
Canadian-Nigerian Human Rights Cooperation in the area of Economic and Social Rights

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Abstract

This paper investigates Canadian-Nigerian cooperation in the area of Economic and Social Rights. The focus on Canadian-Nigerian cooperation in the social and economic rights category during the era that the research covers, apart from being one of the areas mapped out for the study, is justified by the global recognition of economic and social rights as a major and “trending”

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subset of human rights. In examining this topic, the paper further analyses key questions, nature, attainments, problems and prospects in the protection and promotion of Economic and Social Rights as it relates to the cooperation between Nigeria and Canada. It is thus our intention in this paper to go beyond rhetoric and methodically match the theoretical positions framing this paper with the available data from the field research carried out as part of the research.

The paper utilizes both Finnemore & Sikkink's theory of strategic social constructivism as well as Upendra Baxi's trade-related market friendly (TREMFI) framework. The idea is to determine the nature of the collaboration between Canada and Nigeria in this area having regard to existing literature and theoretical explanations. Thereafter, we will investigate the extent to which the relationship between the two countries with regard to economic and social rights could be theoretically interrogated by examining the theories in the context of the evidence from field research.

I. Introduction

There is a common Igbo¹ adage that “when the right hand washes the left hand and the left hand washes the right hand, both hands become clean”. This common adage speaks of human cooperation but is as well apropos of nations². The International Bill of Rights,³ bilateral treaties and international agreements are common indicators of this kind of transnational cooperation, at least in the human rights field. In this field, the world has metamorphosed into a political cosmos where states are no longer the only dominant actors. Certainly not in a world where “half of the largest 100 economies are now companies”⁴. A progressive imagination of the idea of human rights therefore now includes transnational corporations and not just governments or states. This is why *Upendra Baxi* postulates the Trade Related Market Friendly (TREMFI) framework as an alternative paradigm of the human rights discourse⁵, thereby challenging that which had been established under the UDHR. Baxi traces the emergent “human rights” claims of the institutions of global capital, from the WTO and IMF to the MNCs, and illustrates the ways in which they ‘justify’ corporate well-being and dignity even when it entails gross and brazen violation of human rights of human beings and communities.

¹ A tribe from the South- Eastern region of Nigeria and one of the major spoken languages in Nigeria

² Akporobaro F.B.O and Emovon J.A *Nigerian Proverbs: Meaning and Relevance Today* Nigeria Magazine, Lagos, (1994).

³ The two legally binding human rights covenants; the ICCPR, and its sister covenant ICESCR, which – alongside the UDHR – constitute the so-called international bill of rights.

⁴ Michael Posner, former U.S Under Secretary of State, Democracy, Human Rights and Labor, July 2012.

⁵ “Trade-related market-friendly human rights” See Baxi, U (2002) *The Future of Human Rights* (Delhi: Oxford University Press) at pp 131-166.

Since it is trite and evident that change is inevitable even in the context of human rights, a theoretical explanation is the illustration on norms propounded by *Finnemore and Sikkink*⁶ who postulate a “strategic social constructivism” with their theory of a “norm life cycle” and the centrality of the agency of the “norm entrepreneur” in catalyzing human rights change. They argue that the ideational “turn” of recent years is actually a *return* to some traditional concerns of the discipline, generating some propositions about norms—their origins and the mechanisms by which they exercise influence. In this empirical research processes that they term a “strategic social construction,” actors strategize rationally to reconfigure preferences, identities, or social context in politics and human rights.

Using the above-described theories, this research aims to examine ESR not just as a “trending” subset of human rights but also as an essential area in the gamut of human rights enforcement. Specifically, it aims to analyze and theorize the nature, attainments, problems and prospects of the Canadian-Nigerian cooperation in the protection of human rights from the current Nigerian democratic regime. Referencing the above adage, how well has Nigeria and Canada washed their hands together in human rights cooperation from 1999 to 2011? This inquiry forms part of a broader partnership development project, which has brought together Scholars from Osgoode Hall Law School, York University Canada, the Nigerian Institute of Advanced Legal Studies, Nigeria, and the Abuja-based Centre for Social Justice, Nigeria. Funded by the Social Science and Humanities Research Council of Canada (SSHRC), the project involves a three-year collaborative intensive research and joint knowledge mobilization/dissemination, analyzing and theorizing the nature, attainments, problems and prospects of Canadian-Nigerian

⁶ Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ 1998 *International Organization* pp. 887 – 1061

cooperation in the protection of human rights from the current Nigerian democratic regime.

This article sets out to appraise investigations on Canadian-Nigerian cooperation in the area of economic and social rights from 1999 to 2011, a convenient cut-off date. The objective of these investigations is ultimately to determine, on the basis of the evidence originating from field research, what has been the nature/character of this cooperation, how it has proceeded, how the parties have behaved and what implications it has had on policy making, practice and theory; what have been the attainments of this cooperation in the specific context of economic and social rights to food, housing, health or education; what have been the problems of this cooperation; and what appears to be the prospects for this cooperation?

This project is novel. The nature, attainments, extent, partnerships and prospects of human rights cooperation between Nigeria and Canada have not been well captured suitably in any conscious academic effort. Underlying the importance of this study, Obiora⁷ succinctly captures this yawning gap in the following excerpt:

Over one quarter of the African (and over half of the West African) population is Nigerian and it is undoubtedly one of the top two political, economic and social factors of the continent. Yet Nigeria continues to exhibit much complexity... [By its records of] Human rights violations... Canada [on the other hand] is a member of the

⁷ Obiora C. Okafor, Proposal Extract: Human Rights Cooperation between Nigeria and Canada, P.2

G8⁸ and G20⁹, and is widely reputed as a supporter and funder of global human rights struggles; yet its role in this regard in Nigeria... has not been well understood and acknowledged.

Persistent socio-economic inequalities exist globally, affecting both a high-income country like Canada as well as a “developing” partner like Nigeria. Socio-economic inequalities currently are one of the greatest challenges facing the realization of human rights worldwide. This article argues that the struggle for the right to food, housing, education, health, employment and social security in the face of such inequalities requires embracing three critical considerations: *redistribution, representation, and recognition*. While the analysis of ESR has been formulated predominantly around theories of distributive justice, we suggest that a more normatively compelling account will link the politics of economic redistribution to the politics of sociocultural recognition. Our outcome is drawn from the data obtained from the field research of this project as well as the analysis of the theories propounded by Baxi as well as Finnemore and Sikking. We also drew inference from the literature of renowned scholars and academics. This article intends to go beyond rhetoric; to methodically investigate the theoretical positions framing this article in correspondence with the available data from the field research carried out.

