

**IMPEDIMENTS TO THE REALIZATION OF HUMAN RIGHTS GLOBALLY: A COMPARATIVE ANALYSIS OF  
NIGERIA, SOUTH AFRICA, AND INDIA**

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## 1.0. ABSTRACT.

Human rights are universally recognized as inherent entitlements of all individuals, yet their practical realization faces multiple impediments across the globe. This article interrogates the structural, legal, political, and economic barriers to human rights implementation, focusing on Nigeria, South Africa, and India as comparative case studies. While all three states have constitutional and international commitments to protect rights, they grapple with challenges such as non-justiciability, resource constraints, weak institutions, corruption, inequality, and political misuse of emergency powers. At the international level, the flexibility built into the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) particularly Article 4 of the ICCPR and the doctrine of progressive realization under the ICESCR further undermines accountability. Through comparative constitutional and jurisprudential analysis, supported by international commentary and case law, this article argues that the greatest obstacles are not the absence of rights in law but the gap between normative recognition and effective enforcement. The article concludes with recommendations for strengthening domestic enforcement, narrowing international derogation clauses, empowering judicial activism, and promoting cooperative international frameworks.

## 2.0. INTRODUCTION.

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, human rights have occupied a central role in international law and domestic constitutionalism. Yet, more than seventy years later, the gap between the promise of rights and their lived reality remains wide.

States often proclaim rights while simultaneously erecting or maintaining barriers that undermine their fulfillment.

This paradox is particularly pronounced in countries of the Global South, where poverty, inequality, and political instability intersect with weak enforcement mechanisms. Nigeria, South Africa, and India serve as important comparative case studies. Each of these states has a written constitution with entrenched rights, is a party to key international treaties (including the ICCPR and ICESCR), and has a history of judicial engagement with rights claims. Yet, each also faces unique impediments that reflect broader global challenges.

This article employs a comparative legal method, examining constitutional provisions, landmark judicial decisions, and international treaty obligations. It integrates international standards such as the ICCPR and ICESCR with domestic frameworks, while situating obstacles within broader political and economic realities.

The central argument is that impediments to the realization of rights are multi-dimensional: some are structural (non-justiciability, resource limitations), others political (lack of will, authoritarianism), and others international (treaty flexibility, selective enforcement). By analyzing these impediments, the article seeks to contribute to ongoing debates on strengthening global human rights enforcement.

## 3.0 CONCEPTUAL AND LEGAL FRAMEWORK.

Human rights are generally categorized as civil and political rights (protected under the ICCPR) and economic, social, and cultural rights (protected under the ICESCR). These instruments are binding on states parties and form part of the so-called International Bill of Rights. Nigeria, South Africa, and India have all domesticated aspects of these frameworks. Nigeria's 1999 Constitution guarantees civil and political rights under Chapter IV, while socio-economic rights are placed in Chapter II as non-justiciable "directive principles." South Africa's 1996 Constitution contains a robust and justiciable Bill of Rights, explicitly recognizing socio-economic rights such as housing, health care, and education. India's 1950 Constitution divides rights into Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV), with the judiciary gradually expanding enforceability through interpretation. Yet, as will be demonstrated, the translation of rights from paper to practice is obstructed by multiple impediments at both domestic and international levels.

## 4.0. CASE STUDIES.

### 4.1. NIGERIA.

Nigeria's constitutional framework recognizes civil and political rights but treats socio-economic rights as aspirational. Section 6(6)(c) of the 1999 Constitution explicitly renders Chapter II non-justiciable, meaning courts cannot compel the state to implement rights to housing, health, or education. This has been confirmed in cases such as *Attorney-General of Ondo State v. Attorney-General of the Federation*, where the Supreme Court reiterated that Chapter II rights are unenforceable in court.<sup>1</sup> This creates a systemic barrier, effectively excusing state inaction on core socio-economic rights. Beyond constitutional limits, corruption, poverty, insecurity, and weak institutions further erode rights. In *Social and Economic Rights Action Centre (SERAP) v. Nigeria*, the African Commission on Human and Peoples' Rights held Nigeria in violation of multiple rights due to environmental degradation in the Niger Delta.<sup>2</sup> Yet compliance with such decisions has been weak. The UN Human Rights Committee, in its 2019 Concluding Observations on Nigeria, expressed concern at the "persistent gap between constitutional guarantees and actual implementation."<sup>3</sup>

### 4.2. SOUTH AFRICA.

South Africa provides a contrasting model. The 1996 Constitution includes an expansive Bill of Rights, with socio-economic rights expressly justiciable. Section 26 guarantees the right to housing, Section 27 covers health care, food, water, and social security, and Section 29 guarantees education.

