

JUDICIAL ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS IN AFRICA AND THE REALISATION OF AGENDA 2063.

BY

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1.0 Introduction

*Overcoming poverty is not a gesture of charity,
it is an act of justice. It is a protection of a fundamental
human rights, the right to dignity and a decent life.*

Nelson Mandela

1918 - 2013

For a considerable number of years after many African countries have obtained independence, the issue of individual human rights in the mould of civil and political rights were not considered of the first priority. The non-prioritization of human rights finds expression in the Charter of the Organisation of African Unity as scant attention was given to human rights issues. On the other hand, Africa appeared more attracted to economic, social and cultural rights hinging her conviction that "it is essential to pay particular attention to the rights to development and that 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 to the enjoyment of civil and political rights." Economic, social and cultural rights are well articulated in the African Charter on Human and Peoples' Rights and also find normative expression in the Constitution of most African nations. Regrettably, the promotion, protection and fulfilment of these rights continue to be observed more in the breach in the midst of severe political, economic and social challenges countries in Africa continue to face. Consequently, Africa remains largely under-developed. To halt the ugly trend, Agenda 2063 seeks inter alia to provide a robust frame work for addressing past injustices and reposition Africa as a prosperous and peaceful continent, driven by its own citizens and representing a dynamic force in the international arena. One of the thematic aspirations of Agenda 2063 is the desire of Africa to have a universal culture of good governance, democratic values, and respect for human rights, justice and the rule of law. In view of the culture of impunity, passing regard for the rule of law and the challenges of development Africa continues to experience, where should human rights be placed in the development discourse? In the light of the constitutional constraints placed on the courts in judicial enforcement of economic, social and cultural rights, how attainable is the Third Aspiration of Agenda 2063? This paper further discusses current approaches to the judicial enforcement of economic, social and cultural rights and further interrogates the roles of the judiciary in the realisation of Agenda 2063.

1.1 History of Economic, Social and Cultural Rights

The end of the Second World War in 1945 was to change the global political architecture forever as the war left in its trail wanton destruction and death of an apocalyptic dimension never before witness. In the cause of the war that lasted almost six years, it is recorded that about 22 to 25 million soldiers and 38 to 55 million civilians lost their lives.¹ To save succeeding generations from such scourge of war, reaffirm faith in fundamental human rights,

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in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standard of life in larger freedom remain the core aims for the establishment of the United Nations [UN] in 1945.²

In order to concretise and operationalize the recognition, promotion and respect for human rights and fundamental freedoms, the UN in 1948 adopted the Universal Declaration of Human Rights [UDHR]. By the adoption, Member States pledged themselves to achieve, in cooperation with the UN, the promotion of universal respect for and observance of human rights and fundamental freedoms.³ The UDHR in fact remains one of the most important documents of the 21st Century. According to Welch, it has become a touchstone for actions by governments, individuals, and non-governmental groups. Welch further adumbrated the essence of the document when she posited that:

“The Universal Declaration provides both a guide to present actions and evolving set of ideals for future implementation at the national level. Increasingly the UDHRs principles have been embodied in what states do, and it serves as the foundation for the international Bills of Rights and several other crucial human rights agreements.”⁴

On the dark side of this otherwise giant step for mankind in the enthronement of a new culture of universalising human rights, sadly, is the realisation that the UDHR fall short of some of the aims and purposes of the UN in the sense that the document captures only civil and political rights. Therefore realising and recognising that, in accordance with the UDHR, the ideals of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights, the General Assembly in 1966 adopted the International Covenant on Civil and Political Rights [ICCPR] and the International Covenant on Economic, Social and Cultural Rights [ICESCR].⁵

The ICESCR is an international human rights treaty, creating legally binding obligations on the States that have ratified it. Gladly, almost all African countries have ratified the treaty. It reflects a global consensus on the universal human rights standards that apply to the economic, social and cultural rights.⁶ Economic, social and cultural rights [ESCR] include the right to work, the right to an adequate standard of living including food, cloth and housing, the right to physical and mental health, the right to social security, the right to a healthy environment, the right to education and the right to self-determination. Human rights are based on principles of dignity and freedom. Both principles are severely compromised when human beings cannot meet their fundamental needs. Economic and social rights guarantee that every person be afforded conditions under which they are able to meet their needs.⁷

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¹ Effect in World War II sourced from: <https://www.slideshare.net/olhen/effect-in-second-world-war-II> visited June 20th 2018 at

² See the Preamble to the UN Charter

³ The UDHR was adopted and proclaimed by General Assembly resolution 217 A[iii] of 10th December, 1948

⁴ Claude Welch, The Universal Declaration of Human Rights at Sixty, e-Journal USA [US Department of States] Vol.13 No.11 p3

⁵ The ICESCR was adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A [XXI] of 16 December 1966 and entered into force 3th January 1976, in accordance with Article 27

⁶ See: www.escr-net.org/resource/section-5-background-information-escr

⁷ For more on the interdependence of rights see: www.nesri.org/humanrights/economic-socialrights

2.0 Economic, Social and Cultural Rights in Africa

The adoption and subsequent ratification of these International Covenants marked a watershed in international human rights law as together with the UDHR, they remain the standard models that regional bodies and nations rely on in framing their respective human rights instruments. With the democratisation of the political processes and governance in most countries in Africa, it is gratifying to note that their Constitution now contain bills of rights incorporating civil and political rights as well as economic, social and cultural rights. In an era of increasing economic globalisation and growing inequality within and between states, and excruciating poverty in Africa brought about by needless wars and conflicts, the need to recognise, promote, protect and fulfil ESCR in Africa cannot be over emphasised. This therefore necessitated the adoption of the African Charter on Human and Peoples Rights [ACHPR] on 27th June, 1981.⁸

The Charter contains rights and duties among other provisions. Some of the ESCR cognisable under the Charter are right to participate in the government, right to property, right to work, right to health, right to education, right to protection of the family and vulnerable groups, right to self-determination, right to free disposal of wealth and natural resources, right to economic, social and cultural development, right to national and international security and peace and, right to a general satisfactory environment.⁹ The gains of the adoption of the Charter was summarised by the African Commission on Human and Peoples Rights as follows:

