REALIZING ECONOMIC SOCIAL CULTURAL RIGHTS UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS: SOME PROPOSALS.
DISSEETATION FOR THE PART FULFILMENT OF A BACHELORS DEGREE IN LAW.

SUPERVISOR: DR. KINDIKI

SUPERVISEE: NETO AGOSTINHO.
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Dedication

To the residents of the sprawling African slums, who live in squalor and penury, whose conditions of life redefine economic social cultural rights....

To Fidel, hoping I do not deny you the right to family.

And to Min Del, posthumously that I am.
Acknowledgements

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1.0 INTRODUCTION

1.1 BACKGROUND

‘….. Change is never just about radical rupture, nor is it just incrementalism- it is always about both feeding off each other’¹

Africa is a continent in which there are great disparities of wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when The African Charter on Human and People’s Rights² (ACHPR) was adopted and a commitment by the various African Governments to address them, and to transform Africa into a society where there will be human dignity, freedom and equality. This commitment to address these conditions is so expressed “Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples”³. This commitment is also reflected in the various provisions of the charter as will in this research paper be highlighted.

Numerous policies and legislation have been developed by the African Governments that purport to give effect to the Charter’s obligations. Yet several years down the track of reconstruction and development, it is unclear how policy practices have been effective in implementing the continents Socio-Economic Rights as embedded in the charter. The ACHPR although inspired by other human rights conventions has a distinct character⁴. It recognises civil, political⁵, social, economic and cultural rights⁶. It also

¹ Swilling
⁴ Unlike other regional conventions such as the American Convention on Human Rights (ACHR) and the European Convention on Human Rights (ECHR) which do not expressly recognize social, cultural and economic rights.
⁵ Article 1-13 of ACHPR
⁶ Article 14-18 of ACHPR
accords recognition to collective rights such as the right to development, self-determination, and a satisfactory environment. It further recognizes the duties of the individual towards his family, society and the state. Unlike civil rights that have been described as negative rights, social, economic and cultural rights are seen as positive rights in the sense that they obligate the State to take some measures to enable people enjoy these rights.

While Civil and Political Rights are defined as specific demands that must be fulfilled, rather obligations of result, the requirement to fulfill Socio-Economic Rights is felt to be more ambiguous, dependant on resources and thus are obligations of conduct\(^7\). Hence rather than simply protecting members of the society from State power, the idea of socio-economic rights is that the State must be obliged to do whatever it can to secure for all members of the society a basic set of social goals. However, the obligation imposed by these rights on the State differs from civil and political rights in that, while the latter imposes an immediate duty on the State, Socio-Economic Rights are to be achieved progressively depending on a State's resources. The fact that full realization of socio-economic rights can only be achieved progressively does not however alter the obligation on the State to take those steps that are within its power immediately and other steps as soon as possible. In fact, the obligation “to achieve progressively the full realization of the right’s” requires states parties to move as expeditiously as possible towards the realization of the rights\(^8\). Under no circumstances shall this be interpreted as implying for states the right to defer indefinitely efforts to ensure full realization. On the contrary, all state parties have the obligation to begin immediately to take steps to fulfil their obligations on Socio-Economic Rights.

It is a well known fact however, that Economic, Social and Cultural rights are surrounded by controversies both of an ideological and technical nature. To some, they are not true rights at all, while others may even accord them priority over civil and political rights.\(^9\)

The spirit of African Charter On Human and People’s Rights, is however convinced that

\(^7\) Human Rights Approach to Development Programming, by Urban Jonsson, Pg 17.
\(^8\) Limburg Principles, a set of rules and recommendations for interpreting state obligations in relation to economic, social cultural rights, Adopted by the United Nations Economic and Social Council in 1986.
civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights. This spirit of the charter of interdependence of the rights had been earlier emphasized:

“We have come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence. ‘Necessitous men are not free men’. People who are hungry and out of job are the stuff of which dictatorships are made.”

While it is true that economic, social and cultural rights relates- broadly speaking, more than civil and political rights to goals, policies and programmes, it is essential that a concept of right is included in such goals and programmes. Fundamental needs should not be at the mercy of changing governmental policies and programmes, but should be defined as entitlements. The importance of such entitlements are increasing by the hour, and the role of the modern nation state seems to be on the decline, with an increased role for a mix of actors, including international financial and development institutions, the private sector, regional and local governments interests. The identification of the main actor responsible for policies and programmes become more difficult, and the focus therefore shifts towards individual rights.

Civil and political rights are said to be ‘justiciable’ in the sense that they could be easily applied by courts and similar judicial bodies, whereas economic, social and cultural rights are seen more as being of a political nature. Civil and political rights are also seen as ‘free’ as they do not cost much. The implementation of Economic Social and Cultural rights, in contrast, is seen to be costly since they are seen as obliging the state to provide welfare to the individual?

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10 Paragraph 8, of the Preamble of the African Charter on Human and People’s Rights.
11 Statement by Roosevelt, in his 1944 State of the union Address, advocating for the adoption of an Economic Bill of Rights, as quoted in p. Alston. Pg 387.
As stated in the Charter "The Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them".  

Our understanding is that any State that ratifies the Charter is under obligation to respect all its provisions. This aspect brings out the difference between soft and hard law. This means therefore that all State Parties to the African Charter are under a legally binding obligation to implement the provisions of the Charter. And so whereas judicial enforcement of socio-economic rights is often said to raise a number of difficult and complex issues, for the deplorable socio-economic conditions of the African people to continue, the aspirations of the charter, Article 1, being taken into consideration will have a hollow ring? In other words, realizing socio-economic rights is indispensable to the success of African democracy and to ensuring that the core values of the African Charter on Human and People’s Rights are meaningful to the whole population of the continent.

13 Article 1, ACHPR
14 Soft law refers to declaration, recommendation and resolution, while hard law refers to covenant, treaty, charter and convention. The difference between the two is that while soft law may be respected, they usually have no legal binding force. On the other hand, hard law is legally binding and imposes an obligation upon any State that ratifies it to give full effect to its provisions.

15 In Communication 129/94, Civil Liberties Organisation v Nigeria, the complaint alleged that various decrees by the Nigerian military government which, ousts the jurisdiction of the domestic courts, and specifically nullifies any domestic effect of the African Charter, were in violation of the Charter. The Commission held that the obligation under article 1 commences at ratification and that it will only cease when ratification is withdrawn through an international process involving notice. It also stated that a State cannot negate the effects of its ratification of the Charter through domestic action as it would constitute a serious irregularity, and as such Nigeria remained bound by its obligation under the Charter.

A State's duty to undertake measures implies that a State must also take pre-emptive steps to prevent human rights abuses. Even if State agents are not the immediate and direct cause of a violation, the State still has the duty to intervene in order to prevent such violation or investigate incidents.

In Communication 74/92, Commission Nationale des Droits de l'Homme et des Libertes v Chad, the African Commission held that a State will violate article 1 of the Charter if it neglects to ensure the rights guaranteed in the ACHPR, even if its agents are not the immediate cause of violation. It also stated that the failure of the Chadian government to secure the safety and the liberty of its citizens and to conduct investigations into murder, violated article 1 of the Charter.

16 Freedom, equality, justice and dignity which are essential objectives for the achievement of the legitimate aspirations of the African peoples.
So then, our chickens are coming home to roost, and Social Economic Rights, need to have the status of enforceable and realizable rights. Simply put, the thousands of famine victims in Northern Kenya, the landless and thousands squatters of Zimbabwe, The many South Africans who are HIV positive, and many more citizens in the various African states need to be assured that their governments are equipped, in terms of organizational and political ability to achieve enough of a radical rupture with the past to make good their commitments in the charter, to ensure the progressive realization of socio-economic rights. How, Remains the greatest question, which the content of this research paper tries to propose.

1.2 PROBLEM STATEMENT

The African Charter on Human and People’s Rights has received almost universal ratification by the African Countries. This ratification then means the charter is widely accepted as containing universally recognized principles of Human Rights. The problem that arises from this ratification with regard to the Socio-Economic Rights then is, are the Socio-Economic Rights in the charter justiciable rights in the ordinary way or are they mere directives of state policy? Are the rights directives of state policy as programmatic indicators rather than enforceable rights that are realizable? The transformation of Economic, Social Cultural Rights, into positive law by these ratifications is not enough, since they must be realized, how remains the question.

1.3 OBJECTIVES OF THE STUDY

This research paper broadly seeks to:

i) Show the interdependence of Civil and Political Rights and Socio-Economic Rights in making Socio-Economic rights justiciable and realizable.

ii) Highlight the need for holistic reform in making Socio-Economic Rights realizable.
And specifically to:

i) Show that the realization of economic social cultural rights may be achieved through various settings. There is no single road to their full realization.

ii) That a concerted national effort to invoke the full participation of all sectors of society is indispensable to achieving progress in realizing economic social cultural rights.

iii) To show that trends in international economic relations play an important part in realization of economic social cultural rights in Africa.

