

A COMPARATIVE ANALYSIS OF THE PROTECTION OF SOCIO-ECONOMIC RIGHTS IN NIGERIA AND SOUTH AFRICA*

Abstract

Socio-economic rights (SERs) are essential for human dignity and the realization of justice and equality. Enforcement of socio-economic rights is a panacea to deluge of agitations over bad governance in many underdeveloped countries. While both Nigeria and South Africa recognize these rights in their constitutions, their approaches to protection and enforcement diverge significantly. This paper aims to provide a comparative appraisal of the constitutional, judicial, and institutional frameworks for the protection of socio-economic rights in both countries. It highlights South Africa's robust enforcement mechanisms, especially its justiciability model in contrast with Nigeria's more aspirational and non-justiciable treatment of SERs under its Constitution. The doctrinal research methodology was employed in this study wherein primary sources (statutes, case laws, etc.) and secondary sources (textbooks, journal articles, newspapers, dictionaries, encyclopedias etc.) were used. The paper recommends reforms for Nigeria that draw lessons from South Africa's experience to enhance the enforceability of socio-economic rights. Key amongst the recommendations is an urgent need to amend Section 6(6)(c) of the 1999 Constitution (as amended) to expressly confer justiciability status on socio-economic rights in Nigeria. The above will empower the courts to hold the State accountable for its socio-economic obligations and provide legal remedies for rights violations.

Keywords: Socio-economic rights, enforceability, availability, acceptability and adaptability

1. Introduction

Socio-economic rights (SERs) including the rights to health care, education, housing, food, water, and social security are indispensable for achieving human dignity, equality, and sustainable development.¹ These rights are often enshrined in national constitutions, international human rights instruments, and regional legal frameworks, yet their practical enforcement remains highly uneven across jurisdictions. In Africa, Nigeria and South Africa represent two of the continent's largest democracies and legal systems, but their approaches to the protection of socio-economic rights reveal stark contrasts in constitutional design, judicial interpretation, and institutional implementation.² South Africa is often praised for its transformative constitutionalism, which entrenches socio-economic rights as justiciable and enforceable.³ Nigeria, on the other hand, places these rights under its non-justiciable 'Fundamental Objectives and Directive Principles of State Policy'.⁴

In South Africa, socio-economic rights are entrenched within the Bill of Rights under Chapter Two of the 1996 Constitution, rendering them justiciable and enforceable by the courts. Sections 26 and 27 of the Constitution guarantee the right to access housing, health care, food, water, and social security, subject to the state's obligation to take 'reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights'.⁵ The South African judiciary,

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¹ S. Liebenberg, *Socio-Economic Rights: Adjudication under a Transformative Constitution* (Juta, 2010) 23-25

² *Ibid.*, 25; D. Olowu, *An Integrative Rights-Based Approach to Human Development in Africa* (Pretoria University Law Press, 2009) 219.

³ C. C. Ngang, 'Judicial Enforcement of Socio-economic Rights in South Africa and the Separation of Powers Objection: The Obligation to take "Other Measures"' [2014] *African Human Rights Law Journal* (14) (2) 655-680; D. Brand, 'The Role of Courts in the Enforcement of Socio-Economic Rights: The Grootboom Case' in M. Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press, 2011) 200-220.

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), Chapter II. See also s. 6(6)(c), *ibid.*

particularly the Constitutional Court, has interpreted these provisions robustly. Landmark cases such as *Government of the Republic of South Africa v. Grootboom and others*⁶ and *Minister of Health and Others v. Treatment Action Campaign and Others*⁷ have demonstrated a proactive judicial stance in compelling the State to fulfill its obligations, thereby setting a global precedent for the enforceability of socio-economic rights.⁸

Conversely, Nigeria's 1999 Constitution (as amended) adopts a more restrained approach. Socio-economic rights are encapsulated within Chapter II as 'Fundamental Objectives and Directive Principles of State Policy.' However, Section 6(6)(c) expressly excludes these provisions from the jurisdiction of the courts, rendering them non-justiciable and aspirational in nature. While Nigeria has ratified key international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), their domestic effect is limited unless specifically incorporated by legislation, as per Section 12 of the Constitution.⁹ Despite the constitutional limitations, Nigerian courts and regional bodies have increasingly explored innovative ways to navigate around the non-justiciability barrier. In *SERAP v. Federal Republic of Nigeria*,¹⁰ the ECOWAS Court of Justice ruled in favor of the right to education, emphasizing the binding nature of Nigeria's international commitments.¹¹ However, such rulings, though symbolically powerful, lack consistent domestic enforcement, revealing the systemic gaps in Nigeria's legal framework for socio-economic rights.¹²

This paper undertakes a comparative appraisal of the protection of socio-economic rights in Nigeria and South Africa, with a focus on constitutional provisions, judicial attitudes, legislative instruments, and institutional mechanisms. It critically examines how each country's legal framework shapes the lived experiences of socio-economic rights and evaluates the extent to which the State is held accountable for ensuring access to basic needs. The paper ultimately argues that while South Africa provides a more effective legal model for SERs protection, Nigeria's framework can be strengthened through constitutional reform, judicial activism, and the domestication of international obligations.

2. Meaning of Socio-economic Rights

Socio-economic rights (SERs) encompass entitlements essential to the material well-being of individuals, including the rights to housing, health care, education, social security, food, water, and work. These rights are indispensable for human dignity and social justice and are foundational to achieving substantive equality in democratic societies.¹³ Unlike civil and political rights, socio-economic rights impose positive obligations on the State to act, often requiring significant resource allocation and institutional reform.¹⁴ While historically viewed as aspirational or non-justiciable, socio-economic rights have evolved into enforceable legal norms within many domestic and international legal frameworks.¹⁵

The theoretical foundation of socio-economic rights is rooted in the idea of substantive equality and

⁵Republic of South Africa Constitution 1996, ss. 26(2) & 27(2).

⁶2000 (11) BCLR 1169 (CC).

⁷(2002) 10 BCLR 1033.

⁸Liebenberg (n 1) 150–151; Brand (n 3) 200–220.

⁹Olowu (n 2) 219.

¹⁰ECW/CCJ/APP/08/09 (2010), paras 30–60.

¹¹Ibid.

¹²S. Ibe, 'Implementing Economic, Social and Cultural Rights in Nigeria: Challenges and Opportunities' [2007] *African Human Rights Law Journal* (7) (1) 225, 236-238.

¹³A. O. Ogbonnaya, 'An examination of the Nature, History and Jurisprudence of Socio-Economic Rights' [2023] *Nigerian Bar Journal* (13) (1) 68-90, 87.

¹⁴M. Eseyin, M. Udofia and N. E. Umoh, 'An Examination of Socio-Economic Rights and the Judicial Process in Nigeria' [2024] *Uniuyo Law Journal* (11) 1-5.

¹⁵A. J. Isokpan, 'The Role of the Courts in the Justiciability of Socio-Economic Rights in Nigeria: Lessons from India' [2017] *NnamdiAzikiwe University Journal of International Law and Jurisprudence* (8) (2) 15; I. Trispiotis, 'Socio-Economic Rights: Legally Enforceable or Just Aspirational?' [2010] *Opticon* (1826) (8) 3-4.

human dignity, as articulated in the Universal Declaration of Human Rights (UDHR) 1948. Articles 22 to 27 of the UDHR outline rights to social security, work, education, and an adequate standard of living, affirming their universality and interdependence with civil and political rights.¹⁶ The International Covenant on Economic, Social and Cultural Rights (ICESCR) gives these rights legal force, obliging State Parties to take steps towards their progressive realization.¹⁷ As Liebenberg¹⁸ argues, socio-economic rights are essential for combating poverty and structural inequality and must be understood not as secondary rights but as equal in importance to civil liberties. They protect individuals against deprivation and marginalization, thereby fostering inclusive democracy.

Socio-economic rights have gained increased legal recognition, particularly through the constitutionalization of such rights in countries like South Africa, Colombia, India, and Kenya. South Africa is often hailed as a model of transformative constitutionalism, embedding enforceable socio-economic rights in its 1996 Constitution. Sections 26 and 27 guarantee access to housing, health care, food, water, and social security, subject to the State's duty to adopt reasonable measures within available resources.¹⁹ In contrast, Nigeria's 1999 Constitution incorporates socio-economic rights within Chapter II as non-justiciable Directive Principles of State Policy, meaning they are not legally enforceable in courts.²⁰ As Ibe²¹ notes, this distinction reflects a tension between political aspiration and legal obligation, thereby limiting the scope of judicial protection for the poor in Nigeria.