“The African Charter helped to steer Africa from the age of human wrongs into a new age of human rights. It opened up Africa to supra-national accountability. The Charter sets standards and establishes the groundwork for the promotion and protection of human rights in Africa. Since the adoption its adoption 30 years ago, the Charter has formed the bases for individuals to claim rights in an international forum.”¹⁰

The Commission further justified the inclusion and benefits of ESCR in the Charter to include-

That the African Charter on Human and Peoples’ Rights reflects that all human rights are indivisible, interdependent and interrelated, and cannot be enjoyed in isolation from each other;

That the enjoyment of economic, social and cultural rights is not only imperative for but dependent on the enjoyment of civil and political rights, and in particular on the rule of law, democracy and good governance and;

That economic, social and cultural rights are justiciable and enforceable rights and that state parties to the African Charter have obligation to ensure that individuals and people have access to enforceable administrative and/or judicial remedies for any violation of these rights.¹¹

Over the years since the adoption of the African Charter and the tide of democratisation sweeping across Africa, the Charter has become most the important base documents relied upon by many African countries in the quest to reengineer and reposition their respective countries in recognising that the bill of rights is the main pillar of a democratic society. It is now common knowledge that most African countries have now incorporated economic, social and cultural rights in their Bill of Rights. In this regard, the Constitution of South Africa, Kenya, Tunisia and Nigeria are examined hereafter.

⁸ OAU. CAB/LEG/67/3 rev. 5, 21 I.L.M.[1982], entered into force Oct.21,1986

⁹ See Articles 13 – 24 of the ACHPR

¹⁰ Sourced from: www.achpr.org/instrument/achpr visited on June 21, 2018

¹¹ The Preamble to the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights

2.1 Republic Of South Africa

The people of South Africa recognising the injustices of their past adopted in 1996 the Constitution of the Republic of South Africa so as to heal the division of the past and establish a society based on democratic values, social justice and fundamental human rights, and also improve the quality of life of all citizens and free the potential of each person amongst other objectives.¹² Some of the core values on which the South African nation is founded include human dignity, the achievement of equality and the advancement of human rights and freedoms and these underpin the human rights content of the Constitution. The Constitution therefore acknowledges that the Bill of Rights forms the cornerstone of democracy.¹³

To realise this lofty value, the Constitution places a mandatory obligation on the State to respect, protect, promote and fulfil the rights in the Bill of Rights. This obligation on the State makes no distinction between civil and political rights on the one hand, and economic, social and cultural rights on the other hand. Some of the economic and socio-cultural rights cognisable under the South African Constitution are freedom of trade, right to labour relation, environmental right, right to housing,¹⁴ right to education which the State through reasonable measures must make progressively available and accessible. The South African Bill of rights is indeed home-grown and reflective of the hope and aspiration of the people. South African courts, particularly the Constitutional Courts have given and in fact continue to give liberal but robust interpretations to ESCR in the Bill of Rights.

The ESCR protected in the South African Bill of Rights in the Constitution operate and are enforceable just like the civil and political rights. Section 7[3] of the Constitution obligate the State to respect, promote and fulfil the rights in the Bill of Rights and Section 8[1] unambiguously that the Bill of Right applies to all laws and binds the legislature, the executive the judiciary and all organs of State.

Anyone recognised in the Constitution in that behalf can approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.¹⁵

However, to the rights to housing, health care, food, water, social security and further guaranteed under the South African Constitution, the state is enjoined to take reasonable legislative and other measures, within its available resources to achieve progressive realisation of those rights.¹⁶

2.2 REPUBLIC OF KENYA

It can be said with justification that prior to 2010 Kenya was an autocratic state with virtually all powers infused in the President. The rule of law was non-existent; therefore, gross violation of human rights and freedoms were the norm, thus entrenching poverty. The extent of the dire situation in Kenya is captured in a recent compendium as follows-

Poverty, inequality, socio-economic marginalisation and poor human development, are challenges that have bedevilled Kenya for a long time. The government has projected that, approximately 46-58 per cent of Kenyans are living below the poverty line, though non-governmental organisations argues that this is

¹² See the Preamble to the Constitution of the Republic of South Africa 1996

¹³ See section 7[1] of the Constitution RSA

¹⁴ Section 26[1] provides in part that “ the State must take reasonable legislative and other measure within its available resources to achieve progressively realization of this right

¹⁵ See Section 38 of the Constitution RSA

¹⁶ See sections 26[2]&[2], 27[1]&[2] and 29[1][b] of the Constitution RSA

an understatement and that, the more correct approximation is about 58-65 per cent of Kenyans are living below the poverty. The United Nation Development Programme [UNDP] in their annual Human Development Index [HDI] has consistently ranked Kenya as a low human development country, with the country being ranked at position 145 among the 186 ranked countries of the world.¹⁷

These challenges coupled with of the Post-Election Violence [PEV] of 2007 – 2008 led to the promulgation of the Constitution of the Republic of Kenya on 28¹⁷ August 2010. One of the novelties in the new constitution is the introduction of ESCR most of which are justiceable. The justification for this incorporation into the Bill of Rights was highlighted in the case of John Kabui Mwai & 3 Others v the Kenyan National Examination Council and 2 Others¹⁸ by the High Court of Kenya as follows-

In our view, the inclusion of economic, social and cultural rights in the Constitution is aimed at advancing the socio-economic needs of the people of Kenya, including those who are poor, in order to uplift their human dignity, the protection of these rights is an indication of the fact, that the Constitution's transformative agenda looks beyond merely guaranteeing abstract equality. There is a commitment to transform Kenya from a society based on socio-economic deprivation to one based on equal and equitable distribution of resources. This is borne out by Articles 6[3] and 10[2] [b]. The realization of socio-economic rights means the realization of the conditions of the poor and less advantaged and the beginning of a generation that is free from socio-economic need.

