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ENSURING RIGHTS MAKE REAL CHANGE



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ESR Review

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Unfortunately, in situations of conflict, existing health services are usually overstretched and at best operate at rudimentary levels. In addition, they are forced to cope with injuries because of widespread violence, shortage of food, water, shelter as well as other socio-economic deprivations. As such, in giving humanitarian assistance, there is a possibility that food and shelter and other emergency health issues could be prioritized over the sexual and reproductive health needs of women and girls. No doubt, efforts have been made by various international bodies and States in providing sexual and reproductive health care services to those affected by armed conflict but not to the extent of adequately meeting the needs of a substantial number of those in need.

Aisosa Jennifer Isokpan

Contents:

Features



Realising the sexual and reproductive health needs of women affected by the Boko Haram insurgency in Nigeria

Some Recent Developments on Justiciability of Economic, Social and Cultural Rights

Updates



Developments at the United Nations

Developments in the African Region

Events



Roundtable focuses on access to food for tertiary students – 5 October 2017

The role of national human rights institutions in advancing sexual and reproductive health - 19 – 20 October 2017

Call for Contributions



From the editor:

This is the third issue of the ESR Review in 2017. It includes two feature articles that discuss critically important aspects of socio-economic rights – sexual and reproductive health rights; and recent developments on justiciability of economic, social and cultural rights. Considering recent global and regional developments on the issue of migration, the Issue includes updates from the Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa. It also contains updates from the United Nations with a focus on the work of the Special Representative of the United Nations Secretary-General on Migration.

The first feature is by Aisosa Jennifer Isokpan, who assesses the unmet sexual and reproductive health needs of women affected by the Boko Haram insurgency, especially among the internally displaced populations.

The second feature by Eric Ayemere Okojie and Peace O. Folorunsho explores emerging and recent developments on justiciability of Economic, Social and Cultural Rights.

The timing of this Issue could not have been more timely and apt. It coincides with the landmark and game changing decision by the AU Assembly in January 2018 in Addis Ababa, Ethiopia to facilitate free movement of persons in Africa. The assembly adopted the Protocol to the Treaty Establishing the

African Economic Community Relating to Free Movement of Persons, Right of Residence and Establishment, and its Implementation Roadmap. The adoption of the protocol brings Africa closer to socio and economic integration; visa-free travel and streamlined residence permit processes like those enjoyed in the European Union and the Americas.

The Protocol will remove barriers of trade, investment and tourism as it promotes the right of African nationals to move freely, reside, work, study or do business in any of the 55-member states of the continental body.

This Protocol is timely as the issues of migration and the migrant situation have been a major concern in Africa. The plight of refugees, migrants and asylum seekers has received unprecedented global attention as stories of desperation, death and mistreatment multiply and are highlighted in the media almost daily. Spurred by sociocultural and political injustices, adverse economic conditions, conflict, and war, thousands of Africans make the perilous journey across the Mediterranean each year hoping for a better life in Europe.

The Protocol which is anchored in the Abuja treaty was preceded by many rounds of negotiations in Seychelles, Accra, Kigali, Addis Ababa, and Mauritius leading to a consensus around the phased implementation of people's right of entry by 2023. The free movement of people and goods proved a controversial and divisive issue with countries wanting the reassurance of the plausible negative impact on the Protocol on issues such as border security in wake of terrorism and social and economic concerns in the wake of the fear of being inundated with job seekers from less developed nations amidst competition over scarce resources that have at times given rise to xenophobia and violence.

The aim of the Protocol is to “progressively achieve the free movement of persons and to ensure the enjoyment of the right of residence, establishment, and access to gainful employment in the host countries.” The Protocol envisages that “the free movement of persons, capital, goods and services will promote integration, Pan-Africanism, enhance science, technology, education, research and foster tourism, facilitate intra-Africa trade and investment, increase remittances within Africa, promote mobility of labour, create employment, improve the standards of living of the people of Africa and facilitate the mobilization and utilization of the human and material resources of Africa in order to achieve self-reliance and development.”

The Protocol is a precursor to a major African Union (AU) project of establishing the Continental Free Trade Area (CFTA) which is envisioned to “create a single continental market for goods and services. The envisioned free movement of people, labour, and capital as essential factors of production has been hailed to “enhance competitiveness at the industry and enterprise level through exploiting opportunities for scale production, continental market access and better reallocation of resources.” The adoption of the Protocol on free movement of persons is a big step toward Africa's economic integration and is a welcome development in migration governance and policy in Africa. It is therefore essential that all AU Member States adopt and implement the Protocol. In addition, the AU, Regional Economic Communities (RECs) and various stakeholders including the private sector, universities, civil society, think tanks and African citizens should promote and support effective implementation of the Protocol.