The central debate surrounding socio-economic rights is the question of justiciability - whether courts should enforce rights that depend on resource allocation and policy discretion.²² Proponents argue that judicial enforcement is essential for accountability and the realization of rights, especially where democratic mechanisms fail the poor.²³ In *Government of the Republic of South Africa v. Grootboom*,²⁴ the Constitutional Court held that the right to housing required the government to implement reasonable programmes that progressively realize access to adequate housing.²⁵ Similarly, in *Minister of Health v. Treatment Action Campaign*,²⁶ the Court mandated the government to expand access to antiretroviral drugs to prevent mother-to-child transmission of HIV, asserting that resource limitations cannot be used to deny access to life-saving treatment. However, critics caution that excessive judicial intervention risks undermining democratic legitimacy and technocratic competence. According to Liebenberg,²⁷ courts should respect the separation of powers while still fulfilling their constitutional duty to review State compliance with rights obligations.

Two primary doctrinal approaches have emerged in socio-economic rights adjudication: the minimum core obligation and the reasonableness test. The minimum core doctrine, advocated by the UN Committee on Economic, Social and Cultural Rights, posits that States must ensure at least a basic minimum level of rights, irrespective of resources.²⁸ However, South African courts have rejected this model in favour of a reasonableness approach, which evaluates the adequacy of

¹⁶UN General Assembly 1948, Arts. 22–27.

¹⁷ICESCR, Art. 2(1).

¹⁸Liebenberg (n 1) 32–34.

¹⁹Republic of South Africa Constitution 1996, ss. 26(2) & 27(2).

²⁰Constitution of the Federal Republic of Nigeria 1999 (as amended), s 6(6)(c).

²¹Ibe (n 12) 230.

²²H. P. Faga, F. Aloh and U. Uguru, 'Is the Non-Justiciability of Economic and Socio-Cultural Rights in the Nigerian constitution Unassailable? Re-Examining Judicial Bypass from the Lens of South African and Indian Experiences' [2020] *Fiat Justitia: Jurnal Ilmu Hukum* (14) (3) 203–220, 205.

²³Brand (n 3) 200–202

²⁴(n 6).

²⁵*Ibid.*, paras. 38–44; Liebenberg (n 1) 150–151

²⁶(n 6).

²⁷Liebenberg (n 1) 170.

²⁸General Comment No. 3, 1990, para. 10.

government policies in fulfilling socio-economic rights.²⁹ While the reasonableness test allows flexibility, it has been critiqued for its ambiguity and potential for judicial restraint. Brand³⁰ contends that without clearer benchmarks, the test may fail to protect the most vulnerable effectively.

At the international level, the adoption of the Optional Protocol to the ICESCR in 2008 allows individuals to bring complaints before the UN Committee, enhancing the justiciability of socio-economic rights.³¹ Regionally, the African Charter on Human and Peoples' Rights recognizes socio-economic rights, and the ECOWAS Court of Justice has adjudicated SERs despite national limitations.³² In *SERAP v. Federal Republic of Nigeria*,³³ the Court affirmed the right to education as binding under Nigeria's international obligations.

Socio-economic rights are not mere aspirational goals but essential components of human dignity and democratic inclusion. Their recognition in international instruments and domestic constitutions marks significant progress. However, meaningful protection requires not only legal entrenchment but also effective enforcement mechanisms. While countries like South Africa illustrate the transformative potential of socio-economic rights, others like Nigeria reveal the limitations of weak constitutional protection. The future of socio-economic rights lies in balancing judicial enforcement with democratic legitimacy, ensuring that the law serves as a tool for social justice and not merely as a symbolic affirmation.

3. Examination of the Types of Socio-Economic Rights

3.1 Right to Education

Education is widely recognized as a foundational socio-economic right with intrinsic and instrumental value. It enables individuals to live with dignity, enhances their ability to claim other rights, and serves as a vehicle for empowerment, development, and social justice. It is, therefore, fundamental for personal development and social progress.³⁴ The right to education is firmly grounded in international human rights law, regional frameworks, and increasingly in domestic constitutions. In *Brown v. Board of Education*,³⁵ though not about socio-economic rights per se, the U.S. Supreme Court affirmed education as crucial to the exercise of other rights. In South Africa, the *Juma Musjid* case³⁶ held that while private property rights are protected, they must be balanced against learners' rights to education.

The right to education is recognized in Article 13 of the ICESCR, which obliges States to make primary education compulsory and free and to progressively realize free secondary and higher education.³⁷ According to General Comment No. 13 of the Committee on Economic, Social and Cultural Rights (CESCR), education must meet the '4-A' criteria: Availability, Accessibility,

²⁹Grootboom (n 6) para. 41; Liedenberg (n 1) 165–167

³⁰Brand (n 3) 214.

³¹(n 9).

³²Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, UNGA Res 63/117, adopted 10 December 2008, entered into force 5 May 2013. See also M. Langford and others (eds.), *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (2nd edn., Pretoria University Law Press, 2022) 32.

³³(n 10) paras. 30–60.

³⁴UN Human Rights Committee, *General Comment No. 13: The Right to Education (Article 13 of the Covenant)* (1999) paras. 1–2; A. Sen, *Development as Freedom* (Oxford University Press, 1999) 143–147; K. Tomaševski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (Right to Education Primers No. 3, NovumGrafiska AB, 2001) 7–9.

³⁵347 U.S. 483 (1954).

³⁶*Governing Body of the Juma Musjid Primary School and Others v. Essay NO and Others* (2011 (8) BCLR 761 (CC)) 770.

³⁷ICESCR, Art. 13.

Acceptability, and Adaptability.³⁸ These principles, which transform the abstract right to education into specific, measurable State obligations, are discussed below.

3.1.1 Availability

This means that education must be available in sufficient quantity. This includes functioning educational institutions and programmes with adequate infrastructure, teaching materials, trained teachers, and other essential resources.³⁹ According to CESCR: 'Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party.'⁴⁰ Availability, as a component of the right to education, extends beyond the mere existence of school buildings or classrooms. It encompasses a comprehensive framework that includes legal guarantees, policy initiatives, and institutional support to ensure education is genuinely available to all, especially at the primary level, which must be compulsory and free. According to Katarina Tomaševski, former UN Special Rapporteur on the Right to Education: 'Availability entails that governments must establish the legal foundations for the right to education, ensuring that primary education is free and compulsory, and that there is an infrastructure capable of supporting the full enrolment of all children.'⁴¹ This principle was underscored in the South African case of *Governing Body of the Juma Masjid Primary School & Others v. Essay NO and Others*, where the Constitutional Court affirmed that: 'The right to a basic education is immediately realizable. It is not subject to availability of resources. A child's right to education is not conditional on the State's budgetary constraints.'⁴² This judgment reflects how constitutional commitments can reinforce the availability obligation. Similarly, in *Ex parte Gauteng Provincial Legislature: In re Dispute Concerning the Constitutionality of the Gauteng School Education Bill of 1995*,⁴³ the South African Constitutional Court held that provincial governments have a duty to provide sufficient schools, qualified teachers, and infrastructure: 'The State has a duty to ensure that sufficient schools are established and maintained to meet the educational needs of the population.'⁴⁴

According to the Committee on Economic, Social and Cultural Rights (CESCR) in General Comment No. 13, availability includes not only physical facilities such as classrooms, sanitation, and drinking water, but also trained teachers, curricula, libraries, and teaching materials:

Functioning educational institutions and programmes have to be available in sufficient quantity. What they require to function depends upon numerous factors... but includes buildings, sanitation facilities, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and libraries.⁴⁵

Additionally, Beiter notes that: 'Availability is intrinsically linked with the financial responsibilities of the State. Only through adequate resource allocation and legal guarantees can education move from a rhetorical promise to a tangible right.'⁴⁶ From the foregoing, it can be said that availability is not only about counting schools but about ensuring that every learner has reasonable access to a functioning educational system that meets minimum quality standards - a requirement that blends infrastructure, personnel, and legal guarantees into a comprehensive human rights obligation. This

³⁸CESCR (1999) *General Comment No. 13: The Right to Education*, para. 6.

³⁹United Nations Educational, Scientific, and Cultural Organization (UNESCO), *Guidelines to Strengthen the Right to Education in National Frameworks* (UNESCO, 2021) 3.