1.4 JUSTIFICATION

For various reasons Economic social cultural rights have not received the same attention as civil and political rights. It is time to change this. The inclusion of Socio-Economic rights in the African Charter on Human and People’s Rights thus sought to contribute to addressing one of the greatest challenges facing Africa, its people and its governments, the massive legacy of poverty and inequality. Realization of Economic Social Cultural rights is said not to be an easy task in a continent such as Africa that is so underdeveloped. Suggestion on ways of ensuring and realizing these rights is what this research paper seeks to add to the field of law.

1.5 HYPOTHESIS:

This study is based on several assumptions:

i) That Economic, Social Cultural Rights are not pie in the sky and the provisions that set them out do not diminish the prestige of the African Charter on Human and People’s Rights.

ii) That Economic, Social Cultural Rights as provided in the African Charter on Human and People’s Rights are realizable and can be achieved.

iii) That, though Economic, Social Cultural rights have budgetary elements, African countries can still afford their implications.
1.6 SCOPE

This research paper looks at proposals of realizing Economic Social Cultural Rights contained in the African Charter on Human and Peoples Rights within the African countries perspective. It is appreciated that most African countries issues are mirror reflections of the other. We appreciate that the different African countries have different intricacies that make it complex or difficult in making the Socio-Economic rights realizable, however, the suggestions on realization that are proposed would work in most of these countries.

Realizing Economic Social Cultural Rights in the African Charter on Human and Peoples Rights in a continental perspective is how far we stretch.

1.7 METHODOLOGY

We are going to rely mostly on secondary data, which is from books and articles that have been compiled on the subject. Internet research is also going to play an important part of this research work. Several Research work has been done by United Nations on issues pertaining to Socio Economic rights in Africa and the developing countries, we shall be relying on some of this material.

We will engage Human Rights activists of various civil society organizations in discourse and discussions on ideas and suggestions on how to make Economic, Social, Cultural rights Realizable. These discussions will form part of our primary data. My raw ideas on realization will be discussed with several of my classmates and my supervisor, all these information we hope to package to form the content of this research paper.
1.8 LITERATURE REVIEW:


While Shedrack C. Agbakwa’s article comes close to our subject of research albeit somewhat as it is based on the African Charter on Human and People’s Rights. Our article has several points of divergence with Shedrack’s, since he argues that economic, social, and cultural rights are the key to effectively realizing human rights in Africa. He also contends that human rights discourse on the indivisible bundle of rights must be put into practice in the African context, where these rights are people’s primary means of self-defense. Shedrack’s Article proceeds to argue that African governments’ failure to enthrone enforceable socio-economic rights compromises civil and political rights. It then examines the inextricable link between these rights and development, arguing that there is no justification for discriminatory enforcement of human rights. The Article addresses factors inhibiting the realization of these rights; it is here where we share a commonality since we also address some factors that inhibit the realization of these rights. Shedrack’s article further highlights the broad consequences of the continued marginalization of socio-economic rights. Finally, it urges a rejection of the Western model and explores approaches to improve the fortunes of these rights. The core of our article is not to improve the fortunes of economic social cultural rights; we seek to give proposals on how they can be realized. Shedrack’s Article concludes that selective enforcement of human

17 Yale Human Rights and Development law Journal, vol 5
rights in the context of worsening social, economic, civil, and political conditions is a heedless truncation of humanity.

Our research paper comes close to Danilo Turk’s report on the realization of economic social cultural rights. However Danilo Turk’s report is in five chapters on a variety of issues. Chapter 1 reflects on the need for a comprehensive approach towards human rights and the strengthening of economic social cultural rights. Whereas in our research paper we show the interdependence between economic social cultural rights and civil and political rights, we just mention and do not give a lot of emphasis on a comprehensive approach. Chapter 2 deals extensively with the barriers which obstruct the realization of these rights. We share similarities in the barriers of realization of economic social cultural rights, but we give the barriers an African face, localizing the barriers as opposed to looking at them holistically as barriers for third world countries. In chapter 3, the role of the international financial institutions is further explored, while chapter 4 provides a reflection on the need for new approaches to contribute to a better realization of economic social cultural rights. We do not give so much emphasis to the financial institutions; we give them a mention as part of the barriers to the realization of these rights but nothing more than that. Lastly, chapter 5 contains a consolidated set of recommendations which could, in the opinion of the Special Rapporteur, help the Sub-Commission to develop further its approach towards the issues of realization of economic social cultural rights. We confine our proposals on how the economic social cultural rights under the African charter can be realized, not giving realization recommendations on the whole body of rights. We take into consideration the African circumstances and the African Implementation structures. There are also other chapters in our research paper which bare no resemblance to the report, the chapters on minimum core content of the various rights as well as an interpretation of the various rights.

El Hadji Guissé’s, study deals with current and or recent economic, social and cultural rights violations and of so-called collective rights such as the right to development and the right to a healthy environment, irrespective of their perpetrators, whether States or their agents, groups of States, national or international private organizations or individuals or groups acting outside the competence of the State. This study only
compares with a chapter in our research, the chapter that deals with the barriers to the realization of economic, social and cultural rights.

Having given the above review, suffice it to say, that however much this research paper seems to borrow some lines of argument from the reviewed literature, it takes its on angle of argument to make proposals on the realization of economic, social cultural rights under the African Charter on Human and People’s Rights.

1.9 OVERVIEW OF CHAPTERS:

This research paper is going to be in six chapters. This first chapter has been introductory laying ground for the subsequent ones. The second chapter will highlight and interpret the Economic Social Cultural Rights contained in the African Charter on Human and Peoples. The third chapter will be juxtaposition right by right, on the minimum core obligations required in realizing Economic Social Cultural Rights. The fourth chapter will look at the challenges of making Economic Social Cultural Rights Realizable in Africa. The fifth chapter will be on suggestions and proposals on how to realize the Economic Social Cultural Rights. The last chapter will have my recommendations as well as concluding remarks.
CHAPTER 2:

2.0 ECONOMIC SOCIAL CULTURAL RIGHTS: AN INTERPRETATION:

Economic Social Cultural Rights or Second generation rights\(^{18}\) are ‘positive rights’\(^{19}\) which impose obligations on the part of the government. The idea of Economic Social Cultural rights is that the state must be obliged to do whatever it can to secure for all members of society a basic set of social goods-education, healthcare, food, water, shelter and a clean environment.\(^{20}\)

Economic Social Cultural Rights, in my opinion require what one would call entitlements\(^{21}\), that is, enforceable claims on the delivery of goods, services, or protection by specific others. An entitlement approach to Economic Social Cultural Rights would be important to avoid the simplicity of focusing on the ratio of the services to the population. It will thus give a shift in thinking from what exists to who can command what. Concretization of the entitlements provides an opportunity to develop some of the indicators that will be needed to assess the impact on Economic Social Cultural changes that shall take place at more distant levels.

The African Charter protects the right to property, the right to work and to be paid equally for equal work, the right to enjoy the best attainable state of physical and mental health and the right to education. The Charter places the burden on the State to promote and protect the 'moral and traditional values recognized by the community'. It further ensures protection for the family, which it characterizes as 'the natural unit and basis of society' and declares that it needs assistance from States. The elimination of all forms of

\(^{18}\) The different rights operate in the support of each other, since the realization of one right might be dependent on the realization of another. Starving people may find it difficult to exercise their freedom of speech, while a restriction on freedom of speech may make it difficult for individuals to enforce their right to access to housing.

\(^{19}\) Positive rights –are claims by individuals and groups on the delivery of goods by the government as opposed to civil and political rights which are seen as negative rights which take power away from the government by imposing duty not to act in certain ways, for example the duty not torture.

\(^{20}\) The Bill of Rights Hand Book, Pg 398.

\(^{21}\) Amartya Sen, in Poverty and Famines. An Essay on Entitlements and deprivation, 1981, lists four among the entitlement relationship, trade based entitlement, one is entitled to own what one obtains by trading something one owns with a willing party. Production-based entitlement. Own labour entitlement, one is entitled to own ones labour power, inheritance and transfer entitlement , one is entitled to own what is willingly given to one by another who legitimately owns it.
discrimination against women and the protection of the rights of the woman and the child are ensured.

In the following paragraphs, we shall highlight the specific provisions and proceed with a possible interpretation of what those various economic social cultural rights entail.

### 2.1. THE RIGHT TO PROPERTY

Article 14\(^{22}\) provides that ‘The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws’. The right to property guaranteed under this provision is the right to own property, hold it and to dispose of it. No one should be denied the right to acquire any property. In instances where one is deported and separated from their property it can be construed that the right to property has been violated.\(^{23}\)

The article however entitles states to encroach upon this right to the extent that a person's property\(^{24}\) may be needed for public\(^{25}\) need and in the interest of the community in general. Whereas the right to property is an economic and social right as it protects the economic interests of the individual, this protection is of a negative character, emphasizing the non-interference by the authorities, rather than a positive character.

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\(^{22}\) The African Charter on Human and People’s Rights.

