

CREATING OLD PEOPLES FRIENDLY SOCIETY: PROMOTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF OLD PEOPLE IN NIGERIA

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The old people are very important in Africa like in any part of the world. They are held in high esteem for their wisdom, knowledge and dexterity in dispute settlement, governance, guidance for the young and custody of our historical values. It is therefore important that utmost care and protection is given to them to protect these legacies, which they have to bequeath to the younger generation. Human Rights are a veritable instrument that can help to preserve the lives of the old people. However, not so much in terms of civil and political rights (CPR) (even though these are equally important) but in terms of economic, social and cultural rights (ESCR) in the provisions of basic necessities of life, e.g. health facilities and services, transportation, housing, social securities, clothing, food, etc. This is however not advocating the paramountcy of ESCR over CPR but making provisions that will enhance the quality of lives of old people in Nigeria.

I. INTRODUCTION

“How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the strong, and tolerant of the weak and the strong, because someday in life you will have been all of these.”

– George Washington.

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In Africa, old people are held in high esteem and are greatly revered. Their roles in mediating and settling of disputes for the continuous harmonious living or synthesis of the entire fabric of the community cannot be emphasized enough. Hence there is a communal effort in the care and protection of the elderly at their old age. In the modern world, the communal characteristics of traditional Africa are fast being eroded and the mantle of caring and protecting the old and aged has become individualised and in some instances the responsibility of governments in more advanced countries, though these responsibilities are often abandoned.

Human rights which are universal in nature and inherent in every human being are however a device that could be used in bringing back the care of the good old days for old people in Africa. We need to take care and protect them because of their inestimable value to the society. As a writer opines, “every old person who dies in Africa is like a library set ablaze.”¹ This paper advocates the promotion of economic, social and cultural rights in Africa to make life worth living for the elderly.

II. DEFINING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. WHAT ARE HUMAN RIGHTS?

Human rights are rights, rooted in appeal to human nature,² which all human beings have simply because they are humans.³ Two features set these rights apart from other rights.⁴ First, human rights are demands or claims individuals or groups make against their aim societies or governments.⁵ As Professor Jack Donnelly elaborates, “things to which we have human rights may be denied by an extensive array of individuals and organisations, but human rights are usually taken to have a special reference to the ways in which states treat their own citizens.”⁶

A human right is therefore a moral right held unconditionally and unalterably by all and only human beings. Human rights are often said to belong to persons already, prior to and independently of legislative enactment.⁷

¹ Hampate Ba, cited by Dr. Ekhaguosa Aisien *The Edo Man of the Twentieth Century* available at <http://www.dawodu.net/aisien.htm> (Last visited on 26/9/06).

² R.J. VINCENT, *HUMAN RIGHTS AND INTERNATIONAL RELATIONS* 13 (1986).

³ JACK DONNELLY, *INTERNATIONAL HUMAN RIGHTS* 18 (1998); JACK DONNELLY, *UNFINISHED BUSINESS*, 31 PS: Pol. Sci: Pol. 533 (1998).

⁴ For extensive discussion distinguishing human rights from other rights, see JACK DONNELLY, *THE CONCEPT OF HUMAN RIGHTS* (1985).

⁵ DONNELLY *supra* note 3, 530; JOSHUA A. GOLDSTEIN, *INTERNATIONAL RELATIONS* 329 (1999) (characterizing human rights as ‘the universal rights of human beings against certain abuses of their own governments’).

⁶ DONNELLY, *supra* note 1.

⁷ JOEL FEINBERG, “HUMAN DUTIES AND ANNUAL RIGHTS” IN *JUSTICE AND THE BANDS OF LIBERTY* 54 (1980).

According to H.L.A. Hart, natural (human) rights are:

- (1) rights which all men have if they are capable of choice; they have the rights of men and not only if they are members of same society or stand in same special relation to each other.
- (2) These rights are not created or conferred by man's voluntary action like other moral rights.⁸

B. WHAT ARE ESC RIGHTS?

Human rights cover a wide range of aspects of human existence considered essential for life of dignity and security. Some of these relate to the freedom of the individual to act as she or he pleases as long as that action does not infringe on the rights and freedoms of others. These liberty-oriented rights are usually called civil and political rights and include freedom of speech and religion, the right to fair trial and the right to be free from torture and arbitrary arrest. Other rights relate to conditions necessary to meet basic human needs, such as food, shelter, education, health care, and gainful employment. These are called economic, social and cultural rights (*hereinafter* ESCR).⁹