We acknowledge and thank all the guest contributors to this issue. We trust that readers will find it stimulating and useful in the advancement of socio-economic rights, especially the rights of the poor and most vulnerable groups of society.

1

REALISING THE SEXUAL AND REPRODUCTIVE HEALTH NEEDS OF WOMEN AFFECTED BY THE BOKO HARAM INSURGENCY IN NIGERIA

by **Aisosa Jennifer Isokpan**

Introduction

The need to secure women's reproductive health was recognised as far back as 1993 at the Vienna Conference on Human Rights, the International Conference on Population and Development (ICPD), Cairo in 1994 and the Fourth World Conference on Women in Beijing in 1995. The consensus documents from the ICPD and Beijing conference also articulated the need for women to have access to reproductive health services highlighting the special needs of refugees and internally displaced women. During armed conflict, in addition to other challenges, women are exposed to random acts of sexual violence which includes mass rape, sexual slavery, forced prostitution, forced marriages and pregnancy as well as engaging in transactional sex for survival (UNFPA Adolescent Girls and Armed Conflict, 2016).

This reality makes women and girls amongst the world's most vulnerable and requiring timely access to reproductive health services. Unfortunately, in situations of conflict, existing health services are usually overstretched and at best operate at rudimentary levels. In addition, they are forced to cope with injuries because of widespread violence, shortage of food, water, shelter as well as other socio-economic deprivations. As such, in giving humanitarian assistance, there is a possibility that food and shelter and other emergency health issues could be prioritized over the sexual and reproductive health needs of women and girls. No doubt, efforts have been made by various international bodies and States in providing sexual and reproductive health care services to those affected by armed conflict but not to the extent of adequately meeting the needs of a substantial number of those in need.

This contribution takes particular note of the unmet sexual and reproductive health needs of women affected by the Boko Haram insurgency especially, among the internally displaced populations. The reference to women in this paper includes adolescent girls as they face similar sexual and reproductive health challenges. This paper shows that the Nigerian government has not made the delivery of sexual and reproductive health services a priority and has largely abdicated its duties to international support agencies. It is noted that the sexual and reproductive health consequences of the Boko Haram insurgency could be minimised at least among the displaced populations if the underlying causes of sexual violence against women are addressed. Also of importance is the need for the measures adopted to be the outcome of a participatory process involving the affected women.

The Boko Haram insurgency in Nigeria and its impact on women

The group Jama'atu Ahlis Sunna Lidda'awati wal-jihad (people committed to the propagation of the prophet's teachings and jihad) popularly known as Boko Haram, has unleashed terror on the Northeast of Nigeria since 2009 through series of bombings, assassinations and abductions in furtherance of its aim of creating an Islamic State governed by Sharia law. The insurgency has led to loss of lives, properties and a huge displacement of people including women and children. Across the six states of the Northeast Nigeria, the on-going crisis is estimated to directly affect 26 million people, with 14 million in need of humanitarian assistance. Borno, Adamawa and Yobe States are the most directly affected by the conflict and Bauchi, Gombe and Taraba are equally affected as they host most of the internally displaced populations. This has led to a huge strain on basic infrastructure and services including healthcare (Humanitarian Crisis Overview, 2017).

The insurgency has negatively affected women as they face grave human rights abuses including death, torture, sexual and gender-based violence in addition to other socio-economic deprivations. A notable feature of the Boko Haram insurgency in Nigeria is the widespread sexual violence used as a weapon of war against abducted women and girls by the insurgents for several reasons including torture; humiliation; domination; forced conversion, an attempt to discourage western education as well as to produce a new generation of extremists in Nigeria. As a result of exposure to sexual violence, some return with pregnancies or with babies fathered by the boko haram extremists. Women are sometimes forced to marry their captors, and to give birth without medical assistance. Some have also tested positive for HIV and other sexually transmitted infections. This raises serious concerns for the sexual and reproductive health of a whole generation of women and girls who have endured sexual violence in the hands of their captors. The Boko haram sect has abducted thousands of women and girls since the start of the conflict in 2009. The height of this was the abduction of over 250 Chibok girls in April 2014 which ignited an international outcry and led to the popular '#BringBackOurGirls' campaign (UNICEF, 2015). Though the Chibok girls' abduction represented the largest single incident of abduction attributable to the Boko Haram, it is one among a series of abductions of women and girls by the sect.