Comment [H1]:

These economic and social economic rights are part and parcel of the Kenyan Bill of Rights in the Constitution. They include labour relations, environmental right, right to language and culture, consumer rights and the rights of minority and marginalised groups. Article 43 specifically deal with economic and socio-cultural rights and provides-

43[1] every person has the right-

[a] to the highest standard of health, which includes the right to health care services, including reproductive health care;

[b] to accessible and adequate housing and to reasonable standard of sanitation'

[c] to be free from hunger, and to have adequate food of acceptable quality;

[d] to clean and safe water in adequate quantities;

[e] to social security; and

[f] to education

[2] A person shall not be denied emergency medical treatment.

[3] The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

¹⁷ *A Compendium on economic, social and cultural rights cases under the Kenyan Constitution 2010*, published by East Africa Centre for Human Rights.

¹⁸ Petition No 16 of 2011

It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and freedoms in the Bill of Rights.¹⁹ On the economic and socio-cultural rights mentioned in Article 43, the State is enjoined to take legislative, policy and other measures including the setting of standards, to achieve the progressive realisation of the rights. To the right bearers, the Constitution grants unfettered access to the courts to institute proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.²⁰

2.3 Federal Republic of Nigeria

What may pass for ESCR were introduced and incorporated into the Nigerian constitutional lexicon in 1979 and were christened Fundamental Objectives and Directive Principles Of State Policy [FPDPSP] and provided for in Chapter II of the 1999 Constitution. By the operation of that constitution, the objectives and principles were not justiciable as the courts were divested of the jurisdiction to adjudicate upon such matters.²¹ In December 1983 when the democratically elected government was overthrown in a military putsch, a new order was established and most provisions of the Constitution were either suspended and or modified. Human rights and freedoms were observed more in the breach as the military helmsmen rode roughshod on the populace like bandits. Be that as it may be, it would appear that economic, social and cultural rights were watered and thrived better under that military in Nigeria.

Twenty years after, a new constitution was promulgated and the Constitution of the Federal Republic of Nigeria 1999[CFRN]²² came alive. In the Constitution, civil and political rights, and what may pass for ESCR are enacted in two separate and distinct chapters. ESCR rights are provided for in Chapter Two and christened Fundamental objectives and directive Principles of State Policy. It is debatable whether we can refer to the content of Chapter Two as ESCR so to say as the objectives and principles are not even couched in the familiar human rights language stipulating claims and demands, right bearers and duty bearers. There is also no provision for seeking redress for breaches or non – application of the objectives and principles. Explaining its incorporation into the constitution, the Constitution Drafting Committee stated that:

By Fundamental Objectives we refer to the identification of the ultimate objectives of the Nation whilst Directive Principles of State Policy indicate the paths which lead to those objectives. Fundamental Objectives are ideals towards which the Nation is expected to strive whilst Directive Principles lay down the policies which are expected to be pursued in the efforts of the Nation to realize the national ideals.²³

Some of the economic and socio-cultural rights acknowledge as mere objectives include the security of the people, the control of the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice, the exploitation of natural resources in the form that is for the good of the community, to ensure that all citizens have the opportunity to secure adequate means of livelihood , to safeguard the health safety and welfare of all persons in employment, to ensure that there are adequate medical and health facility for all persons, to ensure that there are equal and adequate educational opportunities at all levels and to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria²⁴.

Section 13 of the Nigerian Constitution provides-

¹⁹ See Article 21[1] Constitution of the Republic of Kenya

²⁰ See Article 22[1] *ibid*

²¹ See section 6[6][c] of the CFRN 1979

²² Since 1999, the Constitution has undergone some alterations and amendments

²³ Report of the Constitution Drafting Committee, Vol. 1. P.v

²⁴ See sections 14 – 21 of the CFRN 1999 as amended

It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial power, to conform to, observe and apply the provisions of this Chapter of this Constitution.

Interpreting this section, the Supreme Court in *Attorney General of Ondo State v Attorney General of the Federation*²⁵ held that this section does not only impose a solemn duty to observe Chapter II on all organs of government and all authorities and persons exercising legislative, executive or judicial powers, but also on private individuals as well. Regrettably, notwithstanding the sound reasoning the apex Court advanced, the enforcement of Chapter II is circumspect and constrained by the limitation placed by the operation of section 6[6][c] of the Constitution which divest the courts of the power to question whether any act of omission by any authority or person or as to whether any law or judicial decision is in conformity with the Chapter.

In *Ugwu v Ararume*²⁶ the Supreme Court gave a stamp of confirmation to the real purport of section 6[6][C] of the Constitution when the apex court held-

An enactment is justiciable if only it can be properly pursued before a court of law or tribunal for a decision. But where a court or tribunal cannot enforce such enactment then it becomes non-justiciable [i.e. non-enforceable]. This means the executive does not have to comply with the enactment unless and until the legislature enacts specific laws for its enforcement. In our constitutional law, we have typical examples of such enactment particularly those contained in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999, placed under the caption, "Fundamental Objectives and Directive Principles of State Policy." These are not justiciable, generally, they run subsidiary to the fundamental rights contained in Chapter IV of the Constitution.

It would appear that the apex court is of the view that the only way to breathe life to the content of Chapter II of the CFRN is through legislation. This appears not to be the current position having regards to the African Commission's Guidelines and Principles on Economic, Social and Cultural Rights in Africa, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights²⁷ the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

This notwithstanding, Nigeria is a signatory to the ICESCR and the African Charter on Human and Peoples' Rights. As a matter of fact the ACHPR is domesticated in Nigeria and therefore justiciable.

2.4 The Tunisian Republic

The people of the Tunisian Republic expressing commitment to the teaching of Islam, to their spirit of openness and tolerance, to human values and the highest principles of universal human rights inspired by the heritage of their civilisation, accumulated over the travails of their history and; with a view to building participatory, democratic, republican system in the framework of a civil state founded on the law and on the sovereignty of the people and to build a system that guarantees respect for human rights and freedoms, independence of the judiciary, equality of rights and duties between all citizens, male and females, and equality between all their regions and desirous of supporting all victims of injustice, wherever they are, defending the people's rights to determine their own destiny on the 26th January adopted the Constitution of the Tunisian Republic.²⁸ Article 12

²⁵ [2010] All FWLR [Pt. 772] 222 SC

²⁶ [2007] All FWLR [Pt.377] 807 at 908

²⁷ These guidelines will be discussed in greater details in this work

²⁸ See the Preamble to the Constitution of the Tunisian Republic 20 14

reinforces the Preamble by stating that the State should seek to achieve social justice, sustainable development and balance between the Regions based on development indicators and the principle of positive discrimination.