⁴⁰UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13 of the Covenant) (1999) paras 6–9.

⁴¹Tomaševski (n 34) 7-15.

⁴²(n36) paras 37–39.

⁴³(3) SA 165 (CC), para 9.

⁴⁴Ibid.

⁴⁵UN Committee on Economic, Social and Cultural Rights (CESCR) 1999 (n 40) para. 6

⁴⁶K. D. Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (MartinusNijhoff, 2006) 161–165.

means that laws must mandate education, and budgetary allocations must support it. Without a statutory obligation and public funding, the physical presence of schools alone cannot guarantee availability. For instance, a rural village may have a school building, but if it lacks teachers, textbooks, or safe facilities, it does not meet the availability standard under international law.

3.1.1 Accessibility

The principle of accessibility in the right to education requires that education be available and accessible to all individuals, without discrimination, at the primary, secondary, and tertiary levels. This principle is enshrined in General Comment No. 13 by the Committee on Economic, Social, and Cultural Rights (CESCR), which provides detailed guidance on the meaning of accessibility in the context of the right to education. It encompasses aspects such as non-discrimination, physical accessibility, and economic accessibility. General Comment No. 13 states that accessibility involves more than just physical proximity to educational institutions. It has several layers:

- i. **Non-discrimination:** All individuals must have equal access to education, irrespective of race, gender, disability, social status, or ethnicity. The aim is to promote equitable access to educational opportunities and ensure marginalized groups are not excluded.
- ii. **Physical Accessibility:** Educational institutions must be physically accessible to students, particularly for those with disabilities or from marginalized communities. Physical barriers, such as the distance to educational institutions or infrastructure issues, must be addressed to ensure that education is within reach of all students. Special focus is often placed on **disability access**, with provisions for **ramps, Braille materials, and sign language interpreters**.
- iii. **Economic Accessibility:** Education must be **affordable** or **free**, especially primary education, ensuring that financial constraints do not prevent individuals from accessing education. Secondary and higher education should be progressively made available at affordable rates.⁴⁷ The CESCR states: 'Education has to be accessible to everyone, without discrimination, within the jurisdiction of the State party.'⁴⁸ Beiter expands on this by emphasizing the importance of removing both direct and indirect barriers to access, particularly in rural areas and for persons with disabilities.⁴⁹

The UN Convention on the Rights of Persons with Disabilities (CRPD) 2007 emphasizes that education should be fully accessible to individuals with disabilities in an inclusive environment.⁵⁰ This reinforces the broad scope of accessibility, including necessary accommodations.

In South Africa, accessibility has been a key theme in the development of socio-economic rights jurisprudence, especially with respect to education. South Africa's Constitution guarantees the right to basic education and requires that this education be provided in a manner that is accessible to all.⁵¹ In the South African case of *Juma Masjid Primary School v. Essay NO*,⁵² In this case, the Constitutional Court of South Africa highlighted the importance of accessibility in the right to education. The Court ruled that the right to basic education (under Section 29(1) of the South African Constitution) must be realized immediately and without discrimination. The case involved the eviction of a school located on private land, and the Court held that this eviction violated the right to education for the children who were physically displaced, thus limiting their access to education.⁵³ The Court emphasized that the State must take reasonable steps to ensure that physical

⁴⁷CESCR, 1999 (n 41) para. 6(b).

⁴⁸Ibid., para. 7.

⁴⁹Beiter (n 47) 162.

⁵⁰UN Convention on the Rights of Persons with Disabilities (CRPD) 2007, Art. 24.

⁵¹Constitution of the Republic of South Africa 1996, s. 29(1).

⁵²(n36) 761.

access to education is maintained and that children's rights are not infringed due to factors outside their control.⁵⁴ In the case of *Grootboom v. Government of the Republic of South Africa*,⁵⁵ the Court ruled that government policies must ensure accessibility to basic needs like housing, which indirectly affects the access to education for children in informal settlements. Educational access is often limited by poor living conditions, and the Court recognized the interconnectedness of basic needs. In *Minister of Education v. Harris*,⁵⁶ the South African Constitutional Court struck down certain regulations that limited access to education based on unjust discriminatory grounds. The regulations were found to be inconsistent with the right to non-discriminatory access to education under the Constitution.⁵⁷

In Nigeria, the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees equal and adequate educational opportunities at all levels,⁵⁸ but the right to education is non-justiciable under Chapter II.⁵⁹ However, Nigerian courts and regional judicial bodies have engaged with accessibility in relation to education, emphasizing the importance of non-discrimination and equal access. In the case of *SERAP v. Federal Republic of Nigeria*,⁶⁰ the ECOWAS Court of Justice examined Nigeria's failure to provide access to free, compulsory education as required by Article 17 of the African Charter on Human and Peoples' Rights. The Court ruled that Nigeria's failure to ensure accessibility to education violated fundamental human rights, especially for children from marginalized groups.⁶¹ The Court directed Nigeria to take immediate steps to ensure universal accessibility to education across the country, including for children with disabilities.⁶² In the case of *Legal Defence and Assistance Project (LEDAP) GTE & LTD v. Federal Ministry of Education & Another*,⁶³ the Federal High Court in Abuja ruled that every Nigerian child has the constitutional right to free and compulsory primary education and free junior secondary education. The court stated that both federal and State governments have constitutional duties to provide adequate funding for such education, making the right to free education enforceable.

Despite the legal guarantees for accessible education, numerous barriers persist in both South Africa and Nigeria that hinder full realization: Those barriers include physical barriers⁶⁴, economic barriers⁶⁵ and social and cultural barriers⁶⁶.

Accessibility in education is a fundamental principle that guarantees non-discriminatory, affordable,

⁵³Ibid., 770.

⁵⁴Ibid., 767.

⁵⁵(n 6). Though primarily a housing case, the Constitutional Court's decision in *Grootboom* also touches on the broader implications of socio-economic rights.

⁵⁶2001 (4) SA 1297 (CC).

⁵⁷Ibid., 1303.

⁵⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), S. 18.

⁵⁹Ibid., S. 6(6)(c).

⁶⁰(n10).

⁶¹Ibid., para. 40.

⁶²Ibid., para. 32.

⁶³(FHC/ABJ/CS/978/15) [2018] NGFCHC 1 (17 April 2018).

⁶⁴ Infrastructure: Poorly maintained schools, lack of transportation for rural students, and inadequate facilities often prevent children from accessing education; Disability access: Inadequate provision for children with special educational needs (e.g., lack of ramps, inaccessible classrooms, and non-adapted curricula) remains a major challenge in many countries.

⁶⁵ Cost of education: In countries like Nigeria, where education is nominally free, parents still face costs associated with school materials, uniforms, and transportation, thus limiting access for low-income families; poverty: Families living in poverty often cannot afford the direct or indirect costs of education, resulting in high dropout rates and lower school attendance.

⁶⁶ Gender discrimination: In some regions, such as the far northern Nigeria, girls still face cultural barriers to accessing education due to **gender norms** and expectations of domestic labour; Discriminatory practices: Children from ethnic minorities or marginalized communities may be excluded from schools or face prejudicial treatment that denies them equal access.

and physically accessible education for all. Judicial decisions, particularly in South Africa and Nigeria, demonstrate the legal and moral obligations of the State to eliminate barriers to education. Courts have played a pivotal role in ensuring the right to education is enforced by requiring governments to take positive actions to guarantee access to education for marginalized groups. However, despite these legal protections, significant challenges remain in ensuring full accessibility due to aforementioned economic, physical, and social and cultural barriers.

3.1.3 Acceptability

This criterion of the right to education entails that the form and content of education, including curricula and teaching methods, must be relevant, culturally appropriate, and of good quality. It should also be acceptable to students and, in some cases, to parents.⁶⁷ According to General Comment No. 13, acceptability means that: *'The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents.'*⁶⁸ Sen views education as a tool for empowerment and dignity; therefore, its content must resonate with learners' lived experiences to be meaningful.⁶⁹

Acceptability comprises:

- i. **Curricular relevance:** The content must be relevant to the learner's social, cultural, and economic context.
- ii. **Cultural sensitivity:** Education must not alienate learners from their linguistic, religious, or cultural identities.
- iii. **Pedagogical quality:** Teaching methods and materials should meet minimum educational standards and be respectful of human dignity.
- iv. **Freedom from indoctrination:** Education must be consistent with fundamental human rights and must not promote hatred or propaganda.⁷⁰

The International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) affirms that education must be directed to 'the full development of the human personality and the sense of its dignity' and must "strengthen respect for human rights and fundamental freedoms."⁷¹ The Convention on the Rights of the Child 1989 (CRC) emphasizes the development of respect for the child's cultural identity, language, and values.⁷² These treaties recognize acceptability as essential to the substantive enjoyment of the right to education.