The core contents of ESCR in the International Covenant on Economic, Social and Cultural Rights (*hereinafter* ICESCR) and the Universal Declaration of Human rights (*hereinafter* UDHR) include:

- (a) fair and safe working conditions for workers;
- (b) right to seek and choose work;
- (c) right to form, join and act together in trade unions;
- (d) 'social security', including government assistance during old age and in times of unemployment, and money or other help for people at other times when they need assistance in order to live their lives with dignity;
- (e) assistance and protection for families;
- (f) equal marriage rights for men and women;

⁸ "Are there any Natural Rights" in Anthony Quantum (ed), *Political Philosophy* (Oxford: OUP, 1267) pp. 54-55; For other definitions of human rights *see generally* Nickel (1992); 561-2, culled from the Internet Encyclopaedia of Philosophy; Ronald Cohen, "endless Teardrops: Prolegomena to the study of Human Rights in Africa" in *Human Rights and Governance in Africa*," (ed. Ronald Cohen et. Al., (University of Florida) at p. 4; Adediran M.O.; *Human Rights and the Disabled Persons*" being a paper presented at the 2nd Public Lecturer of the School of Arts and Social Sciences, Federal College of Education (Special) Oyo on the 19th of November 1998; O. Oko Elechi, Ph.D. "Human rights and the African Indigenous Justice System" being a paper for presentation at the 18th International Conference of the International Society for the Reform of Criminal Law, August 8-12, 2004, Montreal, Quebec, Canada.

⁹ *Economic, Social and Cultural Rights: Questions and Answers*, available at http://www.amnestyusa.org/escr/files/escr_qa.pdf (Last visited on 12 September 2006).

- (g) an adequate standard of living for everyone, involving adequate clothing, housing, and food;
- (h) a high standard of health and health care for all;
- (i) satisfactory primary education for all and increased opportunities for further education;
- (j) right to participate in the cultural life of the community;
- (k) right to benefit from scientific progress.

Several United Nations (*hereinafter* UN) treaties guarantee economic, social and cultural rights for specific groups. For instance many conventions agreed to through the International Labour Organization (*hereinafter* ILO) are aimed at employees and employers. Other UN treaties containing protections for ESCR include Convention on the Elimination of All Forms of Discrimination Against Women (*hereinafter* CEDAW), the Convention on the Right of the Child (*hereinafter* CRC) and Convention on the Elimination of All Forms of Racial Discrimination (*hereinafter* CERD).¹⁰ However, these treaties did not specifically create rights for old people.

In 1993, at the World Conference on Human Rights in Vienna, it was affirmed that all human rights are ‘indivisible, interdependent and inter-related’ as initially envisioned by the UDHR.¹¹ Both civil and political rights (*hereinafter* CPR) and ESCR are upheld in the UDHR.¹² In spite of the abundance of international standards on ESCR, it is often said that one of the main obstacles in implementing these rights is that they require financial resources, which certain governments lack. Nevertheless, this is not a general situation. For instance, in Nigeria, it is obvious that there is abundance of resources to meet these needs but due to wrong prioritisation, corruption and bad governance the country has not been able to meet these needs.

¹⁰ AAAS/HURIDOCs *Economic, Social & Cultural Rights Violations Project ‘Promoting and Defending Economic, Social and Cultural Rights’* available at <http://shr.aaas.org/escr/handbook/chap03.htm> (Last visited on 12 September 2006): *see* also Oyelade O.S. & Akintola A.L. ‘Making the right to Life More Meaningful Under the Nigerian Constitution’ *Ife Juris* Vol. 1 Part 2 (2004) p. 363 fn. 19; Article 25; ICESACR, Article 9 (social security), Article 11 (sufficient food and clean water) Article 12 (health care); CERD, Article 5 (e) (1) (social security), Article 5(e) (iv) (Health care); CEDAW, Articles 11 (2) (b) and 15 (e) (social security), Article 12 (2) (sufficient food and clean water), Article 14 (2) (b) (Health care); CRC, article 24 (c) (sufficient Food and clean water), Articles 26, 27 (Social security); European social charter (1981), Articles 11 and 13 (health care), Article 12 (social security), and African charter on Human and Peoples rights (1981), Articles 16 (Health care), Article 18 (Social security) *see* also Leary V.A. ‘The Right to Health in International Human rights Law’ (1994) *Health and Human Rights* 25-56.