The Constitutional Court has developed a rich socio-economic rights jurisprudence. In *Government of the Republic of South Africa v. Grootboom*, the Court held that the state must take "reasonable measures" to realize the right to housing.<sup>4</sup> In *Minister of Health v. Treatment Action Campaign*, the Court ordered the government to provide access to anti-retroviral drugs for preventing mother-to-child HIV transmission.<sup>5</sup>

However, despite these advances, South Africa remains one of the most unequal societies in the world. The UNDP's 2021 Human Development Report observed:

"South Africa remains one of the most unequal societies in the world, with structural inequalities undermining the full realization of constitutionally protected socio-economic rights."<sup>6</sup>

Thus, the key impediment is not legal recognition, but economic inequality and implementation capacity.

### 4.3. INDIA.

India's Constitution divides rights between Fundamental Rights and Directive Principles of State Policy (DPSPs). The Supreme Court of India has creatively expanded the scope of enforceable rights through judicial activism.

In *Kesavananda Bharati v. State of Kerala*, the Court established the basic structure doctrine, preventing Parliament from amending the "basic features" of the Constitution, including fundamental rights.<sup>7</sup> In *Olga Tellis v. Bombay Municipal Corporation*, the Court held that the right to life under Article 21 includes the right to livelihood.<sup>8</sup>

<sup>1</sup> (2002) 9 NWLR (Pt. 772) 222 (Nigeria SC).

<sup>2</sup> *Social and Economic Rights Action Centre (SERAC) v. Nigeria*, Comm. No. 155/96 (Afr. Comm'n H.P.R. 2001).

<sup>3</sup> U.N. Hum. Rts. Comm., Concluding Observations on Nigeria, 8, U.N. Doc. CCPR/C/NGA/CO/1 (2019).

<sup>4</sup> *Gov't of the Republic of S. Afr. v. Grootboom* 2001 (1) SA 46 (CC).

<sup>5</sup> *Minister of Health v. Treatment Action Campaign* 2002 (5) SA 721 (CC).

<sup>6</sup> United Nations Development Programme, Human Development Report 2021/2022 67 (2021).

<sup>7</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225 (India SC).

<sup>8</sup> *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545 (India SC).

Yet, India also faces impediments. Resource constraints, widespread poverty, and political misuse of emergency powers undermine rights. During the 1975–77 Emergency, civil liberties were suspended under Article 352 of the Constitution, paralleling ICCPR Article 4 derogations.

As the UN Special Rapporteur on Extreme Poverty noted in 2018:

*“India has an impressive legal framework for the protection of rights, but the persistence of extreme poverty reveals a striking implementation deficit.”<sup>9</sup>*

## 5.0. INTERNATIONAL IMPEDIMENTS UNDER ICCPR AND ICESCR.

### **ICCPR Article 4:** Derogations

The ICCPR permits derogation in times of emergency under Article 4(1):

*“In time of public emergency which threatens the life of the nation... States Parties may take measures derogating from their obligations... to the extent strictly required by the exigencies of the situation.”<sup>10</sup>*

While some rights are non-derogable (e.g., right to life, prohibition of torture), states often misuse emergencies to restrict rights excessively. The Human Rights Committee, in General Comment No. 29, warned that emergency powers “must be of an exceptional and temporary nature” and not become permanent.<sup>11</sup> Nigeria’s military regimes, India’s 1975–77 Emergency, and apartheid South Africa illustrate how broad derogation powers enable abuse.

### **ICESCR Article 2(1):** Progressive Realization

The ICESCR requires states to realize rights “progressively” and “to the maximum of their available resources.”<sup>12</sup> This acknowledges resource disparities but also allows states to defer obligations indefinitely.

The Committee on Economic, Social and Cultural Rights clarified in General Comment No. 3 that states must at least ensure “minimum core obligations” immediately.<sup>13</sup> Yet many states, including Nigeria and India, fail to meet even minimum standards in health and education, citing limited resources.

This doctrine thus functions as a double-edged sword: flexible but easily abused.

## STRUCTURAL INTERNATIONAL IMPEDIMENTS.

- i. Sovereignty vs. Universality: Enforcement relies on state compliance; there are no coercive mechanisms.
- ii. Global Inequality: Debt burdens and IMF/World Bank conditionalities undermine socio-economic rights.
- iii. Selective Enforcement: Powerful states often avoid scrutiny, while weaker states face disproportionate pressure.
- iv. Security Paradigm: Post-9/11 counter-terrorism measures have normalized derogations worldwide.