\(^{23}\) In Communication 159/96 to the African Commission, UIDF, FIDH, FADDHO, ONDH, AMDH v Angola, it was stated that the type of deportation of non-nationals in this case calls into question rights guaranteed under the Charter such as property rights. Therefore the deportation of victims, thus separating them from their property constituted a violation of article 14 of the Charter.

\(^{24}\) Armen A. Alchian in the Concise encyclopedia of economics states that: the three basic elements of private property are (1) exclusivity of rights to the choice of use of a resource, (2) exclusivity of rights to the services of a resource, and (3) rights to exchange the resource at mutually agreeable terms.

\(^{25}\) Public purposes may include the building of a dam. However, such encroachment must be done with the provisions of appropriate laws. The South African and Kenyan Constitution for instance, provide for adequate compensation if a person's property is to be used for public interest. This can be regarded as an appropriate law. However, the general community interest does not require that the property should be put to use to the community generally, or even a substantial proportion of it, should directly benefit from the taking. Case of James and others, judgment of 21 February 1986, Publications of the European Court of Human Rights, Series A, no 98 paras 53-66. Additionally, legislation measures governing the contractual or property rights of private individuals can be in the public interest, even if they involve the transfer of property between an individual and another.
emphasizing the active measures by the state to ensure that everyone in fact enjoys the right to property.

To what extent therefore can the interest of the community be used to encroach on private property? Since an effective realization of economic and social rights calls for redistribution of wealth and resources while the right to property protects acquired rights and can thus run counter to social rights. How far can the right to property contribute to the enjoyment of socio-economic rights, or does the right to property by its very nature hamper an effective realization of socio-economic rights?

In my opinion, the right to property comprises three distinct rules. The first enounces the principal of the peaceful enjoyment of property. The second addresses deprivation of possessions and subjects this to certain conditions. The third rule recognizes that the states are entitled, to among other things, to control the use of property in accordance with the general interest, by enforcing such laws as it deems necessary for the aim pursued.

2.2 RIGHT TO WORK:

“Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.”26

Work related rights27 could be divided into several sub categories that include, employment related rights, employment derivative rights28, instrumental rights29 and equality of treatment and non-discrimination rights.30

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27 The right to work and rights in work, by Krzysztof Drzewicki, in Economic, social and cultural, universal challenge pg 173.

28 These rights refer to such rights as the right to just conditions of work, such as working hours, annual paid holiday and other rest periods, the right to safe and healthy working conditions, the right to fair remuneration, the right to vocational guidance and training.
29 Here one has in mind, such freedoms and rights as freedom of association and the right to organize, the right to collective bargaining, the right to strike and the freedom of migration of workers. The rights are instrumental in the sense that they provide indispensable implements and set a favorable framework without which an unimpeded exercise of work related rights might be seriously affected.
Article 15 of the ACHPR in my opinion suggests that, individuals have not only to work but conditions of work must be healthy and the terms of employment must be fair. This will include that the number of working hours be reasonable, working conditions be safe, payment proportionate to work done, and individuals should not be discriminated against in their place of work. This provision may also be interpreted as imposing an obligation on states to adopt programs and other measures to create job opportunities for every person\textsuperscript{31}. Where the right to work has been understood \textit{sensu stricto} as the right to employment or the right to be provided with work, full employment oriented policy has resulted into over-employment and economic inefficiency.

An important component of the right to work is the right to protection of employment, that is to legal and other arrangements for the maintenance and protection of Labour relationship\textsuperscript{32}.

We have given what in our opinion the right to work amounts to, but all in all, a set of employment related rights appears to be an umbrella human rights principle rather than a specific right, since it is essentially diversified in its legal modalities and everyone may have a completely different content of mind.

\textbf{2.3 RIGHT TO HEALTH:}

\begin{quote}
“Every individual shall have the right to enjoy the best attainable state of physical and mental health. States Party to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”\textsuperscript{33}
\end{quote}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{30} This addresses work related rights from an angle of non-discrimination and equality of treatment.
\item\textsuperscript{31} Evelyne Ankumah interpretation of this right in her book 'The African Commission on Human and Peoples' Rights'.
\item\textsuperscript{32} Social economic and Cultural rights, edited by Allan Rosas and Absjorn Eide, pg 182.
\item\textsuperscript{33} Article16, African Charter on Human and People’s Rights.
\end{itemize}
\end{footnotesize}
The afore-mentioned article gives rise to three components, first, the highest attainable state of health\textsuperscript{34}, which obviously varies in time and place. The right to health\textsuperscript{35} does not mean a person has a right to be healthy, since no individual nor government can assure a specific state of health. A person’s right to health is determined by an individual’s heredity and environment, and moulded by health interventions to a limited degree. The second component creates an obligation on the state parties to take necessary measures to protect the health\textsuperscript{36} of their people. The protection of the health of the people envisages, citizens who are not sick, but incase they get sick, then the third component, ‘to ensure that they receive medical attention when they are sick’ comes into play.

The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include

\textsuperscript{34} Health is defined as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity, Basic Documents of the WHO, 1988, 37\textsuperscript{th} edition, pg 1-2

\textsuperscript{35} The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health. (Paragraph 3 general Comment No. 14 (2000) the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). The right to physical and mental health is also related to other rights guaranteed under the African Charter like the right to life, freedom from torture, the right to a satisfactory environment as was stated in Communication 25/89, 47/90, 56/91, 100/93 Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interafrique des Droits de l’Homme, Les Temoins de Jehovah v Zaire alleged amongst others that public finances were mismanaged; that the failure of the government to provide basic services was degrading. The Commission upheld this view and found that the failure of the government to provide basic services such as safe drinking water and electricity constituted a violation of the right to health. It also held that the shortage of medicines was a breach of the duty to protect the health of the people under article 16 of the Charter.

\textsuperscript{36} The scope of the right to health is that, every human being has the right to an environment with minimum health risks, and to have access to health services that can prevent or alleviate their suffering, treat disease, and help maintain and promote good health throughout the individual’s life- Women’s Health: Across Age and Frontier, WHO, 1992 pg v. The right to health as per Jonathan Montgomery, ‘Rights to Health and Health Care, in: A. Coote (Ed) The welfare of citizens, Developing New Social Rights, 1992 Pg 89. Could be broadly into three, individually enforceable rights, aimed to secure minimum standards, aspirational rights aimed at directing national policy towards health improvement and legal obligations to ensure conditions that make it possible for citizens to choose to pursue maximal health.
the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health\textsuperscript{37}.

The notion of "the highest attainable standard of health" takes into account both the individual's biological and socio-economic preconditions and a State's available resources. The right to health in all its forms and at all levels contains interrelated and essential elements which include availability\textsuperscript{38}, accessibility\textsuperscript{39}, acceptability\textsuperscript{40} and quality\textsuperscript{41} the precise application of which will depend on the conditions prevailing in a particular State party.

\textsuperscript{37} Paragraph 8 General Comment No. 14 (2000) The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)

\textsuperscript{38} 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. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs.

\textsuperscript{39} Accessibility has four overlapping dimensions:

Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

\textsuperscript{40} All health facilities, goods and services must be respectful of medical ethics and respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

\textsuperscript{41} Health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, \textit{inter alia}, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.
2.4 RIGHT TO EDUCATION

“Every individual shall have the right to education. Every individual may freely, take part in the cultural life of his community. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State”.42

The right to education43 is a positive right that requires states to provide education44 for all. Education for all therefore guarantees the right to equality of treatment and freedom from discrimination in education.

Article 17 further protects the right of an individual to take part in his communal activities. It prohibits the State or private individuals and institutions from interference with an individual's right to use the language or to participate in the cultural activities of his choice. It therefore protects persons belonging to a cultural, religious or linguistic community of participation in their culture, language and religion with other members of that community.45

Education is a public function, and states have the right and the duty to provide for education and to compel children until a certain age to attend school. Compulsory education is an important means by which the state protects children against their parents and all forms of economic exploitation.

42 Article 17, the African Charter on Human and People’s Rights.
43 The right to education consist of the right to primary education, the right to secondary education, the right to higher education the right to fundamental education, the right to choice of schools and the principle of compulsory education free of charge.- Guidelines II (b)) on the African Commission's guidelines for the submission of state reports.
44 Education is a precondition for the exercise of human rights. The enjoyment of many civil and political rights, such as freedom of information, expression, assembly and association, the right to vote and to be elected or the right of equal access to public service depends on at least a minimum level of education, including literacy. Similarly, many economic, social and cultural rights, such as the right to choose work, to receive equal pay for equal work, the right to form trade unions, to take part in cultural life, to enjoy the benefits of scientific progress and to receive higher education on the basis of capacity, can only be exercised in a meaningful way after a minimum level of education has been achieved.
45 In Nigeria and Cameroon for instance, Muslims are free and do in fact take part in their religious educational programmes, while not being refused to attend ordinary schools.
Suffice it to say, the right to education is one of the most complex human rights. It is based on a variety of, sometimes antagonistic, philosophical foundations and encompasses aspects of all three generations of human rights.

2.5 RIGHT TO FAMILY

“The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.”