The internal displacement resulting from

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the insurgency has equally had a heavy toll on women. They make up 54 per cent of the displaced population with a large number living in deplorable conditions in often over-crowded camps with limited sanitary facilities, and weak protection and security measures in place. There is also a lack of adequate reproductive health care services including timely clinical management of rape (Humanitarian Crisis Overview, 2017). The displacement situation has increased the rate of violence against women in IDP camps including rape, early/forced marriages as well as engagement in transactional sex. Transactional sex (sexual exchange for material gain) has been reported in many IDP camps in Borno, for several reasons including in exchange for food assistance and to gain freedom of movement in and out of temporary IDP sites (Humanitarian Crisis Overview, 2017). There have equally been reported cases of harassment of women in IDP camps and host communities, often in the course of conducting daily activities such as food distribution and water collection. This risky coping mechanism predisposes these women and girls to reproductive health complications.

The burden appears worse for pregnant women or lactating mothers, elderly women and female headed households. This situation is rooted in gender-based discrimination, social norms and gender stereotypes and can be exacerbated in humanitarian settings of which women and girls are at the receiving end (UNFPA, 2016).

The unmet reproductive health needs of women affected by the boko haram insurgency

During armed conflict, the resulting disruption of protection services leads to an increase in sexual violence exacerbating threats to the health and survival of women and girls. This has significant sexual and reproductive health consequences including forced and unwanted pregnancies, unsafe abortions, risk of sexually transmitted infections (STI) including HIV, chronic pelvic pain and other gynaecological problems. They also suffer mental and emotional health problems such as anxiety, depression, loss of self-esteem, eating disorders amongst others (UNFPA, 2017). Access to sexual and reproductive health services during armed conflict is important to curb the spread of infectious diseases as well as control the rate of maternal and child mortality. Victims of sexual violence require specialised health care including timely clinical management of rape, psychological and psychosocial support, and access to justice, safety and security as a minimum requirement.

Sexual and reproductive health is an essential component of the universal right to the highest attainable standard of physical and mental health. Implicit in this right is access to effective, affordable and safe healthcare services to enable women go safely through pregnancy, childbirth and have a healthy infant. It involves the availability of affordable pre-natal care, safe motherhood services, assisted childbirth from a trained attendant, comprehensive infant health care, and access to information regarding contraception. It includes the right of women to enjoy a satisfying and safe sexual life free from coercion, discrimination and violence as well as the prevention of sexually transmitted infections including HIV (UNFPA, 2014). States have an obligation to within available resources and progressively achieve the full realization of the right to sexual and reproductive health which must be available,

accessible, and affordable and of good quality (Committee on Economic Social and Cultural Rights ESCR General Comment 22 (2016) paras 11-21, 33). This obligation also includes the duty to ensure its existence even in situations of armed conflict.

The realisation of this right is largely dependent on the achievement of gender equality and non-discrimination. The CEDAW committee considers violence against women and girls as a form of discrimination and a manifestation of gender inequalities which during armed conflict place them at a heightened risk of various forms of gender-based violence (Committee on the Elimination of All forms of Discrimination against Women, General Recommendation 30, (2013) para 34). This is largely due to the fact that women are disproportionately affected by poverty, violence, socio-economic deprivations, discrimination in decision making at various levels amongst others.

Women have a right to be protected from all forms of violence whether in public or private settings and definitely during armed conflict. Article 4 of the African Women's Protocol emphasises the need for a woman to enjoy respect for her integrity and the security of her person. States must give effect to this by taking appropriate measures to protect women from violence including unwanted or forced sex whether such takes place in private or public (Article 4(2) (a) African Women's Protocol).

This means that women affected by armed conflict especially the refugees and internally displaced sheltered in camps have a right to be protected from sexual violence. The United Nations Security Council Resolution 1325 calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict (UN Security Council Resolution 1325, (2000) para 10).

The escalation of the conflict in 2014 has resulted in a severe deterioration of living conditions and has significantly disrupted the health system with a rise in outbreaks of preventable communicable diseases, restricted access to essential medicines and care for non-communicable diseases and a lack of services for pregnant and lactating women. Among the most vulnerable populations are reproductive age females below poverty line who are sheltered in IDP camps as a result of the insurgency. Access to adequate healthcare has been highly constrained due to the destruction of over 450 health facilities in Borno, Adamawa, Yobe and Gombe, with 334 in Borno alone (Humanitarian Needs Overview, 2017). In addition to the insufficient number of skilled health care workers, the limited availability of medicines and medical equipment together with a non-functioning referral system hampers humanitarian response (Humanitarian Crisis Overview, 2017). It is estimated that over 1 million women of reproductive age do not have adequate family planning, ante-natal care and post-natal care, safe delivery, emergency obstetric care, prevention and treatment of STIs and HIV, rape treatment and other life-saving reproductive health services (Humanitarian Crisis Overview, 2017). UNFPA is working to reach people affected by the insurgency through support to 155 health facilities and clinics in Adamawa, Borno and Yobe states, reaching 1.2 million people.