¹¹ Vienna Declaration, World Conference on Human Rights, Vienna, 14-25 June 1993, U.N. Doc. A/CONF. 157/24 (Part I) at 20 (1993) at para. 5; Universal Declaration of Human Rights, G.A. Res. 217 of 10 December 1948, UN DOC. A/810 (1948).

¹² International Covenant on Civil and political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16 at 52, UN DOC. A/6316 (1966), 999 UNTS. 171, entered into force March, 23, 1976.

In recognition of this, the ICESCR says that states have to undertake steps, individually and through international assistance and cooperation to the maximum of their available resources to achieve progressively the full realization of the rights.¹³ However, the obligation does not imply that states can defer the full realization of rights indefinitely. All states are obliged to take immediate steps and, as the committee on ESCR asserts there is a core minimum duty on governments to ensure that everyone at least has access to essential levels of economic and social rights such as food, shelter, primary health care, and basic education.¹⁴ At the same time, according to a United Nations Development Programme (UNDP) Report, “most budgets can accommodate additional spending on human development by reorienting national priorities.”¹⁵ Thus, it is the obligation of the state to prioritise its resources to be able to meet these minimum obligations and even during times of severe resource constraints, the most vulnerable members of society must be protected.¹⁶

III. THE STATUS OF ESCR, AND THE OLD PEOPLE IN NIGERIA

Looking at the core contents of ESCR, which we have stated above, it is instructive to note that provision of infrastructures, facilities, transportation, health services, food, shelter and all other essentials which make life worth living are embedded therein. In our opinion, the old people fall in the category of vulnerable groups, like women and children, and there is therefore the need to protect and provide for them, in view of their fragile and most often times ailing nature.

There has been serious arguments as to which of the rights is more important to man whether CPR or ESCR. We are not going to be drawn into these polemics but to say that, it is logical that fulfilment of one set of rights is necessary for the enjoyment of the other and vice versa. Both sets of rights are complimentary, interdependent and interrelated. As Nwabueze puts it,

“The good life, which is the common aspiration of all of us, is a product of both spiritual and material; it can only be attained by a combination of the inner happiness that comes from freedom of thought, conscience, emotions, speech and movement with the material comforts implied by economic and social rights like food, shelter and medical care, education, clothing etc. These material things are needed not solely for

¹³ Magdalena Smieszek, *The Evolving Spectrum of International Human rights Law*, 1; International Covenant on Economic, Social and Cultural Rights, UNDOC. A/RES/2200 of (XXI), (1966), Article 2.

¹⁴ Committee on Economic, Social and Cultural rights, General Comment No. 3 (1990) UNDOC. E/1991/23, Annex 111 at ¶ 10 (General Comment No. 3).

¹⁵ UNDP, *Human Development Report 1990*, at 4 (Steiner & Alston, (eds.) *International Human Rights in Context* 255 (2000).

¹⁶ General Comment No. 3, ¶ 12.

the material comforts they provide but also for their role in man's spiritual well-being."¹⁷

To the old people or the aged, pursuing CPR might be an attitude like the Yorubas of the South West of Nigeria would say, "*ojo melo la olo laye, Tan un wo ewu irin*". (how long do we have to live on this earth that we clad ourselves in iron clothing).

The old person most probably has worked and retired and has reached his twilight and would only look forward to enjoying the rest of his stay on earth. This would however be possible where the basic necessities of life are available and functioning properly, e.g. where cost of living is bearable and within his reach, availability and affordability of transportation, health services and facilities, medical care, housing and social security. Where all of these benefits are available, the attitude of the old person may then be like the Yorubas would say "*Oun ti eiye ba je, l'eiye ngbe fo*" (whatever the bird eats is what it flies with). In as much as we are not claiming paramountcy of ESCR over CPR in this paper, we believe that for the old people who are weak, spent and needing care and protection from the young and more agile members of the society or more importantly from the society itself, pursuing CPR alone without a concomitant advocacy or practical realisation of ESCR will be chasing shadows. Unfortunately, however in Africa, ESCR even though provided for in most national constitutions, are non-justiciable and cannot be enforced by courts of law. For the first time in Nigeria under the 1979 Constitution, certain fundamental objectives and Directive Principles of State Policy were written in the Constitution. This is contained in Chapter II of that Constitution.