⁸ The G8 is the group of 8 Nations. The G8 is made up of heads of government from Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom and the United States. These countries are some of the world’s major industrial powers. The European Union is also represented at meetings by both the president of the European Commission and the leader of the country that has European Union presidency. The leaders of these countries meet on an annual basis to discuss critical issues facing the world as a whole.

⁹ The G20 is a group of 20 Nations. G20 members represent around 85 per cent of global gross domestic product, over 75 per cent of global trade, and two-thirds of the world’s population. The members of the G20 are: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, United Kingdom, United States, and European Union. This group was formed to discuss important economical issues.

To do this, the essay is structured in seven sections. This part of the work forms the first section. The next section discusses the theoretical underpinnings of ESR. The third section examines the status of ESR in Nigeria and Canada. The fourth section discusses the Upendra Baxi's TREMF Theory and the Finnemore and Sikkink's Constructivist Theory of Norm Life Cycle while the fifth section provides an analysis of the Interview Data: *Nature, Attainments, Problems and Prospects* of the Human Rights Cooperation between Nigeria and Canada. The sixth section exemplifies the theories in section four using the interview data and other evidence collated in the course of the fieldwork to ascertain whether the preceding discussions reinforce or detract from these theories. The last section concludes the article by recommending several ways in which ESR advocacy and research will be strengthened to enhance the quality of the lives and cooperation of both countries.

II. Economic and Social Rights: Theoretical underpinnings

According to *Okafor and Ngwaba*,¹⁰ given the deluge of literature on the subject, one would think it would be easy to describe the meaning of ESR but no. *Contiades and Fotiadou*¹¹ warn that the answer to the question of what ESRs are is not obvious because the concept of ESR cannot be commonly described

¹⁰ Okafor and Ngwaba, 'Economic and Social Rights: A Century of Constitutional Subordination in Nigeria' Cap 23 "Nigeria: A Century of Constitutional Evolution: 1914 – 2014" Nigerian Institute of Advanced Legal Studies (2014) P.691.

¹¹ Xenophon Contiades and Alkmene Fotiadou: "Social Rights in the Age of proportionality: Global Economic Crisis and Constitutional Litigation" (2012) 10(3) *Int J. Constitutional Law* 600.

even though a central theme runs through the work of many scholars who have written on the subject. Simply put, ESRs are designed to provide certain entitlements and protections for the interests of individuals in laying access to certain socio-economic resources. *Cecile Fabre*, for instance, argues that such rights protect the vital interests individuals have in autonomy and wellbeing. As a result, she contends, they are not simply moral rights but deserve to be constitutionalized:

[T]urning a moral right into a constitutional right means that the interest protected by the moral right is important enough to legally disable citizens and members of the legislature from enacting laws which violate these moral rights, that is from changing people's legal situation by forbidding them by law to do certain things, or by not giving them certain things by law.¹²

On a traditional (though not entirely accurate) approach, ESR have been said by many to require the state to act positively, imposing on the state duties to provide goods or services such as work, housing, health care, education, welfare and social security. However, differences in the understanding of what these rights consist of become apparent in the debate for their "constitutionalisation" and judicial enforceability.¹³ Regardless of how one

¹² Cecile Fabre, 'Social Rights under the Constitution' 101 (2000)

¹³ Contiades and Alkhmene note that Mark Tushnet chooses the term "social welfare rights" over the term "social and economic rights," distinguishing between confining the rights to those associated with the provision of social goods to the especially needy, and referring to the rights held by everyone in the population. See Mark Tushnet: "Social Welfare Rights and the Forms of Judicial Review" (2004) 82 *T ex. L. Rev.* 1895 referred to in Contiades and Alkhmene, *ibid*; for other approaches to the conceptualisation of social rights can see Cécile Fabre: "Social Rights Under the Constitution" (2000); Terence Daintith: "The Constitutional Protection of Economic Rights" (2004) 2 *Int'l J. Const. L. (I.CON)* 56, 61-62; and Sandra Fredman: "Human Rights Transformed: Positive Rights and Positive Duties" (2008) referred to in Contiades and Alkhmene, *ibid*.

may choose to see them, a constant theme in the general narrative of ESR is that they seek to build social solidarity by ensuring the equitable utilisation of resources of the state to benefit citizens.¹⁴ *Frank Michelman* provides a further argument for the importance of ESR, rooted in the *Rawlsian* notion of legitimacy, which flows from a system in which free, equal, and diverse individuals could reasonably assent to a political system¹⁵. Without protections for ESR, Michelman recognizes that such a legitimacy test cannot be met as it is unlikely individuals so conceived would have reason to assent to any polity in which their most basic interests in living a decent life may be abrogated.¹⁶

There have been legal, political and academic debates over whether and how human rights should be classified. While this article does not engage in this debate, in discussing ESR it is important to situate this concept within these discussions. The UDHR did not separate between different dimensions of rights. What we identify as ESR is placed alongside other rights within the UDHR. They include the right to work,¹⁷ the right to education, which should be free in the elementary and fundamental stages¹⁸; and the right to a...

... [S]tandard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old

¹⁴ *ibid.* (Footnote 10) Okafor and Ngwaba.

¹⁵ David Bilchitz, 'Socio-Economic Rights, Economic Crisis and Legal Doctrine' *I•CON* (2014), Vol. 12 No. 3, 710–739

¹⁶ Frank Michelman, *Socio-economic Rights in Constitutional Law: Explaining America Away*, 6 *int'l J. const. l.* 1, 11–13 (2008).

¹⁷ UDHR, *Art. 23*.

¹⁸ UDHR, *Art. 26*.

age or other lack of livelihood in circumstances beyond his control¹⁹

However, human rights are now commonly theorized in terms of different ‘generations’, with some differing opinions on how this should be structured. One of the most commonly used classifications is to distinguish between CPR and ESR; and collective, participatory and solidarity rights.²⁰ The establishment of two separate subsequent UN covenants reinforced the distinction between generations of rights: the ICCPR and ICESCR. The latter outlines the ESR in the UDHR, as well as explicitly including others such as ‘... the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’²¹

However, the generational paradigm of human rights has been criticized on various grounds, including that such terminology implies a preference for certain rights, typically first-generation rights; that they may lead to less effective protection of some rights, in practice; and that such divisions were essentially ideological, invented and an oversimplification.²² For example, *Evans and Ayers* argue that the emphasis on CPR has emerged as globally

¹⁹ UDHR, *Art. 25*.