Some 300,000 people were reached in October and November of 2016 alone. UNFPA supplies these facilities with comprehensive reproductive health kits containing contraceptives; equipment for pre-natal care, safe childbirth and post-natal care; supplies to treat sexually transmitted diseases and to prevent HIV; and supplies to support the clinical management of rape. These efforts are part of a broader plan to restore access to essential reproductive health services to people affected by the crisis (UNFPA, 2017). The UNFPA has also created safe spaces in some IDP camps reaching thousands of women (UNFPA Adolescent Girls (2016). These safe spaces in camps provide an entry point for reproductive health information and services including family planning and psychosocial counselling for gender-based violence. It equally offers women and girls opportunities to acquire livelihood skills and engage with others to rebuild community networks.

These efforts though laudable have not been able to meet the needs of a large number of affected women and girls. As said earlier, the Nigerian government had performed less than expected in its assistance to the IDPs as it appears to have abdicated its responsibility to international support agencies. A State has the primary role in the provision of humanitarian assistance to IDPs within its territory (UN Guiding Principles on Internal Displacement, principle 25, United Nations Resolution 46/182 of 1991, para 4). The support of international bodies cannot override that responsibility as it is only limited to some camps reaching just a fraction of the IDPs. The major burden lies with the Nigerian government. However, the government has not been able to meet the humanitarian needs of the IDPs probably because their needs outweigh its current capacity to address them and also the limited understanding of the needs of IDPs. National efforts to respond to the challenges of IDPs and mitigate the long-term effects remain inadequate as shown by the 2017 Humanitarian Needs Overview which demonstrates that the needs of IDPs remain largely unmet.

It is not in doubt that the worsening Nigerian economy and state finances are affecting the ability of the response at the Federal and State level, as Nigeria is currently battling with economic recession. The recent establishment of an Inter-Ministerial Task Force in 2016 under the Minister of Budget and Planning and an Emergency Coordination Centre as its operational arm are very positive steps in fostering greater partnership and more efficient coordination between the Government and the humanitarian community. It shows government's readiness to effectively lead the humanitarian response. The impact of these efforts is yet to be seen just as other previous results. Addressing the needs of the affected women and girls goes way beyond setting up committees. Rather, it turns on adequate implementation of strategies to meet the needs of the people.

Conclusion and recommendations

The reproductive health needs of women and girls affected by armed conflict are similar to their counterparts in stable environments except that the consequences of armed conflict make them more vulnerable to sexual and reproductive ill health.

Efforts at addressing the sexual and reproductive health challenges of women have to be holistic in approach and aimed at addressing the root causes of sexual violence and its attendant consequences such as transmission of STIs and unwanted pregnancies which puts a strain on already limited healthcare services.

It also involves ensuring access to contraceptive alternatives in order to control the rate of unwanted pregnancies. The underlying cause of this sexual exploitation is the dependence of women on male partners for survival due to the deplorable living conditions including shortage of food, limited security and lack of economic opportunities. Food insecurity happens to be the greatest concern among the internally displaced people which predisposes women to engage in transactional sex for their survival and that of their dependants (OCHA 'Nigeria-Northeast: Humanitarian Emergency 2017). Women should be given opportunities to be empowered in order to prevent dependence on a male partner placing them at risk of sexual exploitation.

It should be borne in mind that in all conflicts, women are faced with challenges in ways specific to women. This does not necessarily make them a homogenous group as different women will have varying needs, vulnerabilities and coping mechanisms. For a fact, it is important to spot the general needs of women, but it is equally necessary to respond to their different needs. The challenges faced by adolescent girls could in some way differ from those of older women with dependants. Same applies to lactating women, elderly and female headed households. The intervention programmes need to be borne out of a participatory process where women can be involved and engaged with on what services would adequately meet their needs. The CEDAW Committee has expressed concern that while women often take on leadership roles during conflict as heads of households, peacemakers, political leaders and combatants, their voices are silenced and marginalized in post conflict and transition periods and recovery processes (CEDAW, General Recommendation 30, (2013) para 42). The UN Security Council in its Resolution 1325 requires that measures adopted in camps and settlements take into consideration the peculiar needs of women and girls (UN Security Council Resolution 1325 para 12). It has equally stressed the need for women to be part of the decision-making processes at all stages including conflict prevention, management and resolution (UN Security Council Resolution 2106 (2013) para 7). It will amount to an exercise in futility to attempt to address the root causes of sexual violence among displaced women and girls without engaging with them in a bid to know their peculiar challenges and how best to deal with it.