South Africa has a robust jurisprudence on the quality and appropriateness of education as a constitutional right. In the case of *Juma Masjid Primary School v. Essay NO and Others*,⁷³ the Constitutional Court emphasized that the right to basic education under Section 29(1)(a) of the South African Constitution is 'immediately realisable' and must include aspects of acceptable educational quality and environment.⁷⁴ The Court remarked that education must equip learners with essential skills and values, consistent with the Constitution's emphasis on human dignity and equality.⁷⁵ In the case of *Minister of Basic Education v. Basic Education for All*,⁷⁶ which involved the failure to deliver textbooks in Limpopo, South Africa, the Court ruled that the absence of learning materials

⁶⁷CESCR (1999) (n 40) para. 6(c), 3.

⁶⁸Ibid.

⁶⁹A. Sen, *Development as Freedom* (Oxford University Press, 1999) 143–147.

⁷⁰CESCR (1999) (n 40) paras. 6(c), 33–34, 3, 10–11.

⁷¹ICESCR, Art. 13(1).

⁷²CRC, Art. 29(1)

⁷³(n36).

⁷⁴Ibid., para. 37, 768.

⁷⁵Ibid.

⁷⁶[2016] ZASCA 150; (2016) 4 All SA 27 (SCA).

undermined the quality and acceptability of education.⁷⁷ The Court found that 'the right to a basic education includes the provision of essential learning and teaching support material' and held that curriculum content and delivery must meet acceptable standards.⁷⁸ These South African cases reinforce the notion that adequate content and delivery mechanisms are critical components of an acceptable education system.

While the Nigerian Constitution does not make socio-economic rights expressly justiciable,⁷⁹ courts have interpreted the right to education through international and regional instruments, especially the African Charter on Human and Peoples' Rights 1981, which is part of Nigerian domestic law (via Cap. A9, LFN 2010). In *SERAP v. Federal Republic of Nigeria*,⁸⁰ the court held that Nigeria's failure to provide quality and culturally relevant education to disadvantaged communities violated Article 17 of the African Charter.⁸¹ It ruled that education must be 'qualitative, relevant, and in accordance with national values and dignity'.⁸² The Court emphasized that teacher absenteeism, dilapidated infrastructure, and inappropriate teaching materials all amounted to a breach of the acceptability requirement.⁸³ In *Uzoukwu v. Ezeonu II*,⁸⁴ though not directly an education case, the Court of Appeal discussed fundamental rights in the light of international law, acknowledging that customary and cultural relevance are significant in evaluating State duties under Chapter II of the Constitution. This indirectly informs the acceptability standard in Nigerian education.

The key issues and challenges in ensuring Acceptability include the following:

- I. Inappropriate Curriculum Content: Curricula in some regions may be outdated, overly theoretical, or alienating to local values and needs. In Nigeria, for example, the lack of vocational and technical education limits the relevance of schooling to job markets.
- ii. Language of Instruction: In both Nigeria and South Africa, linguistic barriers undermine acceptability. The use of English or Afrikaans without sufficient support for mother-tongue instruction hinders comprehension and cultural inclusion.
- iii. Poor Pedagogical Standards: The quality of teaching is central to acceptability. Inadequately trained teachers, lack of continuous professional development, and the absence of child-friendly teaching methods diminish the educational experience.

Acceptability is an essential component of the right to education, ensuring that learners receive not just any education, but an education that is relevant, culturally sensitive, and of good quality. Judicial bodies, particularly in South Africa and regional African courts, have interpreted this criterion to mean that states must provide appropriate curricula, competent teaching, and culturally relevant learning environments. This standard is pivotal to transforming education from a mere policy promise to a legally enforceable right that respects the dignity, diversity, and development of every learner.

3.1.4 Adaptability

According to General Comment No. 13: '*Adaptability means that education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.*'⁸⁵ Tomaševski argues that adaptability is critical in modern education systems, especially to accommodate children with disabilities, working children,

⁷⁷*Ibid.*, para. 44, 36.

⁷⁸*Ibid.*, 38.

⁷⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 6(6)(c) & 18.

⁸⁰ (n10).

⁸¹*Ibid.*, para. 32.

⁸²*Ibid.*, para. 42, 11.

⁸³*Ibid.*

⁸⁴ (1991) 6 NWLR (Pt. 200) 708 at 761

and other marginalized groups.⁸⁶ Adaptability thus includes:

- i. Curriculum responsiveness to societal transformation
- ii. Education for marginalized and vulnerable groups
- iii. Incorporation of learners' needs and life experiences
- iv. Use of inclusive pedagogical methods (e.g., for children with disabilities, working children, indigenous peoples, etc.)⁸⁷

The elements of Adaptability include the following:

a. Curriculum Relevance

Education must equip learners with practical and analytical skills to meet evolving economic, technological, and social challenges. For example, integrating digital literacy, climate education, or civic education can make curricula more adaptable to contemporary demands.⁸⁸

b. Inclusion of Vulnerable Groups

Education systems must adapt to cater for the needs of:

- i. Children with disabilities (through inclusive education practices)
- ii. Girls and women (addressing gender biases)
- iii. Indigenous populations (through bilingual and culturally relevant curricula)
- iv. Internally displaced persons and refugees.⁸⁹

c. Cultural and Linguistic Sensitivity

Here, adaptability also entails using mother tongue instruction, respecting indigenous knowledge systems, and avoiding curricula that alienate learners from their identities.⁹⁰

The Convention on the Rights of the Child (CRC), in its Article 29, requires that education develop a child's personality, talents, and abilities to the fullest. This calls for flexibility and learner-centered approaches. In a similar vein, the Convention on the Rights of Persons with Disabilities (CRPD), in its Article 24, requires states to ensure that persons with disabilities can access inclusive, quality, and free primary and secondary education. This underscores adaptability in addressing diverse needs.

The South African Constitution emphasizes transformation, which supports the idea of an adaptable education system that addresses past inequalities and meets future developmental needs. In the case of *Governing Body of the Juma Musjid Primary School v. Essay NO,91* although the case primarily addressed availability and accessibility, the Constitutional Court stressed that education must be effective and meet learners' needs, aligning with the notion of adaptability. The Court stated: 'The right to a basic education is immediately realisable... and must be directed toward the development of the child's personality, talents, and mental and physical abilities to their fullest potential.'⁹² In *MEC for Education: KwaZulu-Natal v. Pillay*,⁹³ a landmark case where a learner was barred from wearing a nose stud as part of her religious and cultural expression. The Constitutional Court ruled that school codes must adapt to accommodate the diverse identities of learners, thus reinforcing adaptability in educational policy. According to the court: 'Uniformity cannot be allowed to trump the constitutional value of diversity.'⁹⁴

While the Nigerian Constitution under Section 18 provides for educational goals, its non-

⁸⁵ CESCR, 1999 (n 40) para. 6(d).

⁸⁶ Tomaševski (n 35) 41.

UNESCO, 2015

⁸⁷ CESCR, 1999 (n 40) para. 6(d).

⁸⁸ Tomaševski (n 34) 41.

⁸⁹ Ibid.

⁹⁰ UNESCO, *Education for All Global Monitoring Report* () 107.

⁹¹ (n36) 761.

⁹² Ibid., 772.

⁹³ 2008 (1) SA 474 (CC).

⁹⁴ Ibid., 489.

justiciability limits direct litigation. However, regional courts like the ECOWAS Court of Justice have intervened, as exemplified in the case of *SERAP v. Federal Republic of Nigeria*⁹⁵ where the ECOWAS Court emphasized the obligation of Nigeria to ensure that education is inclusive and adaptable, particularly for disadvantaged communities. The Court recognized that failure to provide context-sensitive and relevant education was a breach of the African Charter on Human and Peoples' Rights: 'The State's failure to ensure curricula and institutions respond to the needs of all social groups... amounts to a violation of the right to education.'⁹⁶

Despite its importance, adaptability remains underdeveloped in implementation across many jurisdictions due to reasons, such as:

- i. Outdated curricula that don't reflect current socio-economic realities.
- ii. Rigid national education policies that leave little room for local innovation.
- iii. Insufficient teacher training in inclusive and responsive pedagogy.
- iv. Lack of disaggregated data to monitor how education systems serve diverse learners.