²⁰ For example, K. Vasak, ‘Les différentes catégories des droits de l’homme’, in *Les dimensions universelles des droits de l’homme*, Vol. I, ed. Lapeyre, de Tinguy and Vasak (1990), 303, cited from and translated by J. Donnelly, ‘Third Generation Rights’, in Catherine Brolmann, R. Lefebvre, and M. Zieck, *Peoples and Minorities in International Law* (Dordrecht, Boston, London: Martinus Nijhoff, 1993), 119–50, 122.

²¹ ICESCR, *Art. 12*.

²² For example, R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, Cambridge, 1986), 11–13; J. Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 1989), 28–45; H. Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, 2nd edition (Princeton, NJ: Princeton University Press, 1996), pp. 51–60; T. Evans and A.J. Ayers, ‘In the Service of Power: The Global Political Economy of Citizenship and Human Rights’, *Citizenship Studies* 10, no. 3 (2006): 289–308.

hegemonic since the end of the Cold War, reinforcing the dichotomy between first and second generation rights and marginalizing ESR as unrealistic aspirations in the Western-dominated global order.²³ Therefore, some academics, campaigners and governance institutions have more strongly emphasized the connections and commonalities between rights, instead of their differentiation.²⁴ For example, the VDPA²⁵ and the Proclamation of Tehran of 1968²⁶ assert that human rights should be considered as being indivisible, interdependent and interrelated, as well as of equal worth.

It is trite that the UDHR purposefully recognised the ‘traditional’²⁷ CPR as well as ESR.²⁸ In transmuted the articles of the UDHR into legally binding obligations, the UN adopted the ICCPR and ICESCR²⁹ and these two covenants now form a major measure of International Human Rights Law. The indivisibility, interrelatedness, interdependence and universality of human rights guaranteed in the two covenants have been continually affirmed,³⁰ and has been advocated to be treated with ‘equal status and importance’³¹ on the same equilibrium, and ‘with the same emphasis’³² but since the drafters of

²³ Evans and Ayers, ‘In the Service of Power’.

²⁴ *Ibid.* (Footnote 15) David Bilchitz.

²⁵ Vienna Declaration and Programme of Action, *Art. 5*.

²⁶ *Para. 13*.

²⁷ P. Alston and R. Goodman, *International Human Rights* (OUP 2012) 277.

²⁸ The UDHR protects Civil and Political Rights in Articles 3 – 21 and ICESCR in Articles 22 - 26

²⁹ This may however be subject to the ratification laws of various States

³⁰ VDPA, World Conference on Human Rights, Vienna, 14 – 25 June 1993, UN Doc A/CONF157/24 (Part I) at 20 (1993), 32 ILM 1661 (1993), Para 5. Including the 2005 resolution that established the HRC.

³¹ Alston and Goodman (n13) 277.

³² The principle of the interdependence and indivisibility of the rights was first stated at the Tehran World Conference on Human Rights in 1968 and again in Vienna in 1993.

these covenants have put them on two separate documents³³, there exists the argument that CPR are ‘legal rights’³⁴ that are immediately applicable but possess a negative character that requires a ‘hands-off’³⁵ duty by the state while ESR are termed ‘programme rights’³⁶ that are progressively implemented and require a positive action with a ‘hands-on’ duty of the state. ESR in this context are rights of a different nature compared to CPR. This is because ESR are rights that require a different type of supervision mechanism as they are rights of a different kind, require time to be implemented, require budgetary committees and international cooperation for them to be effectively realised.³⁷ This also means that ESR require progressive realisation, in accordance with the resources of each state. That is to say the level of development of each state is a factor to be considered in ascertaining the extent of implementation of economic and social rights in that state, as such, developing States will not be expected to categorically make provisions for food, shelter, health, education, etc., as of right, but based on the available resources, budgetary committees and International Cooperation.

ESR are fundamental to human existence as they are “quotidian” requirements and they affect a larger population of citizens per time. *Immanuel Kant*³⁸ posits that Economic and Social Rights violations ascends from the ‘injustice of the government’, which esteems certain persons thereby introducing an ‘inequality

³³ Alston and Goodman (n6) 281 *supra*

³⁴ *Ibid.* (n13) 282.

³⁵ *Ibid.* (n13) 181.

³⁶ *Ibid.* (n13) 281.

³⁷ Oliver De Schutter “*Cellule de Recherche interdisciplinaire en Droits de l’Homme*”; ‘Economic, Social and Cultural Rights as Human Rights: An Introduction’, CHIDHO working Paper 2013/2; Edward Edgar Publ. 2013, p. 6

³⁸ Alston and Goodman (n13) 307.

of wealth³⁹, that makes the poor consistently needy of help; therefore the attempt to enforce ESR is essentially an attempt to right the ‘injustice’ inherent in the adaptation of these rights and this makes it more significant. CPR and ESR are equally matched in importance and status and cannot be differentiated considering the salient attribute of indivisibility and interrelatedness (I/I). The I/I⁴⁰ factor proves that they are “symbiotic” and inseparable with almost every fundamental human right having elements from the two categories (e.g. the doctrine of equality and non-discrimination are themes that run through both CPR and ESR. Also, the civil right to privacy and the economic right to housing are inextricably linked). The ICCPR and ICESCR reiterates ‘everyone’ as the beneficiary of human rights and the UDHR makes no separation or priority of same, therefore the ideal freedom from fear and want can be achieved if the human being is able to enjoy economic and social rights.⁴¹

III. Economic and Social Rights in Canada and Nigeria

³⁹ This phrase is in consonance with the provision of Section 16 (2) (c) of the Nigerian Constitution where it provides that “that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group”

⁴⁰ “Indivisibility and Interrelatedness”: L. Minkler and S. Sweeney, ‘On the Indivisibility and Interdependence of Basic Rights in Developing Countries’ *Human Rights Quarterly*, Volume 33, Number 2, May 2011, p. 352

⁴¹ S. Egan, ‘Strengthening the United Nations Human Rights Treaty Body System’, 13(2) *Human Rights Law Review* (2013) 285.