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2 SOME RECENT DEVELOPMENTS ON JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS by **Eric AyemereOkojie and Peace O. Folorunsho**

Introduction

On 16 November 1966, the United Nations General Assembly adopted as well as opened for signature, ratification, and accession, via Resolution 2200A (XXI), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its sister covenant, the International Covenant Civil and Political Rights (ICCPR). The ICESCR entered into force on 3 January 1976 in accordance with Article 27.

Whilst the ICESCR deals with economic, social and cultural rights (ESCR) such as work, health, education, social security and social insurance, and an adequate standard of living including adequate food, clothing and housing and the continuous improvement of the standard of living, the ICCPR is concerned with civil and political rights. Among these are the right to life, the right to liberty and security of person, the right to marry and found a family with the full consent of both parties, the right to fair trial, the right to privacy, and the prohibition of slavery and servitude, torture or cruel, inhuman or degrading treatment or punishment.

A good number of these rights (ESCR and civil and political rights) have been incorporated into the constitutions of countries that are state parties to these covenants, including Nigeria (a focus of this paper). According to Trispiotis (2010: 1), these two sets of rights were developed after the 1950s during the Cold War. It should be noted that it was at the time of the adoption of the two covenants that ESCR started playing second fiddle to civil and political rights, a status they have retained into the present day.

Historically, issues pertaining to food, health, education, shelter, and work have troubled the human race (Udu: 28).

The aforesaid have been argued to have been responsible for the Tonghat Peasant Revolution in Korea in 1894, in which, in response to exploitation by local magistrates, peasants occupied the county office, seized weapons and distributed illegally collected tax rice to the poor (Abelmann: 27).

In China, peasants also resisted taxes which they perceived as inequitable (Hanagana, Moch, and Blake: 158). The issue of food, particularly bread, was the major cause of the French Revolution of 1789 in which the monarch was deposed. According to Udu (28), those who experienced the greatest violation of ESCR were slaves, who suffered from hunger, lived in miserable conditions, had ill-health resulting from poor food and lack of medical care, and had little or no access to formal education.

The establishment of the United Nations (UN) in 1945 after the end of the Second World War was a turning point in the international concern for the protection human rights generally (both civil and political rights as well as ESCR). Article 55 of the UN Charter states amongst others that the UN shall promote a higher standard of living, full employment, and conditions of economic and social progress and development.

It is worth noting that the rights above have been part of the language of international human rights since the adoption of the Universal Declaration on Human Rights (UDHR) 1948 (International Commission of Jurists: 2). These rights are replicated in Articles 22-27 of the UDHR. It should be noted that the UDHR was a non-binding instrument: it was a mere declaration that had a no legal force whatsoever in holding states accountable for the non-implementation of those rights.

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The non-justiciability of ESCR has to do with the relatively less attention accorded to them than to civil and political rights: This anomaly has significantly affected human rights. The treatment accorded ESCR came to the fore at the World Conference in Vienna in 1993, where the Economic, Social and Cultural Rights Committee of the UN reiterated the unsatisfactory role that ESCR has played in political and societal awareness since their codification, arguing that violations of civil and political rights continued to enjoy a special status denied to ESCR (Steiner, Alston and Goodman: 264).

To underscore the importance of ESCR to society, President Roosevelt, in his State of the Union Address to Congress in 1941, identified four freedoms, of which freedom from want is one. He stated that making freedom from want a reality essentially 'means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world' (Roosevelt, 1941). On 11 January 1944, President Roosevelt in a speech to Congress entitled 'Economic Bill of Rights' further stated that as a people we must do everything to ensure that the general standard of living of the people is taking as a priority so as to achieve individual freedom which will be as a result of economic security; the political rights having proved inadequate in that regard.

From the foregoing it can be inferred that the special status continually accorded to civil and political rights can never result in a happy society. The views expressed by President Roosevelt more than 70 years ago remain relevant in our contemporary world. It can be inferred, furthermore, that our failure to pay heed to those warning that there cannot be true individual freedom where economic security and independence are lacking has resulted in a state of uncertainty. Thus, it cannot be overemphasised that the insecurity experienced in the world today is a result of the relegation of ESCR to the background.

Justiciability

It has been argued that the justiciability and non-justiciability of civil and political rights and ESCR stem from the ICCPR and ICESCR themselves, given the way in which article 2 of both of the covenants was codified (Albrecht, 2012). Under the ICCPR, state parties are obliged to 'respect and ensure' the rights and to 'provide effective remedies' in case of violations, whereas under the ICESCR they are required to 'take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of [their] available resources with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures' (art. 2, ICESCR).