For example, in Nigeria, most school curricula remain urban-centric, neglecting the realities of nomadic, rural, or conflict-affected children.⁹⁷

Adaptability is a critical, though often neglected, component of the right to education. It ensures that education remains relevant, inclusive, and responsive to the real-world circumstances of learners. Courts in South Africa have made progressive interpretations, linking adaptability with diversity and transformation, while regional courts like ECOWAS have begun to address the gap in Nigeria. For genuine realization of the right to education, states must not only provide education but ensure it is flexible and tailored to the lived realities of all learners.

The '4-A scheme is a robust framework that provides concrete guidance for the implementation of the right to education. While CESCR sets the legal foundation, scholars like Tomaševski, Beiter, and Sen provide deeper understandings and practical frameworks for its realization. Under Article 2(1) of the ICESCR, State parties are required to progressively realize the right to education using the maximum available resources. However, primary education must be free and compulsory **immediately**, not subject to progressive realization.⁹⁸ Despite legal guarantees, multiple challenges hinder the full realization of the right to education in African countries, such as:

- i. Inadequate funding of public schools and poor infrastructure;
- ii. Teacher shortages and lack of training;
- iii. Inequitable access, especially for rural, girl-child, and disabled learners;
- iv. Conflict and insecurity (e.g., Boko Haram's attacks on schools in Nigeria); and
- v. Policy inconsistency and weak enforcement mechanisms.⁹⁹

The right to education is a pivotal socio-economic right with far-reaching implications for the realization of other rights. While South Africa provides a model of constitutional justiciability and strong jurisprudence, Nigeria's approach remains largely declaratory. Nonetheless, regional and international legal mechanisms provide an important avenue for holding States accountable. To truly realize the right to education, both nations must ensure adequate funding, equitable policies, and effective enforcement of educational obligations.

3.2 Right to Health

⁹⁵ (n10).

⁹⁶ *Ibid.*, para. 32.

⁹⁷ V. O. Uwaifo, 'Curriculum Development and Educational Challenges in Nigeria' [2013] *African Journal of Education and Practice* (5) (2) 86–90, 87.

⁹⁸ CESCR, 1999 (n 40) para. 51.

⁹⁹ Uwaifo (n 97).

The right to health is a fundamental socio-economic right recognized in international, regional, and domestic legal instruments. It goes beyond mere access to healthcare and encompasses the broader determinants of health, such as access to clean water, nutrition, sanitation, and housing.¹⁰⁰ As a socio-economic right, it imposes positive obligations on the State to ensure conditions conducive to the physical and mental well-being of all people. The right to health is enshrined in Article 12 of the ICESCR, requiring States to ensure access to medical services and take steps to reduce infant mortality, improve environmental hygiene, and control disease.¹⁰¹ As outlined in General Comment No. 14, the right to health includes availability, accessibility, acceptability, and quality of healthcare services (AAAQ).¹⁰² These elements are discussed below.

3.2.1 Availability

Healthcare facilities, goods and services must be available in sufficient quantity within a State's jurisdiction. This encompasses functioning public health and healthcare facilities, trained medical personnel, and essential drugs. According to the CESCR: 'Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party.'¹⁰³ In *Soobramoney v Minister of Health (KwaZulu-Natal)*,¹⁰⁴ the South African Constitutional Court addressed the issue of resource constraints in providing dialysis treatment. The Court recognized the State's challenge in allocating limited resources: 'The provincial administration, which is responsible for health services in KwaZulu-Natal has to make decisions about the funding that should be made available for health care and how such funds should be spent.'¹⁰⁵ In *Minister of Health v. Treatment Action Campaign*,¹⁰⁶ the South African Constitutional Court held that the government's limitation of antiretroviral drugs was unreasonable and violated the right to health under Section 27 of the Constitution.¹⁰⁷ The Court emphasized the duty to provide access to healthcare progressively and within available resources.¹⁰⁸

Nigeria's National Health Act 2014 aims to improve healthcare availability¹⁰⁹. However, challenges persist, particularly in rural areas where health facilities are scarce, and there is a shortage of trained medical personnel.¹¹⁰ The Basic Health Care Provision Fund (BHCPF), established under the Act,¹¹¹ has faced implementation hurdles, impacting the availability of essential health services.

3.2.2 Accessibility

Healthcare facilities and services must be accessible to everyone without discrimination.¹¹² Accessibility has four dimensions:?

- i. **Non-discrimination:** Health services must be accessible to all, especially vulnerable groups.?
- ii. **Physical accessibility:** Facilities must be within safe physical reach for all sections of the population.?
- iii. **Economic accessibility (Affordability):** Services must be affordable for all.?

¹⁰⁰ UN CESCR, 2000: para. 4

¹⁰¹ ICESCR 1966, Art. 12.

¹⁰² CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the ICESCR)*, UN Doc. E/C.12/2000/4 (2000), para. 12.

¹⁰³ *Ibid.*, para. 12(a).

¹⁰⁴ [1997] ZACC 17; 1998 (1) SA 765 (CC).

¹⁰⁵ *Ibid.*

¹⁰⁶ (n8).

¹⁰⁷ *Ibid.*, 745.

¹⁰⁸ *Ibid.*, 751.

¹⁰⁹ *National Health Act 2014*, Ss. 1, 11(1)(a) & 13.

¹¹⁰ *A visit to rural health centres in Nigeria will reveal this ugly reality.*

¹¹¹ *Ibid.*, s. 11.

¹¹² CESCR 2000 (n 100) para. 12(b).

- iv. **Information accessibility:** Individuals must have the right to seek, receive, and impart health-related information.¹¹³ In *Minister of Health and Others v. Treatment Action Campaign and Others (No 2)*,¹¹⁴ the Constitutional Court of South Africa ruled that the government's restriction on the provision of the antiretroviral drug Nevirapine violated the right to health by limiting access to healthcare services. The Court held: "A programme that excludes a significant segment of society cannot be said to be reasonable."¹¹⁵

In *SERAP v. Nigeria*,¹¹⁶ the ECOWAS Court found that the Nigerian government's failure to prevent oil pollution in the Niger Delta, which harmed residents' health, constituted a violation of the right to health. The Court stated: "The Government's failure to prevent and control pollution and to prosecute the perpetrators of oil spills has led to violations of the right to health."¹¹⁷

3.2.3 Acceptability

Health services must be culturally appropriate, respecting medical ethics and sensitive to gender and life-cycle requirements. The CESCR notes: "All health facilities, goods and services must be respectful of medical ethics and culturally appropriate."¹¹⁸ In Nigeria, incorporating traditional medicine practitioners into the formal health system has been proposed to enhance acceptability. Recognizing the role of traditional birth attendants and healers can bridge cultural gaps and improve health-seeking behavior among local communities.¹¹⁹ In South Africa, the Batho Pele ("People First") principles emphasize consultation and service standards, aiming to make public services, including healthcare, more user-friendly and aligned with citizens' needs. This approach fosters trust and encourages utilization of health services.¹²⁰

3.2.4 Quality of Healthcare Services

Health facilities, goods, and services must be scientifically and medically appropriate and of good quality. This necessitates skilled medical personnel, scientifically approved and unexpired drugs, and adequate sanitation.¹²¹ The Life Esidimeni tragedy in South Africa, where over 140 psychiatric patients died after being transferred to unlicensed NGOs, highlighted severe lapses in healthcare quality. The subsequent arbitration led by former Deputy Chief Justice Dikgang Moseneke emphasized the State's obligation to provide adequate, scientifically sound, and quality healthcare services. This case underscored the crucial need for medical facilities to meet international standards and to prevent substandard care.¹²² The Constitutional Court affirmed that the State must ensure healthcare that adheres to quality standards for all individuals, especially vulnerable groups.¹²³

In Nigeria, the quality of healthcare services is often undermined by chronic underfunding, poor

¹¹³ *Ibid.*, para. 12(b), 5.

¹¹⁴ [2002] ZACC 15; 2002 (5) SA 721 (CC).

¹¹⁵ *Ibid.*

¹¹⁶ (n10).