Most national constitutions contain very substantial provisions on ESR. For example, in Africa, only four constitutions⁴² do not guarantee the right to property. Almost all of them guarantee the rights to education⁴³, to health,⁴⁴ to housing,⁴⁵ and to food.⁴⁶ It is however noteworthy that in Nigeria, these rights are not treated as fundamental rights, being not captured amongst those rights that are capable of being enforced under the Nigerian Constitution where they have been, are being or likely to be contravened, but merely labeled as fundamental objectives of states Policy, hence a duty of the State and not the right of citizens. As of January 2015, 162 states were parties to the ICESCR compared to a slight difference of 168 parties to the ICCPR, therefore the documentation of ESR are just as visible as CPR.

⁴² The National Constitutions of Democratic Republic of Congo, Guinea-Bissau, Somalia, and Swaziland

⁴³ These are, alphabetically, Algeria (sec 53), Angola (sec 28(2)&49), Benin (sec 12), Burkina Faso (sec 18&27), Burundi (sec 34&44), Cameroon (preamble), Cape Verde (sec 49&77), Central African Republic (sec 6&7), Chad (sec 35), Comoros (preamble), Congo (sec 23), Cote d'Ivoire (sec 7), Egypt (sec 18,19&20), Equatorial Guinea (sec 23), Eritrea (sec 21), Ethiopia (sec 41&90), Gabon (sec 1(16))), Gambia (sec 30&217), Ghana (sec 25&38), Guinea (sec 21), Lesotho (sec 28), Liberia (sec 6), Libya (sec 14), Madagascar (sec 23&24), Malawi (sec 13&25), Mali (sec 17), Mozambique (sec 52&92), Namibia (sec 20), Niger (sec 11&19), Nigeria (sec 18), Rwanda (sec 26), Sao Tome & Principe (sec 30&54), Senegal (sec 22), Seychelles (sec 33), Sierra Leone (sec 9), South Africa (sec 29), Sudan (sec 12,14&28), Tanzania (sec 11), Togo (sec 35), and Uganda (sec 30).

⁴⁴ These are, alphabetically, Algeria (sec 54), Angola (sec 47), Benin (sec 8), Burkina Faso (sec 18&26), Burundi (sec 39), Cape Verde (sec 70), Comoros (preamble), Congo (sec 30), Cote d'Ivoire (sec 7), Egypt (sec 16&17), Equatorial Guinea (sec 22), Eritrea (sec 21), Ethiopia (sec 41&90), Gambia (sec 216(4)), Ghana (sec 30&36(10)), Guinea (sec 15), Lesotho (sec 27), Liberia (sec 8), Libya (sec 15), Madagascar (sec 19), Malawi (sec 13), Mali (sec 17), Mozambique (sec 54&94), Niger (sec 11&49), Nigeria (sec 17), Sao Tome & Principe (sec 49), Senegal (sec 8), Seychelles (sec 29), Sierra Leone (sec 8(3)), South Africa (sec 27), Sudan (sec 13), Tanzania (sec 11), Togo (sec 34), and Uganda (sec 20).

⁴⁵ These are, alphabetically, Burkina Faso (sec 18), Cape Verde (sec 71), Ethiopia (sec 90), Mali (sec 17), Nigeria (sec 16(2)), Sao Tome & Principe (sec 48), Seychelles (sec 34), South Africa (sec 26), and Uganda (sec 14).

⁴⁶ These are, alphabetically, Ethiopia (sec 90), Gambia (sec 216(4)), Ghana (sec 36(e)), Malawi (sec 13), Nigeria (sec 16(2)), Sierra Leone (sec 7), South Africa (sec 27), and Uganda (sec 21&22).

Canada

Canada is an exceedingly abundant society. The country ranks sixth on the United Nations Development Program's Human Development Index,⁴⁷ and enjoys the second highest GDP per capita among G7 countries.⁴⁸ But amidst this incredible wealth, 3.5 million Canadians – over 11% of the population – live in poverty.⁴⁹ 684,000 families were living below the poverty line in 2004, with single mother-headed households experiencing the highest poverty rates.⁵⁰ Nearly 1.7 million Canadians rely on social assistance, including almost half a million children, and every month some 770,000 people turn to food banks, 40 percent of them children.⁵¹ Best estimates indicate that approximately 300,000 people are experiencing homelessness in Canada, and tens of thousands more are insecurely or inappropriately housed.⁵²

Poverty and homelessness particularly affect Canada's indigenous peoples: in First Nations and Inuit communities, one in four children grow up poor. As of February 29, 2012, 112 First Nations communities were under drinking water advisories, meaning their water was unsafe to drink.⁵³ As noted by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, the appalling

⁴⁷ The Human Development Index is a summary measure for assessing long-term progress in three basic dimensions of human development: a long and healthy life, access to knowledge, and a decent standard of living. See UNDP Human Development Report, 2011.

⁴⁸ See Human Resources and Skills Development Canada, Indicators of Well-Being in Canada: Financial Security – Standard of Living <<http://www4.hrsdc.gc.ca/.3ndic.1t.4r@eng.jsp?iid=26>> accessed 1 January 2015

⁴⁹ Canadian Council on Social Development: <www.ccsd.ca> accessed 1 January 2015.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² Gordon Laird, Shelter: Homelessness in a growth economy: Canada's 21st Century Paradox (Sheldon Chumir Foundation for Ethics in Leadership, 2007)

⁵³ Health Canada, 'First Nations, Inuit and Aboriginal Health: Drinking Water and Wastewater' <http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php#how_many> accessed 1 January 2015.

conditions present in the community of Attawapiskat, which declared a state of emergency in November 2011 when a critical housing shortage forced dozens of families to live in temporary shelters, some without insulation or plumbing, exemplify the ‘dire social and economic conditions’ that exist in many Aboriginal communities across the country.⁵⁴

The *Canadian Charter of Rights and Freedoms* is, according to the nation’s highest court, ‘the primary vehicle through which international human rights achieve domestic effect.’⁵⁵ The Supreme Court of Canada has recognized the importance of international human rights, including economic and social rights, in interpreting the Charter’s human rights guarantees, holding that ‘the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.’⁵⁶ Interpretation of the Charter must be ‘aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charter’s protections,’⁵⁷ and ‘[t]he content of Canada’s international human rights obligations is ... an important indicia of the meaning of “the full benefit of the Charter’s protection.”’⁵⁸ In sum, according to Canada’s top court, international obligations ‘must be a relevant and persuasive factor in Charter interpretation.’⁵⁹

⁵⁴ Canada/Attawapiskat First Nation: Statement by the UN Special Rapporteur on Indigenous People (20 December 2011) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11743&LangID=E>> accessed 1 January 2015.