The promulgation and adoption of the Tunisian Constitution follows the success of the revolution of December 17, 2010 which sought to free the people from tyranny and enthrone a culture of freedom and dignity of the human person. The ESCR cognisable and justiciable under Title II of the Constitution are the right to health, right to education which makes education compulsory up till the age of sixteen years, right to work for every citizen, right to culture, right to water and right to a healthy and balanced environment and to participate in protection of the climate.²⁹

It is gratifying to note that apart from Nigeria, the constitution of the other three countries highlighted above do not make any distinction between civil and political rights, and economic, social and cultural rights save for the principle of progressive realisation in relation to the right to health and housing. South African jurisprudence is very rich in the liberal interpretation of this second and third generation rights so-called, and this forms the basis of our next discussion.

The vision of the African Union as envisaged in both the Charter of the AU and the ACHPR is that of an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.³⁰ To harness and concretise on the gains recorded in terms of economic growth and democratisation Agenda 2063 was envisioned. Agenda 2063 is a strategic framework for the socio-economic transformation of the continent over the next 50 years. It builds on, and seeks to accelerate the implementation of past and existing continental initiatives for growth and sustainable development. One of the thematic aspirations of Agenda 2063 is the desire of Africa to have a universal culture of good governance, democratic values, and respect for human rights, justice and the rule of law.

3.0 Economic, Social and Cultural Rights and Agenda 2063

It is no doubt that post-colonial Africa has come a long way. In 1963 when the now disbanded Organisation of African Unity [OAU] was established and 32 African countries formed the membership, quite a number of African countries were under colonial administration. It was no surprise therefore that-

the main objectives of the OAU were, inter alia, to rid the continent of the remaining vestiges of colonisation and apartheid; to promote unity and solidarity among African States; to coordinate and intensify cooperation for development; to safeguard the sovereignty and territorial integrity of Member States and to promote international cooperation within the framework of the United Nations.³¹

African countries were in the forefront in the struggle to decolonise the continent and bring to an end the reprehensive and obnoxious apartheid government in South Africa. In this regard, the OAU achieved phenomenal result as all African counties are now independent. The tide of military intervention in governance in the continent has also been halted. All African governments now practise constitutional democracy, though not withstanding some inherent challenges in the adaptation of the western-style democracy.

²⁹ See: Articles 38, 39, 40, 42, 44 and 45 of the Tunisian Constitution. Article 13 vests ownership of natural resources on the people of Tunisia .

³⁰ AU in a Nutshell. See: www.au.int/en/history/oau-and-au visited on June 21, 2018

³¹ AU in a Nutshell <https://au.int>

In the pursuit for unity, economic and social development, the OAU over the years took many initiatives to make Africa a critical actor in the global economy. These include:

- Lagos Plan of Action [LPA] and the Final Act of Lagos [1980]; incorporating programmes and strategies for self-reliant development and cooperation among African countries.
- Africa's Priority Programme for Economic Recovery [APPER] – 1985; designed to meet the challenges posed by the drought and famine that conflagrated the continent in the 1980s.
- OAU Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes taking place in the world [1990].
- The Charter on Popular Participation adopted in 1990- designed to place African citizens at the centre of development and decision-making.
- The Treaty establishing the African Economic Community [AEC] - 1991: commonly referred to as the Abuja Treaty. The ultimate aim was the attainment of an African common market using the Regional Economic Communities [RECs] as building blocks.³²
- Cairo Agenda for Action [1995]: a programme for launching Africa's political, economic and social development.
- Africa's Common Position on Africa's External Debt Crisis[1997]
- The Algiers Decision on Unconstitutional Changes of Government [1999] and the Lome Declaration on the framework for an OAU Response to Unconstitutional Changes [2000]

Some of the successes recorded by the OAU include the establishment of the African Development Bank for economic projects intended to make Africa financially stronger, aiding and facilitating the democratisation processes in Africa and opening up the African markets to African. These successes among others notwithstanding, Africa remains constrained with unnecessary dependence on their former colonial masters for economic aids. It therefore became imperative for Africa to develop a new blueprint rooted in Pan Africanism and African renaissance which will provide a robust framework for addressing past injustices and the realisation of the 21st Century as the African Century. This realisation and expectation form the fulcrum on which Agenda 2063 rests.

Agenda 2063³³ re-echoes the need for Africa to unite in order to realise its renaissance believing that the destiny of Africa is in the hands of Africa and that Africa needs to act now to shape the future they want. In this new and noble order, past plans and commitments were reviewed and the lessons learnt from them were taken into account. These include: mobilisation of the people and their ownership of continental programmes at the core; the principle of self-reliance and Africa financing its own development; the importance of capable, inclusive and accountable states and institutions at all levels and in all spheres; the critical role of Regional Economic Communities as building blocks for continental unity.

The vision as stated in the Agenda is that of an “integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the international arena”. To be able to actualise this vision, seven aspirations are identified and amplified as the vehicles. The aspirations reflects Africa's desire for shared prosperity and well-being, for unity and integration, for a continent of free citizens and expanded horizons, where the full potential of women and youth, boys and girls are realised, and with freedom from fear, disease and want. Africa therefore commit to act together towards achieving the aspirations.

³² The Treaty has been in operation since 1994

³³ The final edition was published in 2015 @African Union Commission; ISBN978-92-95104-23-5

The aspirations for the envisaged Africa are:

1. A prosperous Africa based on inclusive growth and sustainable development.
2. An integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of Africa's Renaissance.
3. An Africa of good governance, democracy, respect for human rights, justice and the rule of law.
4. A peaceful and secure Africa.
5. An Africa with a strong cultural identity, common heritage, shared values and ethics.
6. An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children.
7. Africa as a strong, united and influential global player and partner.

Agenda 2063 is a shared strategic framework for inclusive growth and sustainable development. There can be no meaningful growth and development in the absence of good governance, respect for civil liberty and the rule of law. This therefore underscores the relevance of the Third Aspiration of the Agenda.