Professor Jadesola Akande¹⁸ believes that the reason for the insertion of Chapter II into the Constitution of Nigeria is that "governments in developing countries have tended to be pre-occupied with power and its material perquisites with scant regard for 'political' ideas as to how society can be organized and ruled to the best advantage of all." She opined further that this rationale is of special relevance to the Nigerian polity whose cardinal features are "heterogeneity of the society, the increasing gap between the rich and the poor, growing cleavage between the social groupings all of which combine to confuse the nation and bedevil the concerted march to orderly progress."

The provisions under the Fundamental Objectives and Directive Principles of State Policy essentially proclaim the significance of the rights of the citizens to include; rights to social security, right to work, free choice of employment, just and favourable remuneration; right to a standard of living adequate for the health and well being of himself and of his family including food, clothing, housing, right to education and right to clean environment, water, air, and preservation and protection of wild life.¹⁹

¹⁷ Nwabueze, B.O., *The Value of Human rights and the Challenge for Africa*, paper delivered at the Annual Conference of the Nigerian Bar Association at Abuja, (August 27, 1998) 15.

¹⁸ AKANDE, INTRODUCTION TO THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 52 (1999).

¹⁹ See generally Sections 17, 18 and 20 Const. of the Federal Republic of Nigeria, 1999.

The Constitution of the Federal Republic of Nigeria 1999, like most written constitutions, sets out those objectives and state policy goals that the government is obligated to pursue for the better life of its citizens. As good as the provisions in chapter of the constitution on fundamental objectives and directive principle are, they cannot be enforced under the Nigerian Constitution. In other words, they are non-justiciable.²⁰ In a number of cases concerning ESCR the courts had declined to offer any remedy pleading non-justiciability clause in Section 6(6)(c).²¹ Sections 16(2) and 17(3) of the Constitution stating respectively that “suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens” and “the state shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons”²² are therefore paper tigers in view of Section 6(6)(c) of the Constitution which appears to approbate and reprobate.

In South Africa, limited recognition and access is granted on ESCR. The South African Constitution²³ in Chapter 2 of the Bill of Rights provides for the right to have access to adequate housing²⁴ health care, food, water and social security.²⁵ Subsection (2) of those provisions state however, that “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.”

From the above provisions, it could be gleaned that an access to basic health, housing, food, water and social security is granted and the phrase “within its available resources” has knocked off the bottom from the policy of those provisions. African Governments have constantly hinged their inability to provide ESCR to their citizens on lack of resources to do so.

²⁰ Oyelade O.S. & Akintola A.L, *supra* note 10, 365.

²¹ Obiagwu Chinonye E. “Promoting Economic, Social and Cultural rights Using Domestic Legal Mechanism” Legal Defence and Assistance Project, LEDAP, Nigeria Publication p. 2; *See* Arch. Bishop Anthony Olubunmi Okogie (Trustee of Roman Catholic Schools) and others v. Attorney-General of Lagos State (1981) 1 N.C.L.R. 2181. It was held that the directive principles of state policy in Chapter 11 of the Constitution have to conform to and run subsidiary to the fundamental rights and that Chapter 11 is subject to legislative powers conferred on the State; *see* also Ezuokwu v. Ezeonu 11 (1991) 6 N.W.L.R. (Pt. 200) p. 761 where the Court held that not all fundamental Rights are available to all persons in a country. Some of the provisions are limited to the citizens while other provisions are applicable to all persons, citizens and aliens alike.

²² Section 17 (3) *id.*

²³ Const. of the Republic of South Africa 1996 (as adapted on 8 May, 1996 and amended on 11 October 1996 by the Constitutional Assembly) Act 108 of 1996.

²⁴ Section 26(1) *id.*

²⁵ Section 27 (1) *id.*

However, the South African courts have taken bold steps to introduce judicial activism whereby ESCR were decided upon.²⁶ The position in Nigeria and South Africa echoes what obtains in Africa generally. It would therefore be clear from the foregoing, that the old people or the aged do not enjoy the ESCR as envisaged by international treaties by virtue of the non-justiciability of ESCR and by virtue of the non-mandatory, non-pungent and evasive ways by which the provisions concerning ESCR are couched.

Nevertheless, certain provisions of the ICESCR are to be noted. Article 2.1 of the ICESCR and General Comment 3 of the same include phrases such as 'achieving progressively the full realisation' and 'to the maximum of its available resources' which indicate that the burden of obligation on States is not as high as in the case of granting civil and political rights to citizens. The State has a two-fold obligation – that of conduct and of result. According to the General Comment, which streamlines and concretizes the meaning of the Article, 'progressive' does not mean 'into eternity'. Rather, it points towards steps that have to be taken at the earliest, the results of which may not be obvious at the moment. Within the various ESCR also there are certain which are immediately realizable, non-negotiable and self-executing. Furthermore, the General Comment states that States cannot escape such obligations due to reasons such as insufficiency of funds. The State has to justify its use of resources and there needs to be a prioritization of its obligations. In light of the aforementioned, the argument of blanket non-justiciability of ESCR is not an entirely correct approach and there are solutions and alternatives in spite of the fact of non-justiciability.