⁵⁵ *R v Ewanchuk*, [1999] 1 SCR 330, 365

⁵⁶ Reference re Public Service Relations Act (Alta.), [1987] 1 SCR 313 Para 59

⁵⁷ *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295, 344

⁵⁸ *ibid.*

⁵⁹ *ibid.*

The Charter protects a number of important CPR: freedom of speech, conscience and association; the right to be free from unreasonable detention, search and seizure; and voting rights, among others. It does not expressly cover ESR. However, two sections have been relied on by plaintiffs making claims about violations of their economic and social rights: *section 7*⁶⁰, which guarantees the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice, and *section 15*, which guarantees equality to every individual before and under the law, and the right to equal protection and benefit of the law, without discrimination.

Many court decisions in Canada, particularly those emanating from lower courts, illustrate judges' reluctance to engage with ESR claims. Canadian courts have listed a number of concerns with applying the Charter to conditions of social and economic disadvantage, which echo the historic dichotomies between CPR on the one hand, which have been described as 'negative' and therefore justiciable rights, and ESR on the other, which are seen as 'positive' rights, best addressed by democratically elected legislatures as matters of public policy. In declining to find a violation of claimants' ESR on the basis that economic and social policy is simply 'beyond the institutional competence of the courts,'⁶¹ which lack the jurisdiction to 'second guess policy/political decisions,'⁶² Canadian courts are perpetuating an out-dated and discredited hierarchy of rights, with CPR sitting above ESR and the

⁶⁰ "Everyone has the right to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

⁶¹ UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations on Canada' (22 May 2006) UN Doc E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 para. 46

⁶² *ibid*, Para 46 – 47.

former being treated as justiciable, while the latter are relegated to the political sphere.⁶³

In analyzing the scope and applicability of ESR in Canada, *Laura Track* writes extensively on the *Positive vs. Negative Rights argument*,⁶⁴ *Justiciability*⁶⁵ and *Institutional Capacity*⁶⁶. Again, these justifications for treating ESR differently

⁶³ Laura Track, 'Economic and Social Rights in Canada: Will They Get Their Day in Court?' Dissertation Submitted for the Master of Studies Degree in International Human Rights Law University of Oxford (2012)

⁶⁴ According to ... Economic and social rights are often characterized as 'positive rights,' meaning they impose positive obligations on states to take action to fulfil them. For example, the right to an adequate standard of living will require government programs of social and income assistance; the right to health will require a state funded medical system. What is often ignored in these analyses is that civil and political rights also impose positive obligations on government. The right to vote, for example, requires state implementation of election mechanisms; the right to a fair trial requires policing and a functioning criminal justice system. Thus, the distinction between economic and social rights as positive rights, and civil and political rights as negative rights, does not hold up to scrutiny – both forms of rights will necessitate different sorts of state action and state forbearance. To be sure, economic and social rights cost money. Adjudicating them may involve the courts in fiscal policy decisions about the allocation of resources, perhaps placing judges in the position of dictating to government how it should allocate its budget.

⁶⁵ According to *Laura Track*, the issues of the justiciability of economic and social rights raises questions about the institutional capacity and legitimacy of courts deciding issues that implicate government spending and the imposition of positive obligations on the state. Justiciability 'defines the boundaries between our legal and political systems,' and involves a determination of 'what matters are appropriate for judicial determination, and what matters must be left for political resolution.' These are important and consequential matters, for 'a finding that a matter is non-justiciable may immunize certain government actions and laws from judicial review and may deny parties wronged by government action a judicial remedy.' In the case of social and economic rights in Canada, a finding that these rights are non-justiciable would 'render the Charter unable to address some of the most distressing and profound denials of social and economic citizenship to groups among the most disadvantaged in Canadian society.'

⁶⁶ A related objection raised to the justiciability of economic and social rights is the institutional capacity of the judiciary to decide these types of claims. Will the adjudication of these rights 'involve the judiciary in an impossible managerial position over large government bureaucracies,' in too political a set of policy choices and too complex an assessment of competing claims? Former Supreme Court of Canada *Justice Louise Arbour* argues that judicial competency can be assessed only in relation to specific cases, and cannot be relied on as a

from CPR fail to hold up to close scrutiny. All constitutional rights have budgetary implications: '[l]iberty and political freedoms, as much as basic socio-economic entitlements, depend on taxes.'⁶⁷ As *Young* explains,

[w]e don't think of this because we take these structures for granted, as basic political infrastructure of the liberal democratic state – but social programme or benefit provision is different only in its ideological heritage and thus our political comfort or familiarity with it.⁶⁸

Canadian courts are increasingly invoking anxiety about the 'public purse' as a constitutional consideration or value,⁶⁹ and nowhere was this more evident than in *Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees (N.A.P.E.)*.⁷⁰ In this case the Supreme Court of Canada unanimously accepted the provincial government's questionable, budget-based justification for renegeing on pay equity promises for female public sector workers, allowing thinly substantiated government claims about budget pressures to trump substantive claims to economic justice and gender equality.⁷¹ The Court's willingness to defer to government claims of economic hardship risks making a mockery of the whole notion of the protecting constitutional rights through judicial review.⁷² Many variables influence

basis for full-scale rejection of judicial review of social and economic policy; while concerns about the appropriateness of courts getting involved in issues of resource distribution are valid, they are not always significant in particular cases.

⁶⁷ Margot Young, 'Section 7 and the Politics of Social Justice' (2005) 38(2) UBC L Rev 539, 549.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ (2004) 3 SCR 381.