3.1 The Third Aspiration of Agenda 2063

The Third Aspiration is further explained in the final document as:

I. Africa shall have a universal culture of good governance, democratic values, gender equality, and respect for human rights, justice and the rule of law.

II. We aspire that by 2063, Africa will:

- Be a continent where democratic values, culture, practices, universal principles of human rights, gender equality, justice and the rule of law are entrenched; and
- Have capable institutions and transformative leadership in place at all levels.'

III. The continent's population will enjoy affordable and timely access to independent courts and judiciary that deliver justice without fear or favour. Corruption and impunity will be a thing of the past.

IV. Africa will be continent where the institutions are at the service of the people. Citizens will actively participate in the social, economic and political development and management. Competent, professional, rules and merit based public institutions will serve the continent and deliver effective and efficient services. Institutions at all levels of government will be developmental and accountable.

3.2 Democracy, Good Governance and Human Rights and Freedom As Envisioned In Agenda 2063

The Third Aspiration is apt and could not have been visualised, conceptualised and articulated at a better time in the annals of post-colonial Africa. At the fall of the 20th Century, no African nation was still under the yoke of colonialism. The nations of Africa are not only politically independent but virtually all of them have embraced democratic governance in one form or the other. Regrettably, democratisation has not translated to better life for the people as the continent remains in the news for bad reasons. Most African countries have been engaged in bitter conflicts often triggered by the quest to control resources and political power. Many walls still exist.

According to Udombana:

There are wall of power and poverty. There are walls that divide societies between those who have and those who have not, between those who rule and those who suffer. There are walls that consign whole sector of society to an existence barely worth the name. In short wall of underdevelopment.³⁴

These walls have probably been with mankind since the time of creation and man has been waging wars to dismantle these them, real or imagined albeit unsuccessfully. Therefore the constitutional history of most African countries show periodical changes in emphasis between concern for the preservation of public order and development on the one hand, and for the protection of private rights on the other hand. According to McIlwain, when the rights of governments are widely stressed, the rights of individuals are often threatened; when the latter are over emphasised, government becomes too weak to keep order.³⁵

One of the burdens and challenges of governance in Africa as the continent thrive to fit into the new world order is how to attain and sustain a delicate balance between development and preservation of the interest and rights of individuals. This dilemma as far back as 1960 was captured in a UN Report on Development Activities. The Report states:

One of the greatest dangers in development policy lies in the tendency to give to the more material aspect of growth an overriding and disproportionate emphasis and, human rights may be submerged and human beings seen only as instrument of production rather than free.

It is our view that development, democracy, human rights and rule of law are not diametrically antagonistic nor in silos but rather are coterminous. Democracy indeed is the super structure on which development is built. Human rights and freedoms are necessary components of democracy. The concept of democracy emphasises the rule of the people, in that sovereign power is exercised by the people indirectly through their representation. Therefore according to Oputa, in a democracy power resides in the people.³⁶

According to Azinge, classical democratic theory posits the existence of a highly conscious, rational, politically knowledgeable and participant citizenry who seeks to realise a generally recognised common good through collective initiation, discussion and decision of policy questions concerning public affairs.³⁷ We gather from Azinge's view that democracy empowers the individuals to participate in decision through discussion instead of a regime of arbitrariness.

The collectivism of individual participation runs through the entire gamut of democracy. Certain values and principles are universally acknowledged as being components of democracy. These are:

- [i] A government of the people;
- [ii] Government by the people;
- [iii] Free and fair election for the choice of leaders;
- [iv] Political responsibility of government to the people;
- [v] Constitutional protection of civil liberties;

³⁴ Nsongurra J.U, *Human Rights and Contemporary Issues in Africa*; [Lagos Malthouse Presss, 2003] pp 1

³⁵ McIlwain, C.M. *Constitutionalism: Ancient and Modern* [1940] revised ed 1947 pp.141-142

³⁶ Oputa, C. *Democracy: What is it all about? Democracy and the Law* [eds] Bola Ajibola, Federal Ministry of Justice Law Review Series, 1991 pp. 36

³⁷ Azinge, E. *Jurisprudence of Democracy, Democracy and the Law*, FMJLR [1991] PP.2

[vi] Separation of powers;

[vii] Government for the people; and

[viii] A democratic polity.³⁸

From these principles of democracy highlighted above, a government may be constitutional and yet not democratic, and this remains one of the challenges to democracy in Africa as elected leaders having spent their tenure manipulates and arm-twist the citizens to alter the constitution to elongate their tenure. While such extended tenure may be constitutional, it is nevertheless not democratic as it is a subversion of the expressed will of the people. We have seen countries in Africa slide to anarchy and system failure because of the greed of elected leaders such as in Burundi, Democratic Republic of Congo, Zimbabwe and Rwanda. For a reasonable and responsive democracy to exist, eight institutional guarantees ought to be present. These are:

- a. Freedom to form and join political organisation;
- b. Freedom of expression;
- c. The right to vote;
- d. Eligibility for public office;
- e. The right of political leaders to compete for support and votes;
- f. Alternative source of information;
- g. Free and fair election; and
- h. Institution for making government policies depends on your votes and other expression of preference.³⁹

From these institutional guarantees, two elements are distilled as most important; the role of the people and the guarantee of civil liberty. Most of the elements hinge on the people's willingness to exhibit their humanity and that is why most often sovereignty is said to reside in the people and not the elected. Just as contained in the American Declaration of Independence " governments are instituted among men, deriving their just powers from the consent of the governed." For Africa to truly realise the seven aspirations in Agenda 2063, the practice of true democracy must be embraced because the people embody all the community's wisdom and goodness, honesty, justice, and its sense of right and wrong; in short all the civic virtues available in it, which should outweigh all its vices. The people cannot have an interest opposed to their own advantage.⁴⁰ The circumvention of the practice of democracy remains the bane of good governance in Africa.