The article reflects two important aspects, the right to family and the right of vulnerable members of the society. The right to family includes the right to found a family, such as the right to marry and the right to have a family. It also includes the right not to get married without the full and free consent and equality in marriage, which asserts the equal rights and responsibilities of both men and women at marriage, during the marriage and at its dissolution. The family as a whole needs the protection of the State from interference in its peaceful existence, either from private individuals, institutions or State agents.

The article also obliges the State to protect the rights of women, children (as stipulated in international conventions and declarations), and the old and disabled. The protection of the right of women includes non-discrimination in different spheres of life on basis of sex. Women should not be unfairly treated in their place of work; they should have the

46 Article 18, African Charter on Human and People’s Rights.

47 The family is recognised as the most natural and fundamental unit of society and therefore the right of all to marry and found a family is protected in human rights law. Human rights law does not dictate the types of family unit that are deemed acceptable and in the world today there are many diverse forms of families and marriages. (Asmita Naik in Human Rights Education Associates Publication, 2003)
same opportunities as men in the conduct of public activities. Children especially when they are very young are vulnerable and need special support in order to fully enjoy their rights. In addition to other rights therefore, children need family care, not to be abused or neglected not to be forced to work or given work which is not suitable for the child, not to be forced to marry, not to be detained unless this is absolutely necessary; in which case they must be kept separate from adults and they need not to be used during wars.

The State should take steps to provide old and disabled people with assistance in the form of social security and disability benefits. This assistance is very much needed by this group of vulnerable persons since they cannot support themselves and their dependants.

**CONCLUSION:**

An interpretation of the components of the various socio-economic rights forms the indicators from which the various state parties’ activities are measured to their obligations under the charter. This chapter helps us understand what in my opinion would be the highest level of implementation required of the state activities, if they are to raise a claim as to helping realize the various socio-economic rights under the charter.
CHAPTER 3: JUXTAPOSITION RIGHT BY RIGHT OF MINIMUM CORE OBLIGATIONS OF THE ECONOMIC, SOCIAL CULTURAL RIGHTS IN THE AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS:

3.0 INTRODUCTION:

It should not be taken for granted that the realization of economic, social and cultural rights depends significantly on action by the state, although, as a matter of international law, the state remains ultimately responsible for guaranteeing the realization of these rights. This international responsibility imposed upon the state creates a need to deal with the accountability of governments for failure to meet their obligations.

Like civil and political rights, economic, social and cultural rights impose three different types of obligations on states: The obligations to respect, protect and fulfil. The obligation to respect requires states to refrain from interfering with the enjoyment of economic, social and cultural rights. The obligation to protect requires states to prevent violations of such rights by third parties. The obligations to fulfil require states to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights.

The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action

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48 The International Covenant on Economic Social Cultural Rights and the General Comments do not anticipate that the necessary resources will all come from the state. The resources are those that are available within the society as a whole, from the private sector as well as the public. (pg 17, Exploring the core content of socio-economic rights: South African and International perspectives, edited by Danie Brand and Sage Russell)


50 Ibid paragraph 6

51 Thus the right to housing is violated if the state engages in arbitrary forced evictions.

52 The failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to protect also includes the states responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights.

52 The failure of states to provide essential primary health care to those in need may amount to a violation.
reasonably calculated to realize the enjoyment of a particular right.\textsuperscript{54} The obligation of result requires states to achieve specific targets to satisfy a detailed substantive standard.\textsuperscript{55}

Violations of Economic, Social and Cultural rights, occur when a state fails to satisfy what are referred to as “minimum core obligations to ensure the satisfaction of, at the very least, minimum essential levels of each of these rights”.\textsuperscript{56} State efforts in realizing economic, social and cultural rights can then, in our opinion, be measured against the efforts the state has made to achieve, the minimum core obligations of each right in question.

### 3.1.0 MINIMUM CORE OBLIGATIONS, AN OVERVIEW:

Minimum core obligation is the floor beneath which the conduct of the state must not drop if there is to be compliance with its obligations in realizing economic, social and cultural rights.\textsuperscript{57} Each right has a minimum essential level that must be satisfied by the state parties.

Minimum core obligation is determined generally by having regard to the needs of the most vulnerable group that is entitled to the protection of the right in question. It is not possible to determine the minimum threshold for the progressive realization of a right without first identifying the needs and opportunities for the enjoyment of such a right. Variations ultimately depend on the economic and social history and circumstances of a country.\textsuperscript{58} The state’s

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\textsuperscript{53} In the case of right to health, for example, the obligation of conduct could involve the adoption and implementation of plan of action to reduce maternal mortality.

\textsuperscript{54} With respect to the right of health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and development and the 1995 Beijing Fourth World Conference on Women.

\textsuperscript{55} The concept of ‘minimum core’ was developed by the United Nations Committee on Economic, Social and Cultural Rights, which is charged with monitoring the obligations undertaken by state parties to the International Covenant on Economic, Social and Cultural Rights.

\textsuperscript{56} Minimum state obligations: international dimensions, by Sage Russell, contained in page 11 of Exploring the core Content of Socio-economic rights: South African and International Perspectives, edited by Danie brand and Sage Russell.

\textsuperscript{57} Extracts from the judgement of Yacoob J. in Government of the Republic of South Africa and Others V Grootboom and Others, 2001(1) SA 46 (CC), 2000(11) BCLR 11 69 (CC) paragraph 32.
obligation to provide for economic, social and cultural rights depends on context and may differ from urban areas to rural areas\(^{59}\) and from person to person. The extent of the state’s obligation in realizing an economic, social and cultural right is the obligation to take reasonable legislative and other measures, to achieve progressive realization of the right within available resources.\(^{60}\) These three key elements are discussed in detail below.

### 3.1.1 Reasonable legislative and other measures:

All State parties have an obligation to begin immediately to take steps towards full realization of economic, social and cultural rights.\(^{61}\) At the National level states parties, are to use appropriate means including legislative, administrative, judicial, economic, social and educational measures consistent with the nature of the rights in order to fulfil their obligations\(^{62}\)

Mere legislation however is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate\(^{63}\) well directed policies and programs implemented by the executive. The policies and programs must be reasonable both in their conception and their implementation. The formulation of the program is only the first stage; the program must also be reasonably implemented. An otherwise reasonable program that is not implemented reasonably will not constitute compliance with

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58 What might be appropriate in a rural area where people live together in communities engaging in subsistence farming may not be appropriate in an urban area where people are looking for employment and a place to live.


62 Paragraph 17 ibid.

63 While each state party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights, the ‘appropriateness’ of the means chosen will not always be self evident. It is therefore desirable that states parties should indicate not only the measures that have been taken but also the basis on which they are considered to be the most appropriate under the circumstances.
the state’s obligations. The program must be balanced and flexible and make appropriate provision for attention to short term, medium and long term needs.

3.1.2 Progressive Realization of the right:
The obligation to achieve progressively the full realization of the rights requires states parties to move as expeditiously as possible towards the realization of the rights. Progressive realization does not mean that states shall defer indefinitely efforts to ensure full realization. States on the contrary have the obligation to begin immediately to take steps to fulfil their obligations. Progressive realization is a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. However, it imposes the obligation to move as expeditiously and effectively as possible towards these goals.

3.1.3 To the Maximum of its Available Resources:
States are obligated regardless of the level of economic development to ensure respect for minimum subsistence rights for all. A state’s available resources under this obligation refer to both the resources within a state and those available from the international community through international cooperation and assistance. In determining whether adequate measures have been taken for the realization of the rights, attention is paid to equitable and effective use of and access of the available resources.

3.2.0 MINIMUM CORE OBLIGATION OF THE RIGHT TO EDUCATION.
The Minimum core requirements for the right to education entail mainly two components.

63 Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realization of the right. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.
65 Paragraph 21 supra
66 Committee on Economic, Social and Cultural rights General Comment 3, Paragraph 9.
67 Supra note 13
3.2.1 The right of access to public institutions without discrimination
States should provide education for all. Education for all should guarantee the right to equality of treatment and freedom from discrimination in education.

3.2.2 Free choice of education without interference by the state or a third party.
The state, private individuals and institutions should be prohibited from interference with an individual's right to use the language or to participate in the cultural activities of his choice. Persons belonging to a cultural, religious or linguistic community should be protected to participate in their culture, language and religion with other members of that community. Individuals should be able to attend a school where the values of his community like their religion are taught.

3.3.0 MINIMUM CORE OBLIGATION OF THE RIGHT TO HEALTH
The components of the minimum core obligation to health include

3.3.1 Availability – public health care facilities must exist in sufficient quantity. At a minimum, this includes safe drinking water, adequate sanitation, hospitals and clinics, trained medical personnel receiving domestically competitive salaries, and essential drugs.

3.3.2 Accessibility – health care must be physically and economically affordable. It must be provided to all on a non-discriminatory basis. Information on how to obtain services must be freely available.

3.3.3 Acceptability – all health facilities must be respectful of medical ethics, and they must be culturally appropriate

3.3.4 Quality – health facilities, goods, and services must be scientifically and medically appropriate and of good quality. At a minimum, this requires skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe water and adequate nutrition within the facility.
3.4 MINIMUM REQUIREMENT ON THE RIGHT TO WORK.