⁷¹ *ibid.* (Footnote 67) Young, P. 551 - 552

⁷² *ibid.* (Footnote 63) Track.

government spending decisions; ‘respect for social and economic justice, as expressed through rights protections, is properly one of the variables governments should be constitutionally mandated to consider.’⁷³ Particularly disturbing in the current political context, both in Canada and in many other industrialized countries, in which the claims of the poor have very little political purchase or currency.⁷⁴

Nigeria

Nigeria has been in deep economic depression for several years before the Nigerian government rebased her Gross Domestic Product (GDP). The Statistician-General of the Federation on April 6, 2014 released the official figures of the new rebased GDP of Nigeria. The revised GDP is now N80.2 trillion (\$509.9 billion). This dramatically increased the GDP by 89%. Nigeria is now ranked the 26th economy in the world and the largest economy in Africa as a result of the rebased GDP. This good news however does not reflect on the ESR record of the country. With several years of mismanagement of the country’s economy, and with the country not meeting its interest payments on its external debts⁷⁵, Nigeria has been ranked not only as one of the world’s least prosperous countries in 2014, but also one of Africa’s poorest nation beaten by smaller countries like Niger, Benin, Mali and Cameroun.⁷⁶ According to the Legatum Institute⁷⁷ Nigeria ranks 125th out of 142 countries surveyed in terms of prosperity index.

⁷³ *ibid.*

⁷⁴ *ibid.* (Footnote 67) Young.

⁷⁵ As at 2001, this stood at \$28.5b. See also Jubilee 2000, available at Nigeria first <<http://www.Nigeriafirst.org>> accessed 11th November 2014.

⁷⁶ Agbo Paul-Augustine, ‘Nigeria ranked least prosperous nation In the world’ <<http://leadership.ng/news/396558/nigeria-ranked-least-prosperous-nation-world-2>> accessed 6 January 2015.

Asides legal limitations, ESR is further stifled by structural vulnerability-governance problems (including, in particular, corruption⁷⁸), volatile oil prices, ethnic and religious tension, political thuggery and unpredictable relations with the donor community, ensuring a high level of suffering to the majority of Nigerians. 70% of Nigerians live below the poverty line⁷⁹ with limited or no access to basic healthcare, primary education, sustainable employment or good food and clean water. There are a great number of homeless people due to acute housing problems. Decent housing is scarce and expensive. The urban poor, especially women and children, are forced to live in makeshift cheap dumps or shelters in appalling and degrading conditions representing both physical and mental illness hazards. Only 47% of Nigeria's population has adequate access to clean drinking water.⁸⁰ There has been a gross under-funding and inadequate management of health services leading to a rapid fall in quality of health infrastructure in hospitals. Yearly allocation to health and

⁷⁷ A research organization that documents annual prosperity indicators around the world. Legatum Institute, <<http://www.prosperity.com/#!/ranking>> accessed 6 January 2015.

⁷⁸ See, e.g., Transparency Int'l, Transparency Int'l Corruption Perceptions Index 2002, (2002), available at <<http://www.transparency.org/cpi/2002/cpi2002.en.html>> (relating to perceptions of the degree of corruption as seen by business people, academics and risk analysts, and ranging between 10 (highly clean) and 10 (highly corruption). In a survey of 102 countries, Nigeria is ranked as the second most highly corrupt, trailing marginally behind Bangladesh). See also the United Nations Global Development Report, which ranked Nigeria as the 15th poorest country in the world, stating that corruption has been the bane of the country's progress.

⁷⁹ Central Intelligence Agency, 'The World Fact Book'. <<https://www.cia.gov/library/publications/the-world-factbook/fields/2046.html>> accessed 6 January 2015.

⁸⁰ UNICEF Report <http://www.unicef.org/nigeria/ng_media_Water_sanitation_summary_sheet.pdf> accessed 6 January 2015.

other social services is minimal compared with allocations to other federal ministries⁸¹.

The restoration of democracy and, to a certain extent, the rule of law, have provided fertile ground for the implementation of ESR in Nigeria, the realisation of which is largely dependent on a virile and innovative judiciary. These rights are guaranteed not only by the ICESCR, which Nigeria ratified in 1993, but more importantly, by the ACHPR⁸², which it has not only ratified but also domesticated⁸³. The government is, therefore, facing mounting pressure to make good its promise of ‘democracy dividends’.

The Nigerian constitution contains ESR provisions captured in the “fundamental objectives and directive principles of state policy” borrowed from the Indian constitution which had similar provisions laid back in it as far back as 1951.⁸⁴ Tracing the origin of fundamental objectives and directive principles of state policy in Chapter II of the Nigerian Constitution to India, Ajomo submits:

There are other rights in the constitution... that deserve recognition and comment; these are Fundamental Objectives and

⁸¹ See the Committee on Economic, Social and Cultural rights, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Nigeria, 2014, Available at <<http://www1.umn.edu/humanrts/esc/nigeria2014.html>> (ECOSOC Committee)

⁸² African Charter on Human and People’s Rights adopted by the 18th Ordinary Session of the Assembly of Heads and Government of the Organization of African Unity (Now African Union) on June 27, 1981 and came into force on Oct 21, 1986, OAU Doc. OAU/CAB/LEG/67/3/Rev. 5, registered with the United Nations (UN) on Sept 10, 1991, No. 26363. Available online at the African Charter Commission’s website.

⁸³ See the African Charter on Human and People’s Rights (Ratification and Enforcement) Act, Cap. A10, Laws of the Federation of Nigeria, 2004.

⁸⁴ J. O Akande, ‘Fundamental Objectives and Directive Principles of State Policy within the framework of a Liberal Economy: A note in Ayua, 1993.

Directive Principles of State Policy in Chapter II of the constitution. They were introduced into the constitution for the first time in 1979... These rights are those to education, to work and just remuneration, sickness, disability or old age. They have been copied from chapter IV of the Indian Constitution, which has similar rights, incorporated as far back as 1951. The Constitution of Ireland also contains similar provisions.⁸⁵

In terms of Chapter II of the Nigerian Constitution, the fundamental objectives and directive principles include 'rights' to suitable and adequate shelter, suitable and adequate food, reasonable minimum living wage, old age care and pension, unemployment and sick benefits and welfare of the disabled,⁸⁶ promotion of science and technology, eradication of illiteracy by making provision for free, universal and compulsory primary education; free secondary education, free university education⁸⁷, and free adult literacy programme.⁸⁸ These objectives and principles are essentially a set of guidelines designed to secure the national target of social well-being, social justice, political stability, and economic growth in accordance with the espoused vision of the Preamble to the Constitution.⁸⁹

⁸⁵ *ibid.*

⁸⁶ Sections 16 and 17 of the 1999 Constitution of the Federal Republic of Nigeria.