3.2.1 Good Governance

Good governance is not an abstract concept. It is simply a process whereby public institutions conduct public affairs, manage public resources and guarantee the realisation of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law.⁴¹ The true test of "good governance is the degree to which it delivers on the promise of human rights be it civil and political rights or economic, social and cultural rights. The acid test as to how democratic a government is the extent to which good governance is provided. The Council of Europe has developed a template as a determinant of good governance. The template is labelled as the Twelve Principles of Good Governance and European Label of Governance Excellence. These principles are:

³⁸ Nwabueze, B.O. Law and Democracy

³⁹ Aizinge E. *Jurisprudence of Democracy, Democracy and the Law op. cit. p.15*

⁴⁰ A Lexis de Toqueville, Democracy in America ed [Richard Heffner 1956]p.101

⁴¹ *Good Governance and Human Rights*, sourced from: www.ohchr.org visited on 10th July 2018. See also: UNDP [1997] Governance for Sustainable Human Development

1. Fair election and citizens participation;
2. Citizens expectation;
3. Efficiency and effectiveness;
4. Openness and transparency
5. Rule of law;
6. Ethical conduct;
7. Competence and capacity;
8. Innovation and openness to change;
9. Sustainability and long term operation
10. Sound financial management;
11. Human rights and cultural diversity; and
12. Accountability.⁴²

These principles are self-explanatory and ought to be developed as tool-kit to armed Africans with the template to hold elected leaders to account.

Gender inequality remain a big stain on our collective conscience. Holding tight to repressive and reprehensive cultural practices, the girl-child and women continue to suffer discrimination starting from the home to the work place. Indeed, the discrimination starts from the cradle to the grave. For Africa to overcome poverty and illiteracy, we must abandoned completely the false notion of women not being equal to men. The creativity, ingenuity, managerial prowess and latent potential of the African woman must be unleashed if the continent is serious about actualising Agenda 2063. Women like their male counterpart should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capacity to participate constructively.⁴³To sum it up neatly, Kofi Annan said “gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”⁴⁴

3.2.2 Access to Justice

Third Agenda envisions an Africa where the populace will enjoy affordable and timely access to independent courts and judiciary that deliver justice without fear or favour. When can the judiciary be said to be independent and impartial? The International Commission of Jurists provides the answer as follow and we cannot agree less:

A body is independent when it is not subject to the control or influence of the authorities whose actions or omissions that body has to review. An impartial body is one that is capable of making decisions solely on the law and on the facts, without bias for one side or the other, an impartial and independent body should also have enough legal power to impose an order [the order could include a requirement to do something, not to do something, to pay something, etc] upon the duty bearer if he or she is deemed not to have met his or her duties. In this sense, the power to make suggestions or recommendations, but not to enforce orders, would fall short of the definition of a mechanism establishing the justiciability of a right.in the modern State, this task is most frequently performed by courts, although some other mechanisms, such as administrative

⁴² Sourced from: www.coe.int visited on 10th July 2018

⁴³ See: Characteristics of Good Governance, @ www.gdrc.org visited on 11th July 2018

⁴⁴ Lifted from: Governance Quotes @ www.brainyquote.com visited on 11th July 2018

tribunals, arbitration or quasi-judicial bodies may also be adequate, should they comply with the criteria set out above.

Justiciability of a right does not amount to an entitlement to have any given complaint upheld; rather justiciability indicates the possibility of having a case involving an alleged violation of a right heard by an independent and impartial body. In other words, it requires that such a complaint is not excluded *a priori*. The final outcome of a case depends on the merits of the arguments made and, when appropriate, on the evidence produced. Even if a complaint can be adjudicated, the independent and impartial body could still decide that the complaint is wrong either in law or on the facts.⁴⁵

Without an independent and impartial judiciary it will be a tall dream to expect that the lofty aspirations of Agenda 2063 can be realised. After all, the seven aspirations are rooted in the rule of law, the primary meaning of which is that everything must be done according to law. It means also that governance and government should be conducted within the framework of recognised rules and principles which restrict discretionary power.⁴⁶

4.0 CONTEMPORARY APPROACHES TO ENFORCEMENT OF ESCR

As discussed much earlier in this work, while giant strides have been taking in the promotion and protection of ESCR, especially their incorporation into the Bill of Rights of some nations and cloaking them with justiciability, this notwithstanding, the adjudication of ESCRs has to a large extent been constrained by age-long disputation that they are non-justiceable. This argument is based on three faulty foundations, vagueness, and resource dependent nature of the rights and the doctrine of separation of powers. The argument on the resource-dependent nature of ESCRs leads to the formulation of the principle of progressive realisation of these class of rights and the principle has even been entrenched in international human rights treaties as well in national constitutions. The dependence on the principle of progressive realisation to deny ESCRs either justiciability or judicial enforcement is a wrong reading and understanding of the principle. For greater elucidation, the principle of progressive realisation, interdependence of rights and contemporary jurisdictional approaches are re-examined here.

4.1 Progressive Realisation of ESCR

The principle of progressive realisation puts the realisation of economic, social and cultural rights on the availability of resources. This means States are to allocate and expend funds incrementally towards the maximum realisation of ESCR. In other words, ESCRs might have to be realised over time and this of course, it is argued has to be dependent on resources available to the state. Therefore Chenwi submits that:

The progressive realisation qualification requires a state to strive towards fulfilment and improvement in the enjoyment of socio-economic rights to the maximum extent possible, in the face of resource constraints. A state's performance in terms of the progressive realisation would depend on, among other things, both the actual socio-economic rights people enjoy at a given

⁴⁵ *Courts and Legal Enforcement of Economic, Social and Cultural Rights*, International Commission of Jurists, [Geneva, 2008]

⁴⁶ See the case of Governor of Lagos State v Ojukwu [1986] 1 NWLR [Pt.18] 621 at 638

moment as well as the society's capacity of fulfilment [in terms of the resources available to the state].⁴⁷

The origin of the principle can be traced to the International Covenant on Economic, Social and Cultural Rights. Article 2[1] provides:

Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

This principle has been imported into some national constitutions. In this regards the Constitution of the Republic of South Africa and Republic of Kenya stand out. For instance, under the South African Constitution though Sections 26 and 27 guarantee that everyone has the right to access adequate housing, and the right to have access to health care services, sufficient food and water and social security, the section however acknowledge the roles availability of resources play in giving maximum effect to the rights by stating that the State must take reasonable legislative steps and other measures, within available resources to achieve progressive realisation of the rights.⁴⁸ Also in the right to further education the State is directed to make progressively available and accessible through reasonable measure.⁴⁹

The Constitution of Kenya has similar provisions. Article 43 on the one hand provides that everyone has the right to the highest attainable standard of health, to accessible and adequate housing, to food, to clean and safe water, to social security and to education, on the other hand Article 21[2] provides as follows:

The State shall take legislative, policy and other measures, including the setting up of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.

