICESR are in doubt and have been subject to much controversy as discussed above, there are some that are capable of immediate implementation, and hence are amenable to adjudication. These include: Article 2 (non discrimination), Article 3 (equal rights

for men and women), Article 7 (a) (i) equal pay for equal work, Article 8 (right to form and join trade union and to strike). Article 10 (3) child labour, Article 13 (2) (compulsory and free primary school education), Article 13 (3) (liberty of parent to choose child's school) Article 13 (4) (liberty to establish educational institutions) Article 15 (3) (freedom from scientific research)

5.2 *Poor Quality of State Reports under the ICESCR*

Article 16 (1) of the ICESCR provides that:

The State Parties to the present Covenant undertake to submit, in conformity with this part of the Covenant, reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognised herein.

This has remained the only means of implementation until recently when a Protocol for a complaint mechanism was adopted by the General Assembly in December, 2008. However, State Parties have failed in filing their reports promptly; there have been instances where 14 State Parties have failed to file any report for a decade, while 72 reports are outstanding from State Parties, all of which are not encouraging, (UN Doc. E/1991/23, 87-92). The reasons for this apathy include; lack of expertise in some countries, in sufficient data, statistics and resources, and lack of interest by some member States. Whereas the reporting system is set up to perform a number of functions, to monitor and evaluate the progress of State Parties in the implementation of socio-economic rights, to help resolve any challenges that may be facing State Parties and to exchange information and share experiences in a conducive atmosphere devoid of rancour and ill feelings, (Alston, 1991).

The Committee on Economic, Social and Cultural Rights (CESCR) is charged with the responsibility of considering the State Parties report pursuant to which guidelines have been published. From inception each State Party is required to submit a report within two years and every five years subsequently. The CESCR meets twice a year and holds two three-week sessions; it holds three meetings of three hours each, publicly examining State Parties reports and retire to hold two to three hours private discussions with State Parties.

Mechanism and Timeline for Consideration of State Parties Reports are inadequate. A State Party report consists of efforts and programmes set up to implement socio-economic rights in their country in the past five years. These reports are prepared by experts with data and statistics that cannot be faulted in a discussion of about three hours. It is also frequent practices for state representative to be elusive and try to evade probing questions, (Alston, Mexico E/C.12/1990/SR.11 QT 7), while other State Parties might send inexperienced diplomats that may not be able to competently answer questions posed,(E/C.12/1990/SR.1314 Colombia). State Parties often use vague and broad statements in response to critical question. For

example, in 2008, Kenyan representative was asked about the country's policy on housing. The representative reply was that demand 'far outstripped supply', (E/C.12/2008/SR.35/33). There was no presentation of data to show the proportion between demand and supply and why that was so and efforts being made to remedy the situation. There was no mention of government's intention to accommodate several hundreds of thousands of the destitute as well. For Nepal, despite all the negative reports of human rights and violations of socio-economic rights of the people, the State Report was presented in diplomatic language with the impression that every step was being taken to realise the State Obligations under the Covenant; the representative had argued that Nepal is committed to upholding her commitment under the Covenant; there was a policy and programme on land reforms; there was promotion of equality and non discriminatory, the era of the untouchables was gone; women rights assured; asylum seekers protected; labour rights paramount and poverty reduction programmes are being pursued. There was neither data nor statistics to support all the claims. However, Mr Sadi, a Committee member observed that, 'the report gave the impression that everything was perfect, but that was certainly not the case. As for the written replies, they were too general in nature and lacked detailed information on specific measures adopted to implement policies and legislation', (E/C.12/2007/SR.37 para 33).

These types of attitude from State Parties constitute an impediment to the realization of the protected rights. Evasive and fuzzy statements will not allow CESCR members to genuinely evaluate efforts of the State Parties to fulfil these obligations. By implication, the CESCR will not be able to proffer appropriate solutions.

5.3 Conflicts between Local Laws and the ICESCR

A host of State Parties still have laws that expressly negate the protection and enjoyments of socio-economic rights while in other countries socio-economic rights are not made subject to any complaint mechanism; example of the latter is the inclusion of socio-economic rights as directive principles in the constitution of Nigeria, India, Gambia and Ireland. In all of these countries with the exception of India, a violation of socio-economic rights cannot be subjected to any form of complaint mechanism. They are mere guidelines to the governments in the formulation of policies. In some other countries there are conflicts between local laws, cultural values and practice on one hand and socio-economic rights and Constitutional provisions on the other hand:

A new study reveals that laws regulating marriage, divorce, custody and inheritance are the main barriers to women's economic empowerment in ten South Mediterranean countries, and that despite significant strides made in the region, women's rate of participation in economic activity remains the lowest in the world.