A number of arguments have been made as to the reason why ESCR are not justiciable. There is the argument that the non-justiciability of ESCR has to do with their vagueness and indeterminacy.

According to Scott and Macklem (1992: 69), 'social rights suffer from a painful lack of precision', and as such cannot be judicially enforced. Trispiotis (2010: 1) states that opponents of the justiciability of ESCR argue that the cost involved in the implementation of ESCR, as well as the judiciary's incompetence to take decisions with economic implications that would substantially affect the budget of a state, account for the non-justiciability of ESCR.

According to Trispiotis (2010: 1), this argument is based on the assumption that judges find it easy to adjudicate on matters dealing on civil and political rights as doing so does not impact on the state's economy. Trispiotis argues otherwise and stated that it is not true as Article 2 of the ECHR puts States under obligation to investigate killings, to build an efficient framework regulating the use of force, etc.

Another argument adduced to justify the non-enforceability of ESCR in terms of article 2 of the ICESCR is that the ICESCR is generally framed in a way that its provisions are expressed as state obligations rather than individual rights (Verna 2005: 9). However, the Committee on ESCR has continued to reject the argument that article 2 is responsible for the non-enforceability of ESCR (Human Rights Features, 58th Session of the CHR 20032). The Human Rights Committee, in its General Comment 6 (Right to life, Human Rights Committee General Comment 6, para 5, 1982), states that the inherent right to life cannot be understood in a narrow interpretation and its protection requires States to adopt positive measures to that effect.

It can be gleaned from the above that the various arguments against the non-justiciability of ESCR also affect civil and political rights, yet they are justiciable. Thus, ESCR can be enforceable in the same way as civil and political rights are. All that the state needs is to have the same political will with regard to ESCR as to civil and political rights. According to Tushnet (2004: 1895), 'a purported right without an accompanying judicially enforceable obligation is, almost literally, toothless'.

In Nigeria, ESCR are provided in Chapter Two of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Entitled 'Fundamental Objectives and Directive Principles of State Policy', this entire chapter of the Constitution is non-justiciable. The ESCR enumerated in the chapter include equal pay for work without discrimination on the ground of sex or any other ground whatsoever; adequate medical and health facilities for all persons; protection of children against neglect; protection and safeguarding of the health, safety and welfare of persons in employment; and the provision of free education at all levels. For instance, section 18 of the Constitution provides for free education for citizens at primary, secondary and university levels of education; by virtue of subsection (3), though, this is only 'as and when practicable'.

However, the government has taken steps to give legislative effect to certain of the ESCR. In 2004, the National Assembly of Nigeria enacted the Universal Basic Education (UBE) Act, 2004. The UBE Act states that every government in Nigeria shall provide free, compulsory and universal basic education for every person of primary and junior secondary school age. The implication of this provision is that if any of the different levels of government fails to so provide, then action can be brought against it. Therefore, the non-justiciability and non-enforceability of ESCR highlight the government's lack of seriousness in waking up to its responsibility.

The South African Constitution of 1996 has enumerated social welfare rights as directly justiciable (Trispiotis, 2010: 4). ESCR are provided in sections 26(1) (the right of access to adequate housing) and 27(1) (the right to health care, food, water, social security and so on). Subsection (2) of sections 26 and 27 enjoin the state to take legislative and other measures within its available resources to progressively realise these rights. To underscore the importance of ESCR, section 184(3) provides that the Human Rights Commission must ensure that relevant organs of government furnished it with information concerning measures that have been taken to realise the rights in the Bill of Rights.

The courts in South Africa have held in a number of cases that ESCR are justiciable and enforceable. They (the courts) have been at the forefront of ensuring that ESCR are given judicial review (Verna, 2005: 42). In *Government of RSA and others v. Grootboom and others* (2001) 1 SA CC, a case on the right to housing, the Constitutional Court held that '[t]he State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing'. The Court also held that it is the obligation of the state to provide access to housing, health care, sufficient food and water, and social security to those unable to support themselves and their dependants.

Furthermore, it held that the Constitution obliges the state to give effect to ESCR and that in appropriate circumstances the courts must enforce ESCR. In *Bon Vista Mansions v. Southern Metropolitan Local Council* (2002) 6 BCLR 625, the Court held that the Constitution required the state to ensure access to sufficient water when a local council disconnected the water supply to a block of residences. In *Khosa Others v. Minister of Social Development and Others* (2004) 6 BCLR 569, the Constitutional Court ruled that the exclusion of permanent residents from social security was unreasonable and inconsistent with section 27 of the Constitution.