From a combined reading of Article 2[1] of the ICESCR and other similar provisions in national constitutions, it is clear that the principle of progressive realisation is not intended to whittle down the realisation of the rights but rather a handmaid to aid the maximum realisation of socio-economic rights. The principle simply acknowledges that States are differently endowed resource-wise but places obligations on state parties to take all necessary steps to the maximum of their available resources having in mind the desire to progressively realise the rights recognised fully. The standard was meant to be a flexibility device, to allow States the necessary margin of appreciation in adopting measures for the realisation of economic and social rights taking into account their unique contextual situation.⁵⁰

The obligation to progressively and constantly move towards the realisation of ESCR, within the resources available to a State, including regional and international aid is the basis of the coinage "progressive realisation." While the African Charter does not expressly refer to the principle of progressive realisation, this concept is widely accepted in the interpretation of ESCR and has been implied into the Charter in accordance with Articles 61 and 62 of the

⁴⁷ Lillian Chenwi, "Unpacking " progressive realization", its relation to resources, minimum core and reasonableness, and some methodological considerations for accessing compliance" [2013] De Jure Law Journal, sourced from: www.saflii.org/za/journals/DEJURE/2013/39.html visited on 12th July 2018

⁴⁸ See: sections 26 [1] [2] and 27 [1][2] of the Constitution of RSA

⁴⁹ See: section 29[1] [b] ibid

⁵⁰ A Compendum on economic and social rights under the Constitution of Kenya, 2010, pp. 10-11

Charter. State parties are therefore under a duty to move as expeditiously and effectively as possible towards the full realisation of ESCR.⁵¹

This concept means that States must implement a reasonable and measurable plan, including setting achievable benchmarks and timeframes, for the enjoyment over time of ESCRs within the resources available to the state party. Of course some obligation in relation to progressive realisation are immediate. For example, States have an obligation to take concrete and targeted steps to realise ESCRs. The essential needs of vulnerable and disadvantaged groups should be prioritised in all resource allocation processes.⁵²

States need sufficient resources to progressively realise ESCR. There are a variety of means through which states may raise these resources, including taxation. The duty of the individual to pay taxes imposed by the African Charter implies that there is an obligation on the State to institute an effective and fair taxation system and budgeting process that ensures that ESCR are prioritised in the distribution of resources.⁵³

Legislative measure is but only one of the means to attain the full realisation as there are other approaches and measure too which are further discussed below.

4.2 Contemporary Judicial Approaches to Enforcement of ESCR

Here we examine how the content of ESCR has been defined by courts, how the problems posed by the justiciability of ESCRs can be overcome and how courts in other jurisdiction have been able to guarantee ESCRs to claimants. A number of mechanisms that have been applied by courts in other to deal with the different aspects of ESC are examined too.

4.2.1 Core content or minimum core duty

The first conceptual element that assists in determining the responsibilities of a state in relation to ESCR is the idea of core content (also called minimum content). The concept entails a definition of the absolute minimum needed, without which the rights would be unrecognizable or meaningless. States parties have an obligation to ensure the satisfaction of, at the very least, the minimum essential level of each of the ESCR contained in the African Charter. The minimum core obligation is the obligation of the State to ensure that no significant number of individuals is deprived of the essential elements of a particular right. This obligation exists regardless of the availability of resources and is non-derogable.

Applying the idea of core content the Swiss Federal Court has found that Swiss courts can enforce an implied constitutional right to a “minimum level of subsistence” both for Swiss national and foreigners.⁵⁴

Towing the same part, Brazilian courts in construing the constitutional right to education for children have held that as part of the express provision in the Brazilian constitution establishing the right to education for children, the state is obliged to ensure access to day – care and kindergarten for children up to six years old. Compliance with this constitutional mandate according to the Brazilian Federal Supreme Court cannot be left to administrative discretion.⁵⁵

The Argentine Supreme Court has also held that, in light of the human right to health guaranteed by the Constitution and international human rights treaties, statutory regulations granting access to medical

⁵¹ Guideline 13 of the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights

⁵² Guideline 14 *ibid*

⁵³ Guideline 15 *ibid*

⁵⁴ Swiss Federal Court v Einwohnergemeine X und Regierungsrat dse Kanton Bem, BGE/ATF 121/367 October 27,1995

⁵⁵ Supremo Tribunal Federal, RE 436996/SP. October 26,2005

services should be read as requiring health care givers to fully provide essential medical services in case of need.⁵⁶

4.2.2 Duties of immediate effect

Article 2 (1) of the ICESCR provides to the effect that " The State Party to the present Covenant undertake to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressive realization of the rights recognized in the present Covenant ". However we make bold to state that it is not all ESCR that must be achieved progressively; some duties can be realized with immediate effect.⁵⁷ So while some of the duties associated with ESCRs rights may be qualified by the concept of progressive realization, thus leaving the State some leeway to decide the proper timeframe and allocation of resources, according to their availability, other duties must be complied with by the State immediately and no delay is permissible.

The UN Committee on Economic, Social and Cultural Rights (CESCR) has identified some duties as having immediate effect. These include:

- The duty to take steps or adopt measures directed towards the full realization of the rights contained in the ICESCR; and
- The prohibition of discrimination.

The existence of duties of immediate effect offers a basis upon which to assess violations of State action and omission. It clearly demonstrates how ESC rights are not purely pragmatic; rather they impose some directly operative obligations. Non – compliance with these duties can then be justiciable.

The Supreme Courts in India and Bangladesh have issued significant decision in this regard. In *ASK v. Bangladesh*⁵⁸ the court held that before carrying out a massive eviction from an informal settlement, the government should develop a plan for resettlement, allow eviction to occur gradually and take into consideration the ability of those being evicted to find alternative accommodation. The court also held that the authority must give fair notice before eviction.