⁸⁷ *Ibid.* Section 18.

⁸⁸ T. A. Aguda, *Understanding the Nigerian Constitution of 1999* (MIJ Professional Publishers, Lagos, 2000) 87-88.

⁸⁹ "We the people of the Federal Republic of Nigeria; Having firmly and solemnly resolve, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding; And to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people; Do hereby make, enact and give to ourselves the following Constitution."

As is the case with other parts of the world, there is significant difference between the statuses of the two groups of 'rights' in Nigeria. While fundamental rights are inviolable, fundamental objectives and directive principles are not. The concept of justiciability specifically distinguishes the level of recognition of fundamental objectives and directive principles of state policy in Nigeria. Alluding to this, *Agebde* submits as follows: '... although Chapter II of the Constitution contains a number of the positive human rights provisions even if in vague form but as they are not justiciable as they hold no comfort or promise for the ordinary citizens in need of such rights...' ⁹⁰ Similarly, *Aguda* posited thus:

[F]or completeness of treatment it is necessary to make a few points... The third point is that on the face of it, the constitution does not give any legal right to individuals in so far as the fundamental objectives and directive principles of state policy are concerned. ⁹¹

In the same vein *Akande* submits that since they are not justiciable -

Therefore it would appear that the duty and responsibility on all organs of government 'to conform, to observe and apply them' is limited to the extent that the judiciary cannot enforce any of the provisions. Accordingly, the executive does not necessarily have to comply with any of the provisions unless the legislature has enacted specific laws for their enforcement.

⁹⁰ I.O. Agbede, 'The Rule of Law and the Preservation of Individual Rights' 2000

⁹¹ *ibid.* (Footnote 88) T.A. Aguda.

In this regard, *Section 6 (6) (c)* of the Nigerian constitution provides that the judicial powers vested (by the constitution) on the courts: ‘shall not extend... to any issue in question as to whether any act or omission by any authority or person or as to whether any act or omission by any authority or person as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in Chapter II of the constitution.’ The interpretation given by *section 6 (6) (c)* of the Nigerian Constitution by the courts has resulted in the complete negation of the directive principles contained in Chapter II, with courts refusing to entertain complaints based upon a breach of the provisions. An example in this regard is the case of *Uzoukwu v Ezeonu II*⁹², where the court of Appeal said: ‘[T]here are other rights which may pertain to a person which are neither fundamental nor justiciable in the court. These may include rights given under Chapter II’⁹³.

In *Attorney-General, Ondo State v Attorney-General, Federation of Nigeria*,⁹⁴ the Supreme Court made a pronouncement that the contents of chapter II can be the subject of legislative enactments and when this happens, the courts can enforce the provisions of such a law notwithstanding the limitation contained in section 6(6)(c). Should the National Assembly decide to make a law to establish and regulate a body for the specific purpose of enforcing any or all of the socio-economic rights mentioned in chapter II of the Constitution, such a law will be justiciable in the High courts if its provisions are couched in the form of subjective rights. By way of extending the present to the future, the ESR now guaranteed in the ACHPR are also justiciable in the various High courts. The confusion that previously existed with regards to the procedure for

⁹² [1991] 6NWLR (pt 200) 708 at 761-762.

⁹³ Govindjee and Taiwo, ‘Justiciability and Enforceability of the Fundamental Objectives and Directive Principles in Nigeria: Lessons from South Africa and India.’ NBA Journal Vol.7. No 1 (August 2011) p.65.

⁹⁴ [2002] 9 NWLR (pt 772) 222; (2002) 9 Sup. C. Monthly 1.

the enforcement of rights guaranteed in the ACHPR has now been laid to rest. The Supreme Court has now confirmed that in situations where there is no provision as to the procedure for the enforcement of rights, the usual form for the commencement of action in the given jurisdiction may be followed. Thus, prospective plaintiffs seeking to claim ESR may either commence such action by a writ or by the Fundamental Rights Procedure.

Despite the criticisms of both Canada and Nigeria on its ESR enforcements, ESRs are more regarded, provided, recognized and promoted in Canada than in Nigeria. The fulfillment of ESR though lacking in both states, is of a wide gap between both states. Canada is more advanced in ESR than in Nigeria.

IV. The Upendra Baxi's TREMF Theory and the Finnemore &Sikkink's Constructivist Theory of Norm Life Cycle

The Upendra Baxi's TREMF Theory

Baxi's book⁹⁵ ranges widely over a large number of difficult and complex issues, pertaining to the practice and theory of human rights. The book begins with the following sentence:

This book seeks to decipher the future of protean forms of social action assembled, by convention, under a portal named 'human rights'. It problematizes the very notion of 'human rights', the standard narratives of their origins, the ensemble of ideologies

⁹⁵ Baxi, Upendra. *The Future of Human Rights* (Delhi: Oxford University Press , 2002).

animating their modes of production, and the wayward circumstances of their enunciation.⁹⁶

Baxi has developed a ‘germinal thesis’⁹⁷ on the continual displacing in our time of the paradigm of the UDHR by an emergent trade-related market-friendly human rights (TREMFI) paradigm:

This new paradigm seeks to reverse the notion that universal human rights are designed for the attainment of dignity and well-being of human beings and for enhancing the security and well-being of socially, economically and civilisationally vulnerable peoples and communities.⁹⁸

Baxi postulates the emergence of ‘an alternative paradigm of human rights’ challenging that set up by the UDHR in 1945. He traces the emergent “human rights” claims of the institutions of global capital, from the WTO and IMF to multinational corporations, and illustrates the ways in which they validate ‘corporate well being and dignity even when it entails gross and flagrant violation of human rights of actually existing human beings and communities.’⁹⁹ He argues that the emergent paradigm of trade-related market-friendly human rights is working to put an end to ‘human rights oriented, redistributionist governance practices’ in ways that foreclose the possibility of progressive realization of ESR, and is engendering the reinterpretation of actually existing rights, such as the right to development or

⁹⁶ *ibid.* P (v)

⁹⁷ Okafor, Obiora Chinedu. “Assessing Baxi’s Thesis on an Emergent Trade-Related Market-Friendly Human Rights Paradigm: Recent Evidence from Nigerian Labor-led Struggles” (2007) 1 Law, Soc Justice & Global Dev J

⁹⁸ *ibid.* (Footnote 95) Baxi. p.132.