The right to work needs to be accorded the following minimum requirements

3.4.1 Freedom of Association: Everyone has a right to join free trade unions. Unions have the right to strike and function freely.

3.4.2 No discrimination: Discrimination in accessing employment is strictly prohibited, including distinctions, exclusions, restrictions, or preferences, in law or practice, on the grounds of race, color, sex, nationality, political opinion, social origin, or age. Discrimination on the basis of sexual orientation or class should also be prohibited.

3.4.3 No arbitrary dismissal: Arbitrary dismissals are prohibited, and there must be adequate domestic resources for redress if a worker is arbitrarily dismissed.

3.4.4 Equal pay for equal work: There must be equal pay for equal work, meaning that no two people working the same type of job can receive different salaries. There must be adequate remedies to address any such inequalities.

3.4.5 Adequate minimum wage: There must be machinery for fixing, monitoring, and enforcing equitable minimum wage levels that are geared to the cost-of-living index.

3.4.6 Equal Opportunity: There must be equal opportunity for promotion.

3.4.7 Right to Rest: Rest and leisure: there must be a reasonable limitation of working hours, periodic holidays with pay, and remuneration for public holidays.

3.5.0 CONCLUSION:

This chapter provides us with what we would call a benchmark for a needs assessment on the parts of the various African Governments. A needs assessment based on the benchmark of minimum core obligations could be used to discourage the African Governments from taking deliberately retrogressive measures. The governments could then be encouraged to meet their "minimum core obligation", to ensure that their residents do not need to survive below the threshold of decency through the use of their own resources and through receiving international assistance.
CHAPTER 4: CHALLENGES OF REALIZING ECONOMIC SOCIAL CULTURAL RIGHTS UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS:

4.0 Introduction

The African Charter on Human and People’s Rights does not give succinct definitions as to the content of the various rights. It is our belief that since most of the states parties to the charter also subscribe to the International Covenant on Economic Social Cultural Rights, then the definitions of the core content of the rights as contained in the committee for Economic Social Cultural Rights various general comments, highlighted in chapter two, would be applied.

The challenges to the realization and enforcement of Economic Social Cultural Rights under the African Charter include several external factors. These factors include a host of political, economic and historical forces that prevent States Parties from fulfilling their Economic Social Cultural Rights obligations under the Charter.

This research paper will however not exhaustively deal with all these factors, but simply give overviews and show how they impede realization.

4.1 Lack of Effective Enforcement and Promotion

The absence of effective promotion and enforcement at the agency level impedes the realization of Economic Social Cultural Rights under the Charter. The African Commission has yet to address the Charter’s Economic Social Cultural Rights-related issues in any significant way. The Commission has concentrated its efforts mainly on civil and political rights to the detriment of Economic Social Cultural Rights. The Commission however can only entertain cases brought before it. The Commission does not have a mandate to be a knight errant in shining armor initiating cases on behalf of helpless victims. However, one of its primary mandates, is to undertake studies and researches on African problems in the field of human and peoples’ rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples’ rights.68…

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68 Article 45(1) (a) African Charter on Human and People’s Rights.
The dearth of cases on Economic Social Cultural Rights is due in part to the Commission’s inadequate efforts to encourage such cases and to educate and sensitize people as to their rights. Given its broad mandate, the Commission has a responsibility to ensure respect and observance of provisions of the Charter, without exception. There is need to successfully promote and protect Social Economic Rights, since in the absence of effective promotion, individuals are less likely to assert their rights no matter how clearly they are expressed.

4.2 Misconception of the state: Inept leadership and Corruption

The legal basis upon which economic social cultural rights rest, essentially assumes the presence of a "strong" State as the motor behind realizing these rights, combined with a correlative national approach towards this category of legal entitlement. Alongside the assumption of a strong State are other inherent political factors which would seem critical for the society-wide enjoyment of these rights.69

It goes without saying that the world as we know it does not resemble this vision, even though the existence of the "strong State" is still assumed by many to be the norm. A great many States, including those purported to be democratic by nature, in many important ways far more resemble "soft" or "particularistic" forms of governance than the "strong" or "universalistic" vision so often coupled with ideal views of the State protecting, respecting and fulfilling economic social cultural rights.

The particularistic State, instead of basing actions, policy, programs and projects exclusively on "the rule of law" or existing international and national commitments, tends on the contrary to govern more on the basis of connections, inducements, political ties, money and patron-client relationships.70 This situation, naturally, has tremendous implications for a number of aspects of the political dynamic affecting the realization of economic social cultural rights.

69 They include, but are not limited to: a well coordinated, efficient and corruption-free ministerial and governmental apparatus; a reasonable degree of decentralized decision-making and popular participation by citizens; consistently applicable and non-politically motivated respect for the rule of law; the existence of "good government" supported by the will of the citizenry; government-wide knowledge of and adherence to international commitments regarding economic social cultural rights; an economic planning process geared towards the progressive realization of these rights and so forth.

70 Hans Blomkvist "Housing and the State in the third world: misperceptions and non-perceptions in the international debate", in Scandinavian Housing & Planning Research, vol. 6, 1989, pp. 129-141.
The particularistic State breeds corruption and this too has a generally negative influence on the realization of economic social cultural rights. The ineptitude and corruption of certain past and present African leaders have worsened the socio-economic woes of the continent. Whereas Corruption is hardly unique to Africa, some African states have elevated it to an art form worthy of its own national museum. Resources that should have been utilized to provide basic facilities have been flinched and transferred into private Western bank accounts of high-ranking African leaders and officials. Less directly, corrupt leaders steal by rejecting policies that would better spur development and promote Economic Social Cultural Rights in favor of policies that bring greater profits their way through businesses, investments, or unscrupulous cohorts. The interests of the people are pursued only to the extent that they coincide with the selfish interests of those in power.

4.3 Structural Adjustment:
The relationship between the human rights obligations of States and the conditionality attached to structural adjustment loans is critical. The conditions generally set by International Monetary Fund, which must be fulfilled by a recipient country prior to receiving financing from the World Bank or before being considered as internationally creditworthy, concern areas of state involvement which can have a decidedly negative influence, both directly and indirectly, on the realization of economic social cultural rights.

The adjustments culminate in severely austere measures that unleash sweeping pauperization on the majority of people and “a severe deterioration in the abilities of these countries to uphold the economic and social rights of their peoples.” Many African states are goaded into adopting the structural adjustment policies of the International Monetary Fund and World Bank. These policies appear to have worsened their economic circumstances. These states have had to reduce their imports, devalue their currencies, deregulate capital movements, privatize state public utilities, dismantle social programs by cutting government expenditures on social services, such as health

care, education and removal of subsidies on market staples, and provide “national treatment” to foreign investors.\textsuperscript{72} The obvious impact of structural adjustment programs is to reduce the capacity of the states to meet their human rights obligations. Structural adjustment promotes marginalization and deprivation of Economic Social Cultural Rights by both worsening conditions and preventing states from recognizing or enforcing Economic Social Cultural Rights. The imposition of these policies devalues an ethos of accountability since external actors, who are not accountable to the affected people, induce these measures.\textsuperscript{73}

\section*{4.4 Debt}

The debt crisis of the past decade, linked closely to the adjustment process, also has direct repercussions upon the realization of economic social cultural rights. Servicing these debts some of which are “merely a series of fictitious operations bringing no benefit to the populations concerned, which they are nevertheless called on to repay, greatly incapacitates the states involved. They also undermine the prospects of the affected states to provide even the most basic facilities needed to meet Economic Social Cultural Rights obligations.

Debt servicing has had negative impacts especially on the poor and their children, obliging them to do without food subsidies and health and other services, and often Pressing them into exploitative working conditions. This devastating impact is not mitigated by international development assistance, because, the amount of money going from the South to the North for debt servicing greatly exceeds the current amounts of official development assistance going from the North to the South.\textsuperscript{74} Moreover, official

\begin{footnotesize}

\footnote{73 Obiora Chinedu Okafor, Re-Conceiving “Third World” Legitimate Governance Struggles in Our Time: Emergent Imperatives for Rights Activism, 6 BUFF. HUM. RTS. L. REV. 1, 1}

\end{footnotesize}
development aid is likely to benefit the rich and the middle class rather than the poor. . . . since it does not concentrate on the most needy either within countries or among Countries.

One is tempted to agree with the suggestion that “perpetuating the debt of the developing countries is the result of a deliberate and political decision designed solely to frustrate any attempt by the developing countries and their peoples to achieve economic and social progress”. The fact that countries that oppose the measures suggested by the institutions themselves, agents of neo-colonial interests, do not receive any financial assistance amply lends credence to the suggestion.

4.5 Income distribution

Income distribution within States remains distressingly inequitable. Countries in Africa maintain economic systems where the richest 20 per cent of the population possess more than a 50 per cent share of total household income (and in some cases more than 60 per cent), while the corresponding share of the poorest 20 per cent of families hovers around 4 per cent. Carrying out adequate poverty-reduction programmes and fulfilling economic social cultural rights throughout society is unthinkable without redressing current income imbalances.