¹¹⁷ *Ibid.*

¹¹⁸ CESCR (2000) (n 100) para. 12©.

¹¹⁹ A. Ogbaje and A. Adetunji, 'Traditional Medicine and the Health Care System in Nigeria: The Need for Integration' [2017] *Journal of Nigerian Health Policy* (5) (2) 30-45; World Health Organization (WHO), *Traditional Medicine Strategy 2014–2023* (World Health Organization, 2013) 19.

¹²⁰ The Batho Pele principles were introduced in 1997 as part of South Africa's broader effort to transform public service delivery, including healthcare. The principles focus on improving service quality and ensuring that citizens' needs and expectations are central to public service provision. They include consultation, service standards, access, and transparency, which directly relate to the point you've made about fostering trust and encouraging the utilization of public services, including healthcare. See South Africa, *Batho Pele White Paper: White Paper on Transforming Public Service Delivery*, Gov. Gaz. No. 18340, 1 Oct. 1997, para. 3.2.1–3.2.5.

¹²¹ CESCR 2000 (n 100) para. 12(d).

¹²² *Moseneke v. The State (Life Esidimeni Arbitration)*, Report of the Life Esidimeni Arbitration, Final Award (2018), paras. 21-47.

infrastructure, and strikes by health workers. In *Oluwadare v. Minister of Health*,¹²⁴ the Nigerian Court of Appeal ruled that the State's failure to adequately fund public healthcare facilities led to the degradation of healthcare services, violating the constitutional right to health. The court ordered the government to improve the quality of health services by ensuring access to trained healthcare workers, medical equipment, and essential drugs. This decision reinforced the right to health and emphasized that quality healthcare is an essential part of the State's obligation to fulfill its human rights commitments.

The AAAQ framework provides a comprehensive approach to understanding the right to health, encapsulating the need for availability, accessibility, acceptability, and quality in healthcare services. Both Nigeria and South Africa have faced significant challenges in realizing these elements, but regional judicial decisions have provided important insights into the obligations of States. Judicial enforcement of these rights serves as a critical tool in ensuring that governments are held accountable for the provision of equitable and quality healthcare. While progress has been made, especially in South Africa where judicial intervention has led to improved access to essential medicines, challenges related to resource allocation, corruption, and institutional weaknesses continue to undermine the full realization of the right to health. In Nigeria, systemic issues such as inadequate funding and infrastructure have posed similar obstacles. Moving forward, governments must prioritize the progressive realization of the right to health by investing in healthcare infrastructure, training medical personnel, and eliminating barriers to access for marginalized communities. Regional human rights frameworks and domestic judicial decisions will continue to play an essential role in upholding and protecting the right to health for all individuals. The evolution of jurisprudence reflects a growing recognition that the right to health is indispensable for human dignity and development.¹²⁵

3.3 Right to Housing

Housing is essential for human dignity and security. Article 11 of the ICESCR guarantees the right to adequate housing, which includes protection from forced eviction, security of tenure, and habitability.¹²⁶ As detailed in General Comment No. 4, 'adequacy' in housing includes aspects like affordability, accessibility, legal security, and cultural adequacy.¹²⁷ In *Government of the Republic of South Africa v. Grootboom*,¹²⁸ the Court ruled that the State's housing policy was unreasonable for failing to cater to people in desperate need, violating Section 26(2) of the South African Constitution.¹²⁹

3.4 Right to Work and Fair Labour Practices

The right to work, outlined in Articles 6 and 7 of the ICESCR, includes the right to gain a living by work freely chosen and to enjoy just and favourable working conditions. This includes fair wages, safe working environments, equal opportunity, and protection against forced labour.¹³⁰ In *Occupiers of 51 Olivia Road v. City of Johannesburg*,¹³¹ though primarily about housing, the Court stressed the importance of engaging affected individuals in meaningful consultations—a principle also relevant in labour disputes.¹³² Additionally, the International Labour Organization Committee of Experts has condemned States for violations of labour rights, often invoking Convention No. 87 and 98 on

¹²³Ibid.

¹²⁴Appeal No. CA/L/850/2015, delivered on 20 December 2016.

¹²⁵A. E. Yamin, *Power, Suffering and the Struggle for Dignity: Human Rights Frameworks for Health and Why They Matter* (University of Pennsylvania Press, 2015) 38.

¹²⁶ICESCR, Art. 11.

¹²⁷CESCR (1991) *General Comment No. 4: The Right to Adequate Housing*, para. 8.

¹²⁸2001 (1) SA 46 (CC).

¹²⁹Ibid., 60.

¹³⁰CESCR (2005) *General Comment No. 18: The Right to Work*: para. 10

¹³¹2008 (3) SA 208 (CC).

¹³²Ibid., 214.

freedom of association and collective bargaining.¹³³ In Nigeria, the right to work and fair labour practices was provided to the effect that the State shall direct its policy towards ensuring that all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.¹³⁴ However, just like other provisions under Chapter II of the Constitution, the enforceability of the above provision has become a challenge in Nigeria by virtue of non justifiability snag provided in section 6 (6) (c) of the constitution.

3.5 Right to Social Security

Social security ensures protection against life risks such as unemployment, disability, sickness, and old age. It is recognized in Article 9 of the ICESCR. The CESCR's General Comment No. 19 stipulates that social security schemes must be adequate, accessible, affordable, and transparent.¹³⁵ In *Khosa v. Minister of Social Development*,¹³⁶ the Constitutional Court of South Africa held that excluding permanent residents from social grants was unfair and discriminatory, violating the right to social security under Section 27.¹³⁷ In Nigeria, Section 16 of the Constitution provides for the commitment of government towards economic policies aimed at ensuring social security of the citizens¹³⁸.

3.6 Right to Food and Water

Food and water are indispensable for survival and are protected under Articles 11 and 12 of the ICESCR and UN General Assembly Resolution 64/292 (2010), which recognizes the human right to safe and clean drinking water and sanitation. General Comment No. 15 states that the right to water includes sufficient, safe, acceptable, physically accessible, and affordable water.¹³⁹ In *Mazibuko v. City of Johannesburg*,¹⁴⁰ the Court held that while the right to water is constitutionally protected, the State's policy providing 6 kilolitres of free water per month was reasonable.¹⁴¹

Socio-economic rights represent essential guarantees for a dignified human existence. Despite their historically non-justiciable status, courts worldwide, especially in South Africa, have significantly developed jurisprudence supporting their enforceability. While the right to education, health, housing, work, social security, food, and water each have unique elements, they are interdependent and mutually reinforcing. Their realization requires more than legal entrenchment - it demands judicial activism, participatory governance, and genuine political commitment.

4. The Constitutional Framework of Socio-Economic Rights in Nigeria and South Africa

4.1 Constitutional Framework of Socio-Economic Rights in Nigeria

In Nigeria, the constitutional framework for human rights reflects a tension between aspiration and enforceability. While the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) recognizes socio-economic rights, it classifies them under the non-justiciable Fundamental Objectives and Directive Principles of State Policy (FODPSP).¹⁴² Socio-economic rights are primarily found in Chapter II of the 1999 Constitution, titled 'Fundamental Objectives and Directive Principles of State Policy.' Section 16(2)(d) ensures 'that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and

¹³³ Ibid.

¹³⁴ S. 17 (3) (a) CFRN, 1999 (as amended)

¹³⁵ CESCR (2008) *General Comment No. 19: The Right to Social Security*: para. 11–24.

¹³⁶ 2004 (6) SA 505 (CC).

¹³⁷ Ibid., 515.

¹³⁸ It is unfortunate that the same constitution limits the enforcement of all the beautiful provisions made in chapter II therein

¹³⁹ CESCR (2002) *General Comment No. 15: The Right to Water*: para. 2.

¹⁴⁰ 2010 (4) SA 1 (CC).

¹⁴¹ Ibid., 24.

¹⁴² Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 6(6)(c) & Chapter II.

unemployment and sick benefits and welfare of the disabled are provided for all citizens.' Section 17(3)(d) mandates that 'there are adequate medical and health facilities for all persons.' Section 18(1)-(3) recognizes the right to education and mandates the government to ensure free and compulsory primary education, and free secondary and university education 'as and when practicable.' Despite this detailed articulation, Section 6(6)(c) of the Constitution limits enforceability by stating that 'no court shall have jurisdiction' as regards 'any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision conforms with the Fundamental Objectives and Directive Principles of State Policy.'