The concept of duties of immediate effect was applied by the Inter-American Court of Human Rights in the case of *Ituango Massacre v Colombia*.⁵⁹ Following the massacre of the civilian population carried out by paramilitary groups in complicity with members of the Colombia army, the perpetrators stole cattle from the victims, and forced 17 peasants to carry the stolen cattle to territory under their control without pay and under threat of violence. The Inter-American Court considered that the prohibition of forced labour had immediate effect, and read Article 6.2 [prohibition of forced labour or compulsory labour] and Article 7 [right to personal liberty] of the American Convention on human rights in the light of Convention 29 of the International Labour Organisation, finding that the State was liable for the breach.

On the right to work, the African Commission on Human and Peoples 'Rights has considered that even positive obligations to detect and eradicate practices that violate these rights represents immediate duties established by the African Charter on Human and Peoples Rights, regardless of the wealth of the country involved [Mauritania] where allegations were made concerning large scale slave labour.⁶⁰

4.3.3 The Concept of Interrelatedness of Rights

⁵⁶ Reynoso , Nida Noemi c/NSSJP s/amparo, May 16, 2006

⁵⁷ See, in the same sense, Limburg Principles, Principle 8, 16, 21 – 24.

⁵⁸ 19 BLD (1999) 488, July 29, 2001

⁵⁹ July 1 2006 paras 145 - 168

⁶⁰ African Commission on Human and Peoples' Rights Malawi African Association & Ors v Mauritania, Comm. Nos. 54/91, 61/91, 68/93, 164/97 – 196/97 and 210/98 [2000] May 11, 2000 paras 135

It is the current position amongst legal scholars and jurists that human rights are indivisible as they are interrelated and interdependent. This much is evident in the Preamble to the ACHPR which recognizes that civil and political rights cannot be dissociated from ESCR in their conception as well as universality and that the satisfaction of ESCR is a guarantee for the enjoyment of civil and political rights. As was held in the Grootboom Case, the proposition that rights are interrelated and are all equally important is not merely a theoretical postulation. The concept has immense human and practical significance in a society founded on human dignity, equality and freedom.⁶¹

Most of the rights that are justiciable such as the right to life, dignity of the human person, personal security etc are not realizable without the realization of ESCR.⁶² To give effect to the concept of interrelatedness and interdependence of rights, some jurisdictions have adopted the rule of constitutional harmony, completeness, exhaustiveness and paramountcy which requires that constitution be interpreted as an integrated whole with no particular provision destroying the other, but each provision sustaining the other provision in the constitution.⁶³ The need for this delicate balance was deployed in the Ayoma Case in harmonizing the right to property vis-à-vis the right to housing in the context of forced eviction where the High Court held that where there is a danger of being left homeless and destitute, their right to housing has to be balanced with the competing rights of the property owner.

5.0 Recommendations and Conclusion

Having concluded that human rights are indivisible, interrelated and interdependent and that the enjoyment of civil and political rights by and large is tied to the fulfilment of economic, social and cultural rights but however realizing the reluctance of African nations to honouring her treaty obligation as it relates to ESCR, and the Africa envisioned in Agenda 2063 may not be realized if socio-economic rights are implemented by all arms and organs of government, we are constrained to recommend the complete implementation of the General Observation in the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights. As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil, political, economic, social and cultural rights.

- The International Covenant on Economic, Social and Cultural Rights should, in accordance with the Vienna Convention on the Law of Treaties [Vienna 1969], be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and the relevant practice.
- The experience of the relevant specialized agencies as well as of United Nations bodies and intergovernmental organisations, including the United Nations working groups and special rapporteurs in the field of human rights, should be taking into account in the implementation of the ICESCR and in monitoring States parties' achievements.
- The achievement of economic, social and cultural rights may be realized in a variety of political settings. There is no single road to their full realization. Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures.
- States parties must at all times act in good faith to fulfil the obligations they have accepted under the Covenant.
- Although the full realization of ESCR is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time.

⁶¹ Government of South Africa v Grootboom & Ors [2001] [1] S/A 46 [CC] par. 83

⁶² Mitu-Bell Welfare Society v Attorney General & 2 Ors, Nairobi Pet. No. 164 of 2001

⁶³ Ayuma and Others v Regd Trustees of the Kenyan Railway Staff Retired Benefits Scheme and Others Pet. No. 65 of 2010.

- Non-governmental organization can play important role in promoting the implementation of the Covenant. This role should accordingly be facilitated at the national as well as the international level.
- States Parties are accountable both to the international community and to their own people for their compliance with the obligations under the Covenant
- A concerted national effort to invoke the full participation of all sectors of society is, therefore, indispensable to achieving progress in realizing economic, social and cultural rights popular participation is required at all stages, including the formulation, application and review of national policies.
- The supervision of compliance with the Covenant should be approached in a spirit of co-operation and dialogue. To this end, in considering the reports of States parties, the Committee on Economic, Social and Cultural Rights should analyze the cause and factor impeding the realization of the rights covered under the Covenant and, where possible, indicate solutions.
- All organs monitoring the Covenant should pay attention to the principle of non-discrimination and equality before the law when assessing States parties' compliance with the Covenant.
- Given the significance for development of the progressive realization of the rights recognized in the Covenant, special attention should be given to measure to improve the standard of living of the poor and other disadvantaged groups, taking into account that special measure may be required to protect cultural rights of indigenous people and minorities.

At the heart of Agenda 2063 is the enduring Pan African vision of an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the international arena. However. This will not happen spontaneously, it requires conscious and deliberate efforts to nurture a transformative leadership that will not only drive the agenda and defend Africa's interest but will with gusto and zeal observing, respecting and promoting true democracy and the rule: paying particular attention to human rights and fundamental freedoms.

An independent judiciary is indispensable to the effective implementation of ESC rights. While the judiciary is not the only means of securing the realization of such rights, the existence of an independent judiciary is an essential requirement for the effective involvement of jurists in the enforcement, by law, of such rights, given that they are often sensitive, controversial and such as to require the balancing of competing interest and values.⁶⁴

⁶⁴ Bangalore Declaration and Plan of Action