The growing income disparity between States has created a situation in which the average income in the rich countries is some 58 times (5,800 per cent) higher than in the least developed countries. This is a problem of crisis proportions. Viewed slightly differently, the poorest of the developing countries sustain more than half of the world's population, while possessing only 5.6 per cent of world income. Conditions such as these indicate that issues of income distribution must re-ender the framework of discussion regarding economic social cultural rights. Ignoring this issue, as now occurs all too frequently, will only augment existing problems.


Growing income disparities at the national level not only threaten the realization of economic social cultural rights but serve to polarize excessively and fragment societies into the precarious and destabilizing dualism of "haves" and "have nots". Coupled with the "retreating" State, income disparity provides a dangerous basis for alienation, disenfranchisement and cynicism, which can lead ultimately to deterioration in the very relations constituting civil society. Income distribution is a critical issue, if for no other reason than the relationship it has with democracy: "History suggests that increasingly polarized societies, in which growing numbers are paeperazed, are enormously handicapped in the search for democracy."77

4.6 The Consequences of Economic Growth:
Although it has to be recognized that growth is necessary for a successful policy of realization of economic, social cultural rights, a growth-oriented policy in itself is not enough. There appears to be no assurance that economic growth, fuelled by an open market will necessarily lead to poverty alleviation or an improvement in the "de facto" status of socio-economic rights.

The World Bank claims that there is no clear link, in either direction, between growth and changes in income distribution, implying that political intervention is required to rectify income imbalances even during times of economic expansion and that growth in and of itself is no guarantee of society-wide prosperity.78

4.7 Privatizing Human Rights

Governments need to do less in those areas where markets work, more can be made to work, reasonably well. Governments need to let domestic and international competition flourish. At the same time governments need to do more in those areas where the market may be relied upon. Above all, this means investing in education, health, nutrition, family planning, and poverty alleviation; building social, physical, administrative, economic, political, and cultural infrastructures.

77 Ghai and Hewitt de Alcantara, The IMF and the South, p. 39.

regulatory, and legal infrastructure of better quality; mobilizing the resources to finance public expenditures; and providing a stable macroeconomic foundation, without which little can be achieved.79

Accompanying the debate about greater private sector involvement in areas such as health, education, water and sanitation has come the imposition of "user fees" for previously free services; the theme of "cost recovery"; and instituting a system of targeted subsidies by replacing much broader welfare entitlements. Even though low-income groups may be willing to pay a fee for improved services, employing a system of user charges for services which should be free could conflict with the rights of the people involved. Offering the most basic services free permits greater equality of opportunity and fulfils a Government's responsibility to provide for its citizens' basic human rights.

When user fees are introduced, it discourages some poorer groups from seeking the service and in some cases it has been shown that when user fees are introduced there is a corresponding decline in demand from the poor, particularly for health services.

4.8 Misguided visions of development

Human development has never been a priority of spending by the rich countries. According to the United Nations Development Program human development expenditure ratio, the United States, despite having the world's largest Gross National Product, devotes only a meagre 0.01 per cent of its Gross National Product to aid in areas related to human development.80 The 12 largest international donor countries devote less than 10 per cent of what they give, averaged out, to the satisfaction of basic needs in recipient countries.81 Similarly, the percentage of all World Bank lending which goes to education, health, population control and nutrition is minor compared with that which goes to energy, industry, urban development, roads, water and sanitation and telecommunications


projects.\textsuperscript{82} The fact is that development aid has been far too limited to make a significant dent in global poverty.

4.9 Deficient Political Will

The analysis of public spending on human development and of how such expenditure can be designed and monitored contained in the 1991 UNDP report suggests the use of four different but related ratios: the public expenditure ratio; the social allocation ratio; the social priority ratio; and the human expenditure ratio. These ratios are extremely interesting in view of their direct relevance to the obligations of Economic Social Cultural Rights, in particular with regard to measuring the until-now elusive concept of States parties obligation of taking "steps ... to the maximum of its available resources with a view to achieving progressively the full realization of the rights". Arguing that the human expenditure ratio may need to be around 5 per cent if a country wishes to do well in human development.\textsuperscript{83}

4.10 Environmental devastation

The human and economic costs associated with ill-conceived, improperly planned large-scale development projects often affect the realization of economic social cultural rights.\textsuperscript{84} Large dams which flood villages and traditional land of indigenous peoples, logging of the tropical rainforests, non-regulation of polluting industries and numerous other devastating assaults on the environment threaten not only the long-term stability of the ecosphere, but run roughshod over people’s rights in the process. Environmental devastation also has extremely high economic costs, which greatly inhibit economic stability and erode national income. Environmental factors affect the


\textsuperscript{83} UNDP could identify only six developing countries of the 25 examined which had attained this level, indicating the relatively low degree of political commitment to economic social cultural rights. More than half of the countries examined had human development expenditures of less than 3 per cent: UNDP, Human Development Report 1991, pg 39-41.

economies of the African countries more in relative terms. The World Bank has increasingly recognized the risks of impoverishment as a result of environmental degradation. Added to these issues, are the excessive financial costs for many countries of alleviating the worst excesses of global warming, a rise in tidal levels, counteracting the problem of ozone layer depletion and so many other results of humanity's contempt for the planet on which it depends.

4.11 Military expenditure and armed conflict
Most African countries maintain levels of military expenditure which are higher than the combined total spending on health and education which almost ensures that these States will be unable to fulfill the range of economic social cultural rights obligations. Overall, in fact, taking all African countries together, military spending equals combined expenditure on health and education.

4.12 Dualistic views of human rights
Economic Social Cultural rights continue to be viewed with suspicion, caution and skepticism, surrounded, as it were, with a hazy cloud of doubt and treated with an air of triviality. Although international law unreservedly treats this category of rights as equal to civil and political rights the latter group continues to receive far greater attention.

4.13 Conclusion
The aforementioned factors and surely many others continue to thwart the full realization of economic social cultural rights in Africa. Viewed in their totality these barriers indicate the vast distance between the global pursuit and recognition of these rights and their actual fulfilment. They reveal some of the conceptual leaps in perception required from the human rights community in grasping these negative factors and the necessity of transcending purely legalistic approaches towards economic social cultural rights. Unless

85 The cost of deforestation in Ethiopia is estimated at between 6 and 9 per cent of GNP and 5.7 per cent of GNP in Burkina Faso, World Development Report 1991, p. 26.

a much broader view of the nature of the forces blocking the realization of these rights is taken, there is little chance of today's less than ideal situation improving in the future. The need for a unified, compassionate and people-based approach towards the overall satisfaction of economic social cultural rights, built on a solid foundation of international solidarity, has perhaps never been more urgent than it is today. At the same time, the human, technological and resource capacities available have never been more capable of satisfying these rights. Clearly, the issue is no longer one exclusively of supply, but one of distribution, fairness, wherewithal and prioritization.
CHAPTER 5: PROPOSALS ON REALIZING THE ECONOMIC SOCIAL CULTURAL RIGHTS UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS.

5.0 INTRODUCTION

African states ought to take the lead in realization of economic social cultural rights, given Africa’s deplorable socio-economic conditions. They ought not emulate the industrialized states of the north which can afford the luxury of hollow rhetoric in the implementation of economic social cultural rights. Regrettably, African states have so far failed to match their words with appropriate, sufficient action. Where African leaders have asserted the importance of satisfying economic social cultural rights as part of protecting other rights, some have done so with the intention of using this rhetoric as a ploy to suppress civil and political rights.

Africa’s worsening socio-economic conditions, and resulting exacerbation of civil and political strife coupled with the current lack of interest in the enforcement of Economic Social Cultural Rights, renders the effective realization of human rights on the continent a remote possibility. Given the prevailing socio-economic circumstances in Africa, there is an urgent need for a change of attitude and a relocation of emphasis from neglect and discriminatory enforcement of human rights to respect and balanced, holistic enforcement, if the essential aspirations of the Africa Charter on Human and People’s Rights are to be satisfied. The non realization of Economic Social Cultural Rights ridicules the so-called autonomy of the individual, a concept that is the linchpin of civil


88 In the past, repressive regimes in Africa (like Eyadema of Togo and Mobutu of Zaire) have claimed that they could not allow basic civil and political rights in their various states so long as there were prevailing economic hardships and the population remained underfed and economically underdeveloped.

89 Freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples (state in paragraph 3 preamble of the African Charter on Human and people’s Rights).
and political rights. Adequate socioeconomic conditions must exist as a precondition to personal autonomy.\textsuperscript{90}

African states have taken to a holistic recognition of human dignity. The African Charter on Human and People’s Rights remains a testament to the collective recognition of the indivisibility of human rights and dignity. There is an underscored necessity to a holistic approach in realizing of Economic Social Cultural rights. The locus of active realization however remains at the domestic arena where the mechanisms of enforcement will be within reach of the aggrieved citizens. Moreover international protection of human rights is designed to complement the domestic arena.\textsuperscript{91}

African states subscribe to a Charter that acknowledges the importance traditionally attached to Economic Social Cultural Rights, and therefore, ought to do more than pay them lip service. In the following passages we give proposals of possible way forwards.