Nigerian courts have generally upheld the non-justiciability of socio-economic rights. In *Okogie v. Attorney General of Lagos State*,¹⁴³ the Court held that Chapter II rights could not be enforced in court. However, more recent jurisprudence shows a shift towards indirect enforcement. Courts have invoked Chapter IV (civil and political rights) to give effect to socio-economic rights by interpreting them in conjunction with rights to life, dignity, and freedom from discrimination. In *SERAP v. Federal Republic of Nigeria & Anor.*,¹⁴⁴ the ECOWAS Court held that the right to education was justiciable under international law and that Nigeria was in violation for failing to provide free and compulsory education. The Court emphasized that the classification of rights in the Nigerian Constitution does not derogate from Nigeria's international obligations.

There have been legislative efforts to give effect to Chapter II provisions. The Compulsory, Free Universal Basic Education Act 2004 operationalizes Section 18(3)(a) of the Constitution by making basic education a legal entitlement. Similarly, the National Health Act 2014 supports access to health services and aims to realize Section 17(3)(d). On its part, the National Human Rights Commission **Act 2010 (as amended)** empowers the Commission to protect and promote human rights, including socio-economic rights.¹⁴⁵

Additionally, civil society actors and scholars continue to advocate for the constitutional amendment of Section 6(6)(c) of the Constitution to render socio-economic rights justiciable. For instance, in 2019, former Director-General of the Nigerian Institute of Advanced Legal Studies, Prof. Epiphany Azinge (SAN), emphasized the need for constitutional amendments to make socio-economic rights enforceable, highlighting that the realities of the time made such changes imperative.¹⁴⁶ Similarly, the former Attorney-General of the Federation and Minister of Justice, Abubakar Malami (SAN), has advocated for the incorporation of socio-economic rights into Chapter IV of the Constitution, aligning with global trends toward their justiciability.¹⁴⁷ In the academic sphere, scholars¹⁴⁸ have examined the judicial process concerning socio-economic rights in Nigeria. They argue for constitutional amendments and proactive judicial interpretations to advance these rights to a legally enforceable status. Additionally, discussions¹⁴⁹ have centered on overcoming constitutional barriers by personalizing human rights, emphasizing the dignity of the human person as a core element.

¹⁴³ (1981) 2 NCLR 337.

¹⁴⁴ (n 10).

¹⁴⁵ National Human Rights Commission Act 2010 (as amended), s. 5.

¹⁴⁶ The Nation, 'Make socio-economic rights justiciable, says Azinge' (5 November 2019) <https://thenationonline.ng/make-socio-economic-rights-justiciable-says-azinge/?utm_source=chatgpt.com#google_vignette> accessed 20 March 2025.

¹⁴⁷ A. Faith, 'Socio-economic rights should be justiciable – Malami' (14 November 2019) <http://tribuneonline.ng/socio-economic-rights-should-be-justiciable%E2%80%95malami/?utm_source=chatgpt.com> accessed 20 March 2025.

¹⁴⁸ See, for example, Eseyin, Udofia and Umoh (n 15) 3; Isokpan (n 16) 15; Ibe (n 13) 225-248; O. J. Adeoye and S. A. Aina, 'Socio Economic Rights under the Nigeria Legal System: Issues and Challenges' [2018] *International Journal of Current Research* (10) (7) 71433-71438.

¹⁴⁹ See, for example, C. N. Uwaezuoke, 'Making Socio-Economic Rights Justiciable in Nigeria through Personalising of Human Rights' [2019] *International Journal of Research, Innovations and Sustainable Development* (9) (1) 121-131; O. Nnamuchi, 'Justiciability of Socioeconomic Rights in Nigeria and Its Critics: Does International Law Provide any Guidance?' [2022] *The Age of Human Rights Journal* (19) 137-164; Faga, Aloh and Uguru (n 22) 203-220.

While such proposals have not yet succeeded, the growing judicial and legislative activity signals a trend toward mainstreaming these rights. This shift is reflected in judicial decisions¹⁵⁰ that creatively interpret existing legal frameworks, such as invoking the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act to sidestep the non-justiciability clause of Section 6(6)(c) of the 1999 Constitution.¹⁵¹

Nigeria is a party to several international and regional human rights treaties that recognize socio-economic rights as legally binding. These include the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and the African Charter on Human and Peoples' Rights 1981 (ACHPR). Unlike the ICESCR, which requires domestic legislation for enforceability, the African Charter has been domesticated into Nigerian law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.¹⁵² Nigerian courts have relied on the Charter to enforce socio-economic rights. In *Fawehinmi v. Abacha*,¹⁵³ the Supreme Court held that the African Charter forms part of domestic law and can be enforced by courts. In *SERAP v. Federal Government*,¹⁵⁴ the Federal High Court recognized the right to education under the African Charter as enforceable.

The enforcement of socio-economic rights in Nigeria is hindered not only by legal constraints but also by institutional weaknesses. Agencies such as the National Human Rights Commission (NHRC) are empowered to promote and protect human rights, including socio-economic rights, but face budgetary and operational limitations. Similarly, anti-corruption agencies such as the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) play indirect roles in safeguarding public resources, which are crucial for the realization of socio-economic rights.

4.2 Constitutional Framework of Socio-economic Rights in South Africa

The Constitution of the Republic of South Africa, 1996 (hereinafter referred to as 'the South African Constitution') is globally recognized for its progressive inclusion of socio-economic rights as justiciable and enforceable. In a nation emerging from apartheid, where poverty, inequality, and socio-economic deprivation were both symptoms and instruments of racial discrimination, the drafters of the Constitution placed socio-economic rights at the core of democratic transformation.¹⁵⁵ These rights are enshrined in the Bill of Rights, reinforcing the State's obligation to respect, protect, promote, and fulfill fundamental rights that are essential for human dignity.

Chapter 2 of the South African Constitution establishes a comprehensive Bill of Rights, which includes an array of socio-economic rights. These include the right to housing,¹⁵⁶ healthcare, food, water and social security,¹⁵⁷ education,¹⁵⁸ and an environment not harmful to health or well-being.¹⁵⁹ Section 7(2) of the Constitution mandates the State to 'respect, protect, promote and fulfil' these rights, affirming the binding nature of socio-economic rights on all arms of government. Unlike

¹⁵⁰ *Fawehinmi v. Abacha & Ors* (2000) 6 NWLR (Pt. 660) 228; *SERAP v. Federal Republic of Nigeria & Anor* (n 10); *Archibong v. The State* (2006) 14 NWLR (Pt. 1000) 349; *Abacha v. Fawehinmi* (2001) 51 WRN 29.

¹⁵¹ *Ibe* (n 12) 240

¹⁵² Cap. A9, LFN 2010.

¹⁵³ (2000) 6 NWLR (Pt 660) 228.

¹⁵⁴ (n 10).

¹⁵⁵ D. Bilchitz, 'The Performance of Socio-economic Rights in the South African Constitution' in R. Dixon and T. Roux (eds.), *Constitutional Triumphs, Constitutional Disappointments: A Critical Assessment of the 1996 South African Constitution's Local and International Influence* (Cambridge University Press, 2018) 45-87.

¹⁵⁶ Constitution of the Republic of South Africa 1996, s. 26.

¹⁵⁷ *Ibid.*, s. 27.

¹⁵⁸ *Ibid.*, s. 29.

¹⁵⁹ *Ibid.*, s. 24.

many other jurisdictions where such rights are viewed as aspirational or non-justiciable, South Africa's constitutional framework provides for their enforcement before courts, tribunals, and independent bodies.

Socio-economic rights in South Africa are not absolute. Sections 26(2) and 27(2) of the South African Constitution qualify these rights by stipulating that the state must take 'reasonable legislative and other measures, within its available resources, to achieve the progressive realization' of these rights. This qualification introduces a standard of reasonableness and resource availability, which has been interpreted by the Constitutional Court in several landmark cases.¹⁶⁰

Section 36 of the South African Constitution provides a general limitation clause that applies to all rights in the Bill of Rights. Any limitation must be 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.' This limitation is important in balancing socio-economic rights with competing State obligations and fiscal constraints. In terms of enforcement, Section 38 allows individuals and groups to approach a competent court when a right in the Bill of Rights has been infringed or threatened. The Constitutional Court, acting as the apex guardian of the Constitution, plays a central role in adjudicating socio-economic rights cases.¹⁶¹

The South African Constitution establishes independent institutions under Chapter 9, such as the South African Human Rights Commission (SAHRC), which monitors and reports on the realization of socio-economic rights.¹⁶² The Commission has the power to investigate complaints, conduct research, and engage with public and private actors to promote compliance.¹⁶³ The Public Protector¹⁶⁴ and the Auditor-General¹⁶⁵ also contribute indirectly by promoting accountability in the management of public resources, which is crucial to the realization of socio-economic rights. The phrase 'progressive realisation' echoes Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which South Africa ratified in 2015. The Optional Protocol to the ICESCR 2008,¹⁶⁶ permits individual complaints at the international level, although domestic remedies must be exhausted first.