III. CONCLUSION

The treatment of the aged in Africa runs in diametric opposition to what the treaties and conventions envisaged and also runs counter to what obtains in the more developed economies. This is due largely to the most obvious factors of poverty and corruption which pervades and permeates all strata of our society and thus affects and shakes our much cherished tradition of respect and utmost care for the aged on the individual plane.

On the part of the governments also we are given a picture of the macro effect of the poverty, which, they say, impedes provision of basic necessities of life which we advocate in this paper, for the benefit of the elderly or aged so they can have a fulfilled life, and enjoy a blissful rest after labour. It is well said: 'rest is sweet after labour.' We sincerely believe that Africa is immensely blessed in all regards. Our only bane is bad governance and corruption in highest places. If our resources are properly channelled, our priorities set right and we are free from the hydra-

²⁶ See *Minister of Health v. Treatment Action Campaign*, Constitutional Court of South Africa, case CCT 8/02, 5 July, 2002; *Saobramoney v. Minister of Health (Kwazulu-Natal)*, Constitutional Court of South Africa, case CCT 32/907, 27 Nov. 1997; *Government of South Africa*, case CCT 11/00, 4 Oct. 2000.

headed monster “corruption” which like a cankerworm, has eaten deep in to our economy, we should be able to provide adequate care for the elderly and ensure the promotion of their ESCR.

Furthermore, where there is judicial activism on part of the judge, the non-justiciable status of ESCR should not be a barrier to the enforcement of the rights contained therein where there is judicial activism on the part of our judges. All over the world, the judiciary has moved from the legalistic plain to judicial activism.²⁷ As Hon. Justice Chukwudifu Oputa²⁸ said,

“Our judges should be motivated by a dynamic, progressive and forward-looking philosophy of law. There has to be an enlightened approach to the social and developmental engineering of law. What our judiciary urgently needs is a new humanism and a well founded and growing concern for the civil rights and liberties (including ESCR) of our people. Law should never be an end in itself but merely a means to an end – a means and instrument for safeguarding our people from arbitrariness and from oppressive and repressive actions by government and its functionaries or by powerful conglomerates. Our judges should mould and interpret our laws to produce justice. They should realize that the majestic generalities of our Constitution and the laws have content and significance which vary from age to age. This is all that judicial activism is about.”

We associate ourselves fully with the erudite and well-seasoned statement of Oputa, JSC (retired) and suggest that the Nigerian Supreme Court ought to take a cue from India,²⁹ South Africa³⁰ and other jurisdictions where judges have taken bold steps and approaches in interpreting statutes.³¹ It is only when this is done that judges can commit the government or its agencies to implement and provide the ESCR contained in our Constitution to make life worth living for the old people in Nigeria.

²⁷ Oyelade O.S. and M.O. Adediran (Prof.), *Responsibility of Hotel Proprietors for Loss of Lodgers' Properties: An Examination of Anyah v. Imo Concorde Hotel & Ors.* July, 2004, IBADAN B.J. Vol. 3 No. 1, 137.

²⁸ This position has found a voice in *Minerva Mills v. Union of India* AIR 1980 SC 1789 at 111-112, per Bhagwati C.J. where the Indian Supreme Court endorsed the view of indivisibility and interdependence of rights when it found that both the fundamental (civil) rights contained in Part III of the Indian Constitution and the Directive Principles of State are interdependent.

²⁹ See *Olga Tellis v. Bombay Municipal Corporation*, 1985 AIR 1986 SC 18; *People's Union for Civil Liberties v. Union of India & Ors.*, Civil Writ Petition No. 196 of 2001, (S.C.) (Interim Order of May 2, 2003); S.P. SATHE, *JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORCING LIMITS* (2002).

³⁰ It has also been held by the South African courts that right to life includes right to livelihood thereby giving effect to ESCR: see *City of Johannesburg v. Rand Properties (Pty) Ltd and Others*, 2006 (6) BLCR 728 (W);

³¹ O.S. Oyelade and M. O. Adediran (Prof.). *supra* note 28.