5.1 ENCOURAGING INCLUSION OF ECONOMIC SOCIAL CULTURAL RIGHTS AS JUSTICIABLE RIGHTS IN THE AFRICAN STATES CONSTITUTIONS:

The fact that Economic Social Cultural Rights are regarded as mere aspirations and are non justiciable in several African constitutions,\textsuperscript{92} as well as being largely ignored at the regional level, means that there is as yet no hope for their direct judicial enforcement as independent rights. Accordingly, a concerted and integrated approach that takes advantage of currently enforced rights is needed.

\textsuperscript{90} A person, whose every major decision was coerced, extracted from him by threats to his life or that of children, has not led an autonomous life. Similar considerations apply to a person who has Spent the whole of his life fighting starvation and disease, and has no opportunity to accomplish anything other than to stay alive.

\textsuperscript{91} International procedures can never be considered as substitutes for national mechanisms and national measures with the aim to give effect to human rights standards. Human rights have to be implemented first and foremost at national levels.- Theo Van Boven, \textit{The International System of Human Rights: An Overview}, in \textit{MANUAL ON HUMAN RIGHTS REPORTING}, at 10, U.N. Doc. HR/PUB/91/1, U.N. Sales No. GV.97.0.16 (1997);

To deny Economic Social Cultural Rights by reducing them to mere aspirations of state policies would overlook not only the common historic origins of human kind but also their functional and conceptual connections.

Recognising economic social and cultural rights as justiciable entitlements is crucial to honouring the political, moral and legal commitments undertaken by the various states.

5.2 ENCOURAGING STATES TO COMPLY WITH THEIR REPORTING OBLIGATIONS:

The reporting obligation should be utilized as a process through which the realization of economic social cultural rights can be assisted. The various functions and phases of the reporting process, such as initial review, monitoring, policy formulation, public scrutiny, evaluation, identification of problems and exchange of information, should be pursued in a systematic and coherent manner. Preparation of reports should be timely and used as a means for streamlining policies related to the realization of economic social cultural rights.

The widest possible participation by citizens, community-based organizations and non-governmental organizations should be encouraged by States in the process of preparing and discussing the reports. These reports should be widely publicized within the States parties to the Charter, with a view to promoting national dialogue as well as allowing citizens to examine the reports. Excerpts from States' reports should be disseminated through the mass media as a means of facilitating greater public involvement in the reporting process.

The reports should provide a coherent picture of the status of the realization of economic social cultural rights in each reporting State. In this context, particular attention should be paid to the development and analysis of coherent sets of economic and social indicators, the establishment of "benchmarks" of progress and of appropriate methods of legislative and policy review.

The principle of minimum core obligations concerning economic social cultural rights should be identified and be promoted in the reporting process with the view to ensuring
the satisfaction of basic levels of achievement of each of the rights enshrined in the charter.

5.3 REDISCOVERING THE ROLE OF LOCAL GOVERNMENT
Throughout most of Africa, the local governments remain excessively weak, inefficient and very often unrepresentative. And often in conjunction with the adjustment process and the overall economic crisis, local governments have weakened yet further, resulting in, inter alia, declining promotion of means for encouraging participation of people in the development process.\textsuperscript{93}

There is a need to decentralize social services through the local governments. Decentralizing social services reduces costs, because it encourages the use of local resources and often holds down administrative costs ... decentralization usually creates an atmosphere that encourages initiative at all levels, from bottom to top. It thus promotes development that is more people-oriented, more sustainable and more relevant to people's needs and interests.\textsuperscript{94}

5.4 PROMOTION OF ECONOMIC SOCIAL CULTURAL RIGHTS
International and National Non-Governmental Organizations should strengthen their promotion of awareness of the existence of economic social cultural rights, particularly among low-income social groups. This could include the distribution and translation of the relevant human rights instruments and could be accompanied by simple handbooks explaining the legal significance of these texts and the methods of their enforcement. These organizations should also undertake field research concerning the realization of economic social cultural rights, promote the use of available legal remedies and prepare critical observations regarding States' reports on the realization of economic social cultural rights. Their participation should be expanded so as to include efforts to increase

\textsuperscript{93} Rethinking Local Government: Views from the Third World", Environment and Urbanization, vol. 3 No. 1, April 1991, p. 3.

the general public's awareness of economic social cultural rights and active participation in establishing new legislation or policies affecting the realization of these rights.

5.5 ENCOURAGING PERSONAL AND COMMUNITY INITIATIVES
Allowing space for personal and community initiatives related to areas comprising economic social cultural rights should be encouraged and not be taken as a subjugation of State responsibility to respect, protect and fulfil these rights. People's movements, campaigns and initiatives aimed at satisfying citizens' needs should not be discouraged by States or viewed as a threat to social stability, but as perhaps one of the few means by which people who are organized can express themselves and create solutions for their many predicaments. What this approach recognizes, however, is the frequent inability of the State to intervene sufficiently or provide the necessary resources for these rights to be widely enjoyed. The State should allow these processes to flourish, while simultaneously acting in full accordance with their obligations under the charter concerning these rights. It is in these areas that the relevance of "freedom" enters the domain of economic social cultural rights.

5.6 POLICIES OF ECONOMIC ADJUSTMENT ACCOMPANIED BY GROWTH AND DEVELOPMENT:
African Governments in their new strategies for solving the debt problem, of both official and private origin, require policies of economic adjustment accompanied by growth and development, and that it is essential, within those policies, to give priority consideration in their implementation to human conditions, including standards of living, health, food, education and employment of the population, especially among the most vulnerable and low-income groups.

The participation of persons and groups particularly affected by the projects and policies supported by the World Bank is of particular importance, both for the success of policies and projects and for the realization of human rights. Participation should be facilitated throughout all project cycles. In this context, the role of local and community-based non-governmental organizations is of particular importance, as is the access of the people concerned to legal measures and to decision makers. Special research should be
undertaken with a view to ascertaining the actual contribution of the various forms and methods of participation to the overall success of the project or policy concerned. These activities should be developed in a manner which would provide for the necessary experimentation.

5.7 LEGISLATION ENFORCING HARMONIUSOS INCOME DISTRIBUTION:
Practical measures aimed at reducing income disparity should be taken by States as a fundamental means for ensuring society-wide enjoyment of economic social and cultural rights. Sustained and dedicated efforts are necessary to distribute more fairly both land and wealth within designated African countries societies, in particular to benefit disadvantaged groups. It is important to note, in this connection, that there is a clear correlation between the enjoyment of economic social and cultural rights and systems which seek to ensure an equitable distribution of income.
Progressive as opposed to regressive measures of taxation can, if supported by adequate administrative machinery and enforcement mechanisms, in our opinion, lead to gentle and gradual forms of income redistribution within the African states without threatening economic stability or patterns of growth, thereby creating conditions enabling a larger proportion of society to enjoy economic social cultural rights.
Taxation however, by itself, does not provide an assurance that the finances made available to public bodies will be allocated in a manner consistent with either the African Charter on Human and Peoples Rights or the prevailing needs in society. Taxation though, remains the main single source of finance for public expenditure and, while complex by nature, the system of levying tax should be a criterion against which compliance with international obligations is measured, as well as a central means of redressing existing imbalances of income distribution.

5.8 ENSURING A CLOSE LINK BETWEEN ECONOMIC GROWTH AND HUMAN WELL-BEING
We believe that the best way to promote human development is to increase the national income and to ensure a close link between economic growth and human well-being. Gross National Product should not be used as a measure of human progress since while
the Gross National Product measures Economic strength it no way shows the improvement in the citizens lives.
Economic growth has to reach people, and people have to contribute to growth. Both nationally and internationally, economic growth with human development will, in the longer term, depend on achieving a better match between economic opportunities and people's needs.95
Human development also needs to go hand in hand with economic development. How to attain these dual objectives simultaneously is where the consensus ends, and where divergent views begin. Particularly regarding how to incorporate human rights measurements and objectives into all aspects of the development process. If these dual objectives could be achieved, it would provide a means of assisting in the promotion of a more complementary approach in applying human rights criteria to the development process and policies advocated under the charter. It could additionally play a role in seeking to come to an efficacious balance between those external actors, the state and the market.

5.9 UTILIZATION OF TARGETED SUBSIDIES
An introduction of subsidies, in the short term, targeted to those groups most in need of a certain service to satisfy more effectively the needs of the poorest sectors, and act to prevent seepage to better-off groups at the expense of the poor. Subsidies for basic commodities should be targeted rather than general, since general subsidies on normal goods tend to result in large transfers to the non-poor and in an excessive level of overall subsidies. Targeting of subsidies is however a complex operation which requires utilization of appropriate targeting techniques. One of the approaches is targeting certain indicators of need, such as disability, pregnancy or infancy. Targeting specific socioeconomic groups is especially well suited to ensuring adequate nutrition. The protection of these groups is also enhanced by emphasis on primary health care and hygiene education.