In South Africa, sectoral legislations such as the Housing Act 107 of 1997 and the National Health Act 61 of 2003 play a vital role in giving effect to the constitutional guarantees of socio-economic rights. These statutes operationalize the broad constitutional mandates contained in Sections 26 and 27 of the 1996 Constitution by setting out the responsibilities of various spheres of government and establishing the frameworks for service delivery. The Housing Act 107 of 1997, enacted to give effect to Section 26 of the Constitution, outlines the duties of national, provincial, and local governments in promoting access to adequate housing. It mandates the development of sustainable human settlements and the provision of housing subsidies, particularly for the poor.¹⁶⁷ Similarly, the National Health Act 61 of 2003 implements Section 27(1)(a) of the South African Constitution by establishing a national health system and delineating responsibilities among different levels of government to ensure equitable access to health care services. It also provides for the rights and duties of users and healthcare providers, thereby ensuring alignment with constitutional obligations.¹⁶⁸

¹⁶⁰ See *Government of the Republic of South Africa v. Grootboom* (n 6) and *Minister of Health v. Treatment Action Campaign* (n 129)

¹⁶¹ See *Khosa v Minister of Social Development* (n 136)

¹⁶² Constitution of the Republic of South Africa, 1996, s 184(1).

¹⁶³ *Ibid.*, s. 184(2).

¹⁶⁴ *Ibid.*, s. 182.

¹⁶⁵ *Ibid.*, s. 188.

¹⁶⁶ Optional Protocol to the ICESCR, UNGA Res 63/117, adopted 10 December 2008, entered into force 5 May 2013.

¹⁶⁷ Housing Act 1997, s. 3–4

¹⁶⁸ National Health Act 2003, s. 2 & s. 27

The South African judiciary has adopted a contextual and pragmatic approach, often deferring to the executive on resource allocation while insisting on reasonableness and responsiveness. This judicial philosophy seeks to balance the separation of powers with the need to protect vulnerable groups from state neglect.¹⁶⁹ For example, in *Mazibuko v. City of Johannesburg*,¹⁷⁰ the Court upheld the city's policy on water provision, stating that while courts must guard rights, they must not usurp policy-making functions.

The constitutional framework of socio-economic rights in South Africa represents a bold and progressive legal commitment to social justice and human dignity. Through the Constitution, the courts, and independent institutions, South Africa has created an enabling environment for the realization of these rights. However, challenges remain especially in translating legal rights into tangible benefits for the poor. Issues of inequality, inadequate service delivery, and resource constraints continue to impede full realization.¹⁷¹ Scholars such as Liebenberg¹⁷² and Bilchitz¹⁷³ argue that the courts need to adopt a more interventionist approach to ensure that rights are not eroded by inefficiency or political neglect. Others, like Pieterse,¹⁷⁴ call for a rights-based governance model that incorporates participatory democracy and social accountability mechanisms.

Nevertheless, South Africa's framework remains a model for other countries seeking to constitutionalize socio-economic rights and ensure their justiciability. Scholars such as Liebenberg¹⁷⁵ and Bilchitz¹⁷⁶ argue that South Africa's jurisprudence has demonstrated how courts can balance judicial restraint with meaningful intervention to uphold socio-economic rights without usurping executive functions. Liebenberg¹⁷⁷ notes that the reasonableness standard developed by the courts allows for both flexibility and accountability, making it adaptable to different institutional and economic contexts. In comparative perspective, South Africa's model has inspired debates and legal reforms in countries like Kenya, Colombia, and India. For instance, Kenya's 2010 Constitution adopted a Bill of Rights that mirrors South Africa's, and courts there have increasingly cited South African jurisprudence when interpreting socio-economic guarantees.¹⁷⁸

5. Conclusion

The comparative analysis of Nigeria and South Africa reveals two distinct approaches to the constitutional protection of socio-economic rights. South Africa's post-apartheid Constitution has firmly entrenched these rights as justiciable and enforceable, enabling courts, legislative instruments, and independent institutions to act as effective agents for their realization. Landmark decisions by the Constitutional Court such as *Grootboom* and *Treatment Action Campaign* illustrate the dynamic role of the judiciary in holding the State accountable for delivering on its socio-economic obligations. In contrast, Nigeria's 1999 Constitution relegates socio-economic rights to the realm of aspirational principles under Chapter II, reinforced by Section 6(6)(c), which bars courts from enforcing them directly. Thus, while South Africa's model offers valuable lessons in

¹⁶⁹ Liebenberg (n 1) 90-94.

¹⁷⁰ 2010(4) SA 1 (CC) 12-14.

¹⁷¹ Statistics South Africa (Stats SA), 2023. 'Poverty Trends in South Africa: An Examination of Absolute Poverty' <www.statssa.gov.za> accessed 29 March 2025.

¹⁷² Liebenberg (n 1) 82-85.

¹⁷³ Bilchitz (n 47) 155-157.

¹⁷⁴ M. Pieterse, *Can Rights Cure? The Impact of Human Rights Litigation on South Africa's Health System* (Pretoria University Law Press, 2014) 13.

¹⁷⁵ Liebenberg (n 1) 85-89.

¹⁷⁶ Bilchitz (n 47) 156-160.

¹⁷⁷ Liebenberg (n 1) 85-89.

¹⁷⁸ C. Mbazira, 'From a Bill of Rights to the Realisation of Rights: Challenges Facing Kenya's New Constitution' [2013] *Africa Today* (59) (3) 323, 324-325.

constitutional design and judicial enforcement, the Nigerian constitutional framework places socio-economic rights in a precarious position recognized in principle but not directly enforceable in practice. Nevertheless, Nigerian courts have begun to expand their interpretive role, especially through the domestication of international instruments like the African Charter on Human and Peoples' Rights, offering indirect avenues for advancing these rights. Legislative reforms and policy initiatives, such as the Universal Basic Education Act and the National Health Act, indicate a growing recognition of the need to give effect to socio-economic entitlements.

However, both countries face persistent implementation challenges. South Africa continues to grapple with systemic inequality, service delivery failures, and resource constraints, while Nigeria contends with legal limitations, weak institutions, and political inertia. These factors undermine the transformative potential of constitutional and legal frameworks, highlighting the gap between rights on paper and their real-world impact. Ultimately, the realization of socio-economic rights in Nigeria will require not only legal reforms but also political commitment and civic engagement to uphold the dignity and well-being of all Nigerians.

Based on the foregoing, this paper recommends an urgent need to amend Section 6(6)(c) of the 1999 Constitution (as amended) to confer justiciability on socio-economic rights. Drawing from the South African experience, this reform would empower courts to hold the State accountable for its socio-economic obligations and provide legal remedies for rights violations.

Nigerian courts should build upon precedents involving the African Charter and adopt a purposive approach in interpreting socio-economic rights, in line with evolving human rights standards. This would help mitigate the limitations imposed by non-justiciability imbroglio as provided in the constitution and foster progressive jurisprudence.

It is also recommended that Nigeria should intensify efforts to enact and implement sector-specific legislations that concretize socio-economic rights (as exemplified by the provisions of the ICESCR), particularly in health care, housing, education, and social welfare. The specific sector legislations should be clear, inclusive and provide enforceable mechanisms for the realization of the stated right.

Nigeria and South Africa must invest in the capacity and independence of their human rights commissions, public protectors, and oversight bodies to monitor compliance, investigate violations, and recommend corrective measures. Strengthening accountability mechanisms will ensure that socio-economic rights are not only protected but also effectively implemented.

There should be intentional resource allocation and policy coherence in Nigeria. Realizing socio-economic rights requires prioritized, equitable, and transparent resource allocation. National budgets should reflect constitutional commitments to social justice, and policy frameworks must be aligned with human rights imperatives.