According to Verna (2005: 16), the Supreme Court of India has held that where there is a conflict between fundamental rights and directive principles of state policy, fundamental rights are paramount and directive principles are not enforceable in the court of law; as such, citizens cannot complain of violation in order to seek for relief against the state. This was the decision of the Indian Supreme Court in *State of Madras v. Champakan Dorairajan* (1951) AIR SC 525. However, in later cases, such as *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310, the Supreme Court held that 'in building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to the directive principles'. The Supreme Court has also held in *Francis Coralie Mulin v. Administrator* that the right to life encompasses the right to adequate housing, shelter and livelihood.

Similarly, the Indian Supreme Court observed in *Olga Tellis v. Bombay Municipal Corporation (BMC)* (1985) 3 SCC 545: that the right to life is hinged upon the right to livelihood and as such should be treated as a constitutional right so as to guarantee every person the right to life.

Recommendations and conclusion

For society to be a better place, ESCR cannot continue to languish in the shadow of civil and political rights: instead they must be on par with each other. To this end, state parties to the ICESCR must do the necessary by enacting laws that make ESCR justiciable. The enforceability of ESCR depends largely on the courts, as the cases in South Africa and India have shown. We therefore recommend that the judicial activism demonstrated by courts in South Africa and India should be replicated in Nigeria.

There cannot be a right to life when there are no means of livelihood for citizens, nor can there be a right to life when citizens are denied medical health care. The non-justiciability and non-enforceability of ESCR are tantamount to a deniable able to realise the SDGs.

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3 UPDATES

Developments at the United Nations

The report of the Special Representative of the United Nations Secretary-General on Migration Mr. Peter Sutherland, 2017

In February 2017, the Special Representative of the United Nations Secretary-General on Migration, Mr. Peter Sutherland presented his report to the United Nations General Assembly. The report was developed over the course of nearly two years and is enriched by the ideas of numerous experts.

By making recommendations for the better management of migration through international cooperation, the report aims to show that migration need not be a source of fear and conflict, within nations or between them. The report makes practical suggestions on how willing coalitions of States, working with other stakeholders, can begin to tackle these priorities and gradually broaden the consensus on what a functioning international architecture for migration should look like in 2018 and beyond.

The report is divided into three major sections. The introduction section begins with an acknowledgement that societies worldwide would never have achieved their current level of development without migrants. The report acknowledges that migrants make an important contribution to their new homeland by doing jobs that are needed, paying taxes and often bring new ideas, which make for a more diverse and dynamic society. Through remittances, migrants also contribute to their countries of origin. Remittances have a critical role to play in ending poverty in all its forms everywhere (first Goal of the 2030 Agenda).

In conclusion, the report proposes ways of strengthening the engagement of the United

Nations on migration offers 16 recommendations for improving the management of migration through international cooperation. The report lays out 16 recommendations and He recommends among others, the Develop global guiding principles on migrants in vulnerable situations, including migrant children; Expand legal pathways for people fleeing countries in crisis; Building opportunities for labour and skills mobility by reduce recruitment costs and abuses of migrant workers; Strengthen the architecture to govern labour mobility For more see: <https://undocs.org/A/71/728>

Developments in the African Region

Statement by the Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa of the African Commission on Human and Peoples' Rights (the African Commission), Commissioner Maya Sahli Fadel on the occasion of International Migrants Day 18 December 2017.

Taking into account the large and increasing number of migrants in the world, International migration day is observed annually on 18 December since the year 2000. On this day, the Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa of the African Commission on Human and Peoples' Rights (the African Commission), Commissioner Maya Sahli Fadel acknowledged that migration is an inherent feature of the human condition and despite efforts aimed at dissuading or putting an end to this phenomenon, it will persist so long as factors such as violence, poverty, discrimination, inequality, climate change, natural and other disasters continue to prevail.

Thousands of refugees and migrants die or are killed every year in the migration and flight routes that stretch from West Africa through Niger to Libya; from the Horn of Africa through the Sudan into Libya. In a report "Behind the Numbers, (2013)" the International Organization for Migration admits that determining how many die or are killed is "a great challenge", and that, at a minimum, 46,000 migrants have lost their lives or have gone missing worldwide since 2006. Smugglers and traffickers are an integral component of this movement; without them, refugees and migrants are generally unable to navigate the barriers many States erect to deter entry. Efforts should especially be deployed to address the root causes of migration and prevent the occurrence of tragedies such as the loss of human lives in the Mediterranean and the Sahara Desert.