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However, the utilization of targeted subsidies can be such that the previous welfare entitlements of all citizens are replaced by a form of subsidy provided to only the poorest of the poor. This can create problems for groups which are poor but not absolutely poor, or for the lower-middle classes, effectively limiting their access to welfare services. Moreover, subsidies can rarely, if ever, be a substitute for the wide-ranging entitlements associated with economic social cultural rights in the long term.

5.10 QUESTIONS OF INCOME DISTRIBUTION SHOULD NOT BE PART OF INTERNATIONAL FUND CONDITIONALITY

Some of the elements of policy pursued by the International Financial institutions are potentially significant for the realization of economic social cultural rights. One of them relates to the fiscal policies of states which pursue stabilization and adjustment programmes, an area which has been traditionally among the more sensitive aspects of International Financing activity. Fiscal policies are important elements of state sovereignty and the level of involvement of international financial institutions in these matters remains a subject of discussion. The international financial institutions should not become "involved in the detailed decisions by which general policies are put into operation". Therefore specific prices of commodities or services, "specific taxes or other detailed measures to increase revenues or reduce expenditures would not be considered macroeconomic variables". Performance criteria may relate to other variables only in exceptional cases. But the questions of income distribution should not be part of fund conditionality.

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CHAPTER 6: CONCLUDING REMARKS AND RECOMMENDATIONS.

If the purpose of government is to provide for the welfare and security of all citizens, governments fail to fulfill this purpose when they commit to enforcing only civil and political rights. Such an ostrich-like posture denies the various forms of state abuse against which the citizen must be protected: above all, the state’s neglect of its citizens. Governance ceases to be meaningful when the majority of the people are put in a situation where they cannot appreciate the value of life, let alone enjoy its benefits, and where it lacks the appropriate mechanisms to compel change. Where human survival needs frequently go unmet, as in Africa, protection of human rights ought to focus on “preventing governments from neglecting their citizens.” It has been contended that African states cannot reasonably be expected to fulfill their Economic Social Cultural Rights obligations under the African Charter given their socio-economic problems, which arise from underdevelopment and “existing patterns of international trade.” Scholars have also asserted that the poverty of African states justifies treating Economic Social Cultural Rights as principles of state policy (as they are in the constitutions of Nigeria, Cameroon, Lesotho, Liberia, Malawi, Namibia, Sierra Leone, and Tanzania.97

African states are, no doubt, among the most impoverished states of the world. This fact makes the argument that they are too poor to realize Economic Social Cultural Rights very compelling. However, these oft-invoked arguments usually proceed from two interrelated yet erroneous and misleading suppositions. First, they presuppose that Economic Social Cultural Rights are resource-intensive and require the direct intervention of governments, whereas civil and political rights do not involve government expenditure but merely entail the government’s forbearance from interfering with the rights of the people. Second, they presuppose that African states’ underdevelopment is enough to justify non-enforcement of Economic Social Cultural Rights but not civil and political rights.

The African Charter does not impose separate or more onerous obligations on States Parties with respect to Economic Social Cultural Rights. The Charter’s provisions on these rights are modest. The right to an education, for instance, does not impose a more resource-intensive obligation than the right to a fair trial. Should a state then be justified in not providing necessary medical or educational facilities, but not in failing to provide the necessary machinery for law enforcement, fair trials, or dignified prison conditions? If the reason for marginalizing the realization of Economic Social Cultural Rights is a lack of development, how does the state intend to develop if the overwhelming majority of its citizens remain illiterate? Accordingly, the realization of the right to education and other Economic Social Cultural Rights are a prerequisite for the creation of wealth and, as such, a necessary precondition of development. Under-development does not justify partial realization of these rights any more than poverty justifies parents consistently feeding one child to the neglect of their other children.

If it were not for the poor administration and kleptomaniac tendencies of their rulers, many African states might have attained a level where basic survival needs are met. As it is, most previous African rulers are richer than their states and the present rulers continue to squander available resources. Thus, it is not necessarily scarcity of resources which is the first problem, but maldistribution or inequitable allocation of resources . . . [and] provision of government controlled benefits.

African countries possess the resources to eliminate poverty and satisfy basic human needs if their policy makers were so inclined.

Conditions in many African states today arise not out of a lack of wherewithal to satisfy the socio-economic rights of the people to a minimum of human dignity. Rather, they are partly the direct consequence of an active process of impoverishment and de-development. In some cases, international loans and grants purportedly secured to provide essential facilities have ended up lining private pockets, securing safe nests for the advantaged class or being spent to protect that class from the ire of the dispossessed, all in the name of development and security.
If enforceable system of Economic Social Cultural Rights are in place, it might provide an opportunity to challenge the government’s priorities and to hold it accountable for the expenditure of international loans. A government that is not required to justify its Socio-economic policies and priorities are not likely to develop a consistent policy that encourages wise investments and conserves resources necessary for sustainable development.

On structural adjustments the notion of a "development contract", provides one of many potentially useful and thought-provoking alternatives to the existing measures found in the common adjustment package. Another benefit of the development contract idea would be to ensure that a specific case-by-case approach is pursued vis-à-vis adjustment, adequately reflecting the huge diversities between national economies, cultures and histories.

The debt crisis remains an obstacle to growth, overcoming it requires the implementation of comprehensive adjustment programmes and return to regular creditworthiness; expanding the number of countries covered by commercial-debt and debt-service reduction; more concessional rescheduling for the poorest debtor countries; expansion of debt forgiveness and deepening the concessionality of other debt relief measures by official bilateral lenders; and an increase in equity and quasi-equity investment. Debt payments should not take precedence over the basic rights of the people of debtor countries to food, shelter, clothing, employment, health service and a sustainable and

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98 A decision maker who is aware in advance of the risk of being required to justify a decision will always consider it more closely than if there was no risk. A decision maker alive to that risk is under pressure consciously to consider and meet all the objections, consciously to consider and thoughtfully to discard all the alternatives, to the decision contemplated. And if in court the government could not offer a plausible justification for the programme that it had chosen... then the programme would have to be struck down- Etienne Mureinik, Beyond a Charter of Luxuries: Economic Rights in the Constitution, 8 S. AFR. J. HUM. RTS. 464, 466 (1992);

99 the "development contract" would entail the creation by developing countries of socio-economic objectives and targets concerning basic needs, employment levels, income distribution and social security; sustainable trading patterns and targeted improvements in the overall position of women; thus signifying a broader approach to economic stability than is traditionally applied. The international donor community, conversely, would promise both financial support for the development plan and additional financing to compensate for export earning losses brought about by causes beyond the country's control. the contract would also entail substantial adjustment in the industrialized countries without (as is currently the case) transferring the costs to the developing world, as well as ensuring that adequate resources are provided to enable the commitments of the recipient states to be achieved.
healthy environment. Each country must have sufficient resources to allow sustained and sustainable development and growth to take place.

The politically sensitive aspect of redistributing income must be overcome in the interests of fully complying with existing legal obligations of states to recognize, respect, protect and fulfill economic social cultural rights.

While acknowledging the benefits user fees can bring if applied thoughtfully, we would suggest that: (a) primary education is a basic right and should be free; (b) secondary education should be made free as well, for reasons of equity and productivity benefits; (c) access to primary health care should be universal and free; and (d) low-income families and children under five should have free access to hospital care.

On the issue of user fees for water and sanitation, there are strong and obvious arguments for greatly increasing governmental expenditure on these services and for these basic rights of citizens to be free.\textsuperscript{100}

Economic growth in itself cannot solve the social problems affecting the poor. Special efforts are needed and they should necessarily involve public expenditure and, in particular, fair and just distribution of expenditure between poor and non-poor. Avoiding excessive urban bias, most of the poor are rural, and protecting or expanding basic services primary education, basic health care, family planning, extension services, roads are the first steps in increasing the effectiveness of public expenditures.

Social services must be adequate both as a part of "productive investment" and as part of public spending. Both aspects require careful monitoring and permanent analysis of the actual effects.

It may seem necessary that further steps, leading to formal inclusion of issues of fiscal policies into international financial institutions programmes, be taken, if the objectives of reduction of poverty and social justice, accepted both by the World Bank and International monetary Fund, are to be achieved. These steps should then take into account both changes in various taxes and tax rates and changes in specific public

\textsuperscript{100} It is worth noting that many Africans neither have access to safe water nor sanitation. It is therefore not unusual for the poor to pay 20 to 30 times more the price per litre of water than richer households, which have access to piped water, pay. Since water vendors provide up to 30 per cent of the water needs of the poor urban African population.
expenditures, subsidies and public utility rates. Such an approach would represent a step away from the traditional doctrine of reliance on macroeconomic measures.

Suffice it to say that for Economic Social Cultural rights to be realized in Africa, to give the citizens a life of freedom equality and dignity, then it is neither going to be just about radical rupture, nor just incrementalism- it is going to be about both feeding off each other.
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