## 6.0. COMPARATIVE ANALYSIS OF KEY IMPEDIMENTS.

From the case studies and treaty frameworks, three main impediments emerge:

<sup>9</sup> Philip Alston (Special Rapporteur), Report on Extreme Poverty and Human Rights: Visit to India, U.N. Doc. A/HRC/38/33/Add.1 12 (2018).

<sup>10</sup> ICCPR art. 4(1), Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>11</sup> U.N. Hum. Rts. Comm., General Comment No. 29: States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

<sup>12</sup> ICESCR art. 2(1), Dec. 16, 1966, 993 U.N.T.S. 3

<sup>13</sup> ICCPR art. 4(1), Dec. 16, 1966, 999 U.N.T.S. 171.

- a) Legal Barriers: Non-justiciability (Nigeria), excessive derogation (India), reliance on progressive realization (South Africa).
- b) Economic Barriers: Poverty, inequality, and resource constraints weaken rights enforcement.
- c) Political Barriers: Lack of political will, corruption, and misuse of emergency powers obstruct implementation.

As the Human Rights Committee cautioned: *"States parties must ensure that measures derogating from the Covenant do not exceed those strictly required by the exigencies of the situation, nor become permanent features of the legal order."*<sup>14</sup>

## 7.0. RECOMMENDATIONS.

1. Domestic Reform: Nigeria should amend its Constitution to make socio-economic rights enforceable; South Africa should address inequality through targeted social policies; India should strengthen enforcement of judicial decisions.
2. Judicial Independence and Activism: Courts must continue expanding rights jurisprudence while resisting political interference.
3. International Reform: Narrow ICCPR derogation powers and strengthen ICESCR monitoring by clarifying minimum core obligations. Global Cooperation: International financial institutions should align programs with human rights obligations.
4. Grassroots Empowerment: Civil society and community-based monitoring should bridge the gap between law and lived reality.

## 8.0. CONCLUSION.

The recognition of human rights globally is no longer in question; the challenge lies in implementation and enforcement. Nigeria's constitutional limits, South Africa's inequality, and India's resource constraints illustrate that impediments are context-specific but globally resonant.

The ICCPR and ICESCR, while groundbreaking, contain structural weaknesses, Article 4 derogations and progressive realization that allow states to escape accountability.

As Justice Arthur Chaskalson of South Africa's Constitutional Court once observed:

*"Rights mean little without the means to enforce them, but when enforced they become the foundation of human dignity and democracy."*<sup>15</sup>

Thus, the future of human rights depends not on new declarations but on dismantling the barriers of politics, economics, and weak enforcement that prevent existing rights from becoming lived realities.

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<sup>14</sup> U.N. Hum. Rts. Comm., General Comment No. 29, supra note 11.

<sup>15</sup>Quoted in S. Liebenberg, Socio-Economic Rights in South Africa: Transformative Constitutionalism or Judicial Abdication? 23 Stellenbosch L. Rev. 90 (2012).

**BIBLIOGRAPHY**

Akande, Jadesola. *The Constitution of the Federal Republic of Nigeria, 1979: A Commentary*.

London: Sweet & Maxwell, 1982.

Alston, Philip. *The Right to Development at the International Level*. In *Human Rights and Development: Towards Mutual Reinforcement*, ed. Philip Alston & Mary Robinson, 109–145.

Oxford: OUP, 2005.

Austin, Granville. *Working a Democratic Constitution: The Indian Experience*. Oxford: OUP, 1999.

Drèze, Jean & Amartya Sen. *An Uncertain Glory: India and Its Contradictions*. Princeton:

Princeton University Press, 2013.

Dugard, John. *Human Rights and the South African Legal Order*. Princeton: Princeton University Press, 1978.

Liebenberg, Sandra. “Socio-Economic Rights in South Africa: Transformative Constitutionalism or Judicial Abdication?” 23 *Stellenbosch L. Rev.* 90 (2012).

United Nations Development Programme. *Human Development Report 2021/2022*. New York:

UNDP, 2021.

UNICEF Nigeria. *Education Budget Brief 2022*. Abuja: UNICEF, 2022.

UN Human Rights Committee. General Comment No. 29: States of Emergency (Article 4), U.N.

Doc. CCPR/C/21/Rev.1/Add.11 (2001).

UN Committee on Economic, Social and Cultural Rights. General Comment No. 3: The Nature of States Parties’ Obligations, U.N. Doc. E/1991/23 (1990).

Alston, Philip (Special Rapporteur). *Report on the Visit to India on Extreme Poverty and Human Rights*, U.N. Doc. A/HRC/38/33/Add.1 (2018).

Human Rights Watch. *In the Name of Security: Counterterrorism Laws Worldwide Since September 11*. New York: HRW, 2012.