The study shows that while labour codes prohibit sexual discrimination, practice is another matter and women are still constrained by a 'culture of shame' – for example, they may face prosecution for libel if they bring a case of sexual harassment against an employer and lose it. In some instances, there is outright discrimination, e.g. job advertisements that call for male applicants only, (British Council, 2012)

The findings reveal gross inequalities between men and women in these countries. The findings further reveal several violations of socio-economic rights, particularly of women's socio-economic rights. Labour codes in these countries exempt women from night and hazardous jobs; man is recognised as head of the family and, in Egypt, men are permitted to 'discipline' their wives; women's retirement age is less than men's; men automatically receive tax rebate while women are required to prove that their husbands are dead or handicapped before they can be entitled; Egypt entrenches the principle of equality in the constitution however it only 'guarantees the proper co-ordination between the duties of women towards the family and her working status...without violations of the rules of Islamic jurisprudence'; Israel prohibits women from working in the health sector, newspaper work, leisure and tourism, aviation and maritime industries; Morocco prohibits women from working in the fire brigade and national security; Syria deprives a wife of maintenance for working away from home; Egypt allows a man to plead the fact that his wife works away from home as a ground for divorce. It is noteworthy that most of these counties have ratified the ICESCR and some have adopted these rights into their domestic laws, but subject to local laws, culture and the Islamic Code.

5.4 The Role of the Committee on Economic Social and Cultural Rights

Articles 16-25 of the ICESCR place the responsibility for monitoring and implementing the provisions of ICESCR on the ECOSOC. This provides for a reporting system. The State parties are obliged to submit regular reports on the progress and the challenges faced in the implementation of the provisions of the ICESCR. The submission is to be made to the Secretary-General. The Secretary General will then transmit them to the ECOSOC for consideration. The Secretary General may also forward copies of the reports to relevant specialized agencies. The ECOSOC is charged with the responsibilities of formulating a programme for the reporting system, after consulting with State parties and specialized agencies. Pursuant to the enabling provisions, the ECOSOC, in Resolution (LX) dated the 11th of May 1976, formulated the procedure to be adopted in the discharge of its duties. State parties are to submit their initial reports within 2 years of the ICESCR coming into force and subsequently every five years. ECOSOC then established a working group consisting of experts and government representatives to consider the State reports, (UN Doc. E/C.12/1989. 14). The working group was considered a

failure by reason of the fact that its consideration of states reports was nothing but superficial, and disappointing, (Alston, 1987).

In response to the criticism, the ECOSOC, by resolution 1985/17 (1985) established the Committee on Economic, Social and Cultural Rights (CESCR). Members of the CESCR were appointed to serve in their personal capacity, not as representative of government.

ECOSOC Resolution 1985/17, paragraph (b) provides:

The Committee shall have 18 members who shall be experts with recognized competence in the field of human rights, serving in their personal capacity, due consideration being given to equitable geographical distribution and to the representation of different forms of social and legal systems, to this end, 15 seats will be equally distributed among the regional groups, while the additional three seats will be allocated in accordance with the increase in the total number of States parties per regional group.

The CESCR is not a Covenant body. It derives its authority from ECOSOC and responsible to ECOSOC.

The CESCR is charged with the primary responsibility of considering State parties' reports. On the aims and objectives of the reporting system, the CESCR states: 'that it would be incorrect to assume that reporting is essentially a procedural matter designed solely to satisfy each State party's formal obligation to report to the appropriate international monitoring body. On the contrary, in accordance with the letter and spirit of the Covenant, the process of preparation and submission of reports by States can, and indeed should, serve to achieve a variety of objectives', (CESCR E/1989/22, 1989).

The CESCR has made drastic innovations that were not contemplated during the drafting of the ICESCR (Dennis, Stewart, 2004):

1. Since 1993, NGOs have been given audience to make oral representations. This is good and enhances a better realization of socio-economic rights.

2. From its 3rd session, the Committee started giving wide and expansionist interpretations to the various articles and provisions of the Covenant through its General comments. This is controversial.

These General Comments, particularly General Comment 3, on the interpretation of the Covenants have been widely cited and relied upon by commentators and scholars. However, the capacity of the Committee to make pronouncement on the meaning and interpretation of the content of the Covenant is in doubt. The Committee lacks such judicial power.

6. Conclusion

I have earlier, within this paper proposed a range of possible ways to improve the realization of socio-economic rights across the globe. This paper demonstrates that, due to the multi-cultural nature of societies, and due to the fact that States are in different stages of economic and legal development, each State should adopt a proposal that is best suited to its circumstances. However, there are other proposals, in particular, reformulation of some socio-economic rights and the non-judicial remedies that are suitable for all States. I have shown that these rights are couched in broad terms. They do not make for easy interpretation or enforcement. This paper proposes that State Parties should come together to reformulate the texts of the Covenant in the manner that will be acceptable to all. The proposal is inspired by reason of the fact that realization of socio-economic rights is better realized in jurisdictions that have couched socio-economic rights in precise terms. South Africa has been able to make continuous progress in the effort to realize socio-economic rights, because the rights have been couched in more specific manner and entrenched in the Constitution.