As a way forward, she reiterated that African States which have adopted and ratified the African Charter on Human and Peoples' Rights (the African Charter) must provide effective protection to their migrant populations in accordance with Article 5 which guarantees the right of every individual to the respect of the dignity inherent in a human being and protects the individual from all forms of exploitation and degradation of man particularly slavery, slave trade, physical or mental torture. The Special Rapporteur calls on all stakeholders to treat migrants with the dignity that all human beings deserve, as enshrined in the African Charter and rooted in African values.

Statement by Commissioner Maya Sahli Fadel, Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa. See: <http://www.achpr.org/press/2017/12/d382/<>

4 EVENTS

Roundtable focuses on access to food for students in tertiary institutions

The Socio-economic Rights Project hosted a roundtable on access to food for students in tertiary institutions in South Africa on the 5th of October 2017. It looked at issues to be addressed from a first-hand perspective, as well as possible solutions going forward relating to access to food for tertiary students.

The roundtable was an exploratory meeting which probed the issues as well as served as a platform for gaining buy in of proposed partners for SERP's 'Access to Food for Students' Project.'

Participants at the roundtable were in agreement that this was an area requiring urgent intervention by all stakeholders. The need for coordination at national levels to ensure proper accountability mechanisms were in place was reiterated.

Civil society participation on the right to food in South Africa remained apathetic, despite the right being constitutionally guaranteed. Participants opined that this presented an opportunity for civil society to lead the campaign on this constitutionally guaranteed right as well as an opportunity for strategic impact litigation on the right to food.

This roundtable was attended by lawyers, economists, public health practitioners, food security experts, NGOs, government department representatives, chapter nine institutions, researchers, academics and student representatives.

The Role of National Human Rights Institutions in Advancing Sexual and Reproductive Health in East and Southern Africa

Sexual and reproductive health is a fundamental human right as well as human development issue that states must strive to fulfil. It is guaranteed in various international and regional human rights instruments as well as national laws and policies. This was true at the recent Regional Colloquium on The Role of National Human Rights Institutions in Advancing Sexual and Reproductive Health Rights in East and Southern Africa Regions.

The Regional Colloquium, which took place on 19 – 20 October 2017 in Johannesburg, was organised by Dullar Omar Institute in conjunction with the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN).

Participants acknowledged that while issues relating to sexual and reproductive health and rights remain contested in many parts of the world including Africa, however, recent developments such as: the adoption of the Maputo Protocol; resolutions, general comments and communications by the African Commission; adoption of SADC Gender Protocol; Model laws on HIV and child marriage; and the EAC HIV and AIDS Prevention and Management Act, provide great opportunities to further advance the SRHR of women in EAC and SADC regions.

While there are no specific human rights instruments dedicated to the advancement of sexual and reproductive health.

of sexual and reproductive rights under international law, various human rights instruments recognise in one form or another aspects of sexual and reproductive health. In essence, sexual and reproductive health and rights are not new sets of right rather they are rights already recognised in human rights instruments (Paragraph 7.3 of the International Conference on Population and Development (ICPD) Programme of Action), which states are expected to respect, protect, promote and fulfil.

National Human Rights Institutions (NHRIs) call play an important role in advancing SRHR at the national level by exercising their promotional and protective mandate towards sexual and reproductive rights.

The colloquium consisted of 30 participants representing personnel of NHRIs from Namibia, South Africa, Zimbabwe, Malawi, Kenya, Uganda and Tanzania as well as civil society

5 CALL FOR CONTRIBUTIONS TO THE ESR REVIEW

We welcomes contributions to be published in the ESR Review, a quarterly publication that aims to inform and educate politicians, policy-makers, NGOs, the academic community and legal practitioners about key developments relating to socio-economic rights at national and international levels.

Contributions:

- * should reflect contemporary debate or spark new debate;
- * should be opinion pieces or serve an advocacy function, rather than simply stating legal principles or being descriptive in nature; should not be on a topic already published in the ESR Review, unless they take the debate forward;
- * should not be a marketing exercise for a particular project or programme; and should be written in a simple, clear style that avoids technical language and legal jargon where possible, taking into account that the ESR Review is read by both legal practitioners and grass-roots human rights organisations.

Send contributions in electronic format (MSWord) to serp@uwc.ac.za. Provide your full name and present position. Titles and qualifications are not necessary.

If the article has already been published elsewhere, give full details, including whether it has been shortened, updated or substantially changed for the ESR Review and whether the required authorisations have been granted.

Length

Contributions should be no longer than 3 000 words, except contributions for the Events section (1 500 words) and the Publications (Book Review) section (1 000 words).

Previous issues of the ESR Review are available online: <http://dullahomarinstitute.org.za/socio-economic-rights/esr-review>