Indirect Realization Mechanisms

The Paper has shown above that there are two main types of indirect realization of socio-economic rights through the courts. The emerging jurisprudence in India particularly supports this view. This has shown that substantive and robust content could be given to the contents of these rights through adjudication. Article 21 of the Indian constitution, which basically protects the right to life, has been creatively interpreted by the Indian Supreme Court as embedding the right to food, the right to healthcare, and the right to shelter, *Olga Tellis* v. *Bombay Municipal Corporation*, (1985) 3 SCC 545. The realization of socio-economic rights through an indirect application of civil and political rights and through the application of Directive Principles will, however, only be possible in a country that allows judicial activism. In countries like Ireland and Nigeria, the Courts have held that the provisions of Directive Principles are not enforceable in law. Also in the UK, where judges follow judicial precedents, it is difficult for the courts to engage in judicial activism.

National Engagement

I have earlier shown the potential in using lobbying as a mechanism for realising socio-economic rights. In South African jurisprudence, the term 'engagement' is preferred. This practice draws on the 'friendly settlement' approach of both the Inter-American systems and the ECtHR. The term 'engagement' was first introduced into the South African jurisprudence in the case of *Occupiers of 51 Olivia Road v City of Johannesburg*, (2008) (5) BCLR 475 (CC) and since then it has been applied successfully in some other cases. In *Occupiers of 51 Olivia Road*,

the Constitutional Court made an order that the parties should: *engage with each other meaningfully in an effort to resolve the differences and difficulties aired in this application in light of the values of the Constitution, the constitutional and statutory duties of the municipality and the rights and duties of the citizens concerned.*

In addition to the interim order, the Constitutional Court gave a limit of one month within which the parties must report back to the court the outcome of the out-of-court settlement. The parties were able to reach an out-of-court settlement on some issues, in particular that the local authorities should provide alternative accommodation to the squatters and that the squatters should leave within a reasonable time. When the parties returned to the court for determination on whether the council had a *Grootboom* compliance policy, the Court commended both parties for the ability to engage in constructive dialogue with positive outcomes. The court declined to go into *Grootboom*, but acknowledged that engagement in constructive dialogue is part of reasonableness. The Court further urged civil organisations to always seek to engage the government in dialogue.

Political Shift in United Nations Diplomacy

This is a particular area of concern, as there is a link between the non-realization of socio-economic rights and internal violence, unrest, extreme poverty, child labour, human trafficking, prostitution, mass illiteracy and unemployment, (Hogan, 2001). These are vices that keep human beings in a state of inhumanity and chronic depression. All responsible governments should be encouraged and supported to set up machinery to effectively realise socio-economic rights. I have shown above that the opposition of some countries to socio-economic rights, like Iran, China, Sudan, Somalia, Iraq and other Islamic and Asian countries has nothing substantial to do with Islam. This paper rejects the argument that Islamic teachings are incompatible with western-style human rights. I have shown earlier that most of these countries are not comfortable with the political attitude of the UN machineries, master-minded by the US and the UK. A system that treats some countries like Israel as untouchable, while Israel continues to violate the socio-economic rights of the Palestinians, cannot be embraced by the Islamic countries. In sum, to resolve these issues there is urgent need for a political shift in the attitude of both such countries and the United Nations and its machinery. The UN must, as a matter of urgency, embrace constructive engagement with the Islamic world and countries like China.

In conclusion, this paper affirms the inherent dignity of every human being and asserts that the deprivation of socio-economic rights to the people amounts to deprivation of opportunities to fulfil their potentials. 'In conditions of deprivation, human beings retain their dignity, but are deprived of the opportunity to live in dignity, to live in conditions that enable them to develop their capabilities, to

participate as agents in the shaping of their society', (Liebenberg, 2005 p.243). When people are deprived of the right to education, the right to housing, the right to health care and other socio-economic rights, they tend to lose hope about life, they become disillusioned, and in developing countries with weak institutional support to maintain law and order, it becomes easy for the army of unemployed youth to take to violence, extremism, war, and poverty. Other effects of deprivation of socio-economic rights include human trafficking, prostitution, illegal immigration and promotion of economic refugees. This accounts for rampant and continuous civil disorder, lawlessness, and extremism across many African and other states.

Overall, this paper has demonstrated that the proposals above are capable of removing some of the obstacles confronting the enjoyment of socio-economic rights, and has shown as well that improving the realization of socio-economic rights by the State Parties, the regional bodies, and the UN will produce a win-win outcome for everyone. The preambles to both the UN Charter and the ECHR have affirmed that non-realization of human-rights is a threat to international peace and security. On the other hand, a more effective realization of these rights will tremendously improve the quality of life of all, make the world healthier and less likely to be prone to conflicts, and safer for all.

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