⁹⁹ *ibid.* p. 132.

the right to food, in ways that reflect the new market ethos.¹⁰⁰ The role of the state is increasingly to appear attractive to the institutions of global capital, to the extent that, in many cases, it is actually directly accountable to these institutions rather than the citizens who elected it, and who still have to bear the brunt of its decisions. Thus, Baxi convincingly and eloquently shows that ‘the power of the human rights discourse has already been critically appropriated by global capital,’¹⁰¹ and alerts us to the myriad ways in which this process is continuing.

According to *MacDonald*¹⁰², Baxi confers the emergence of the “human rights markets,” brought about by the need for different activists and groups to compete for scarce resources. Although Baxi recognizes that the use of terms such as human rights investors, producers and consumers may cause a considerable degree of discomfort amongst activists, Baxi views this process as to some degree inevitable given the realities of global society, the lack of funding and the widespread desensitization resulting from the ambivalent effects of the global media. In a subtle and nuanced analysis, he suggests that the best way to approach this new phenomenon is with caution, contestation, but not ‘lamenting the global fact of the very existence of human rights markets.’

*Okafor*¹⁰³ neatly enunciates the major strands of this TREMF human rights theory by describing four related sub-claims:

¹⁰⁰ *ibid.* p. 139.

¹⁰¹ *ibid.* p. 147.

¹⁰² Euan MacDonald, ‘*Review Essay - The Future of Human Rights? Theory and Practice in an International Context: Review of Upendra Baxi’s The Future of Human Rights*’

¹⁰³ *ibid.* (Footnote 97) Okafor.

Firstly, The emergent TREMF paradigm (unlike the UDHR paradigm) insists on promoting and protecting the collective *human* rights of various formations of global capital mostly at the direct expense of human beings and communities. The distinctive quality here according to Okafor is Baxi's notion of the assignment of *human* (as opposed to ordinary legal) rights to various formations of global capital¹⁰⁴. To Baxi, the UDHR paradigm differs from the TREMF paradigm in this way because although the UDHR did make provision for a right to property that can be read to benefit any person (including presumably corporations and business associations), in the end the notion of property in the UDHR is itself left substantially unsettled.¹⁰⁵ On the other hand, the TREMF paradigm makes the protection of the property interests of various formations of global capital central to its conception of the global social order. For Baxi, "to say that the [TREMF paradigm]...is just an unfoldment of the potential of [the] UDHR is plainly incorrect."¹⁰⁶

Secondly, as described by Okafor, the second sub-claim describes a progressive state, much more in the past– or at least the progressive 'Third World' state – as conceived by Baxi as:

[O]ne that is a good host state to global capital; as one that protects global capital against political instability and market failure, usually at a significant cost to the most vulnerable among its own citizens; and as one that is in reality more accountable to the IMF and the WB than to its own citizens.¹⁰⁷

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.* p.4

¹⁰⁶ *ibid* (Footnote 95) Baxi, p.145

¹⁰⁷ *ibid* (Footnote 97)Okafor, p.4

According to this TREMF mindset, progressive states are those states that are much more soft than hard toward global capital.¹⁰⁸ Baxi differentiates between politics *of* human rights and politics *for* human rights. Put simply, the former is the use of the discourse of human rights for the pursuit of power. It refers to its strategic/political deployment. Politics *for* human rights, on the other hand seeks to make ‘the state more ethical, governance progressively just, and power increasingly accountable.’¹⁰⁹

Thirdly, a state that is market efficient in suppressing and delegitimizing the human rights based practices of resistance of its own citizens is one that is also capable of unleashing (and, when necessary, does in fact unleash) a reign of terror on some of its citizens, especially those of them that actively oppose its excessive softness toward global capital.

Fourthly, Baxi postulates the TREMF paradigm as working to put an end to ‘human rights oriented, redistributionist governance practices’¹¹⁰ This sub-claim is that unlike the UDHR paradigm, which ‘assigned human responsibilities to states...to construct, progressively and within the community of states, a just social order, national and global, that will at least meet the basic needs of human beings,’ is being pushed aside to a worrisome extent by a TREMF paradigm that in contrast ‘denies any significant redistributive role to the state; calls upon the state [and world order] to free as many spaces for capital as possible, initially by pursuing the three-Ds of contemporary globalization: deregulation, denationalization, and disinvestment.’¹¹¹

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid* (Footnote 95) Baxi, p.41

¹¹⁰ *ibid.*

¹¹¹ *ibid* (Footnote 97) Okafor, Quoting *Baxi*

Finnemore and Sikkink's Constructivist Theory of the Norm Life Cycle

A 'norm' is "a standard of appropriate behavior for actors with a given identity."¹¹² Sometimes the use of the word institution is used interchangeably with norm. An institution is a collection of norms and rules about a particular subject such as sovereignty and slavery. There are different types of norms that exist. Regulatory norms define what behaviors states can or cannot do. Constitutive norms set up new actors, behaviors, or interests. Prescriptive or 'evaluative norms'¹¹³ prescribe actions or non-actions that are to be taken in certain situations.¹¹⁴

Finnemore and Sikkink generate some propositions about three aspects of norms—their origins, the mechanisms by which they exercise influence, and the conditions under which norms will be influential in world politics.

Specifically, we argue that norms evolve in a patterned "life cycle" and that different behavioral logics dominate different segments of the life cycle... we argue that the current tendency to oppose norms against rationality or rational choice is not helpful in explaining many of the most politically salient processes we see in empirical research—processes we call "strategic social construction," in which actors strategize rationally to reconfigure preferences, identities, or social context.¹¹⁵

To understand what it takes to make a norm, one must understand the lifecycle of the norm. This can be broken up into three different stages. The first is the

¹¹² Finnemore, Martha and Kathryn Sikkink. "International Norm Dynamics and Political Change." *International Organization* 54.2 (1998), p. 891.

¹¹³ *ibid.*

¹¹⁴ *ibid.*

¹¹⁵ *ibid.* p 888.

emergence of the norm due to norm entrepreneurs. The norm entrepreneurs must try to persuade a 'critical mass' of states to adopt the new norms. If the enough of the states are convinced to take on the new norm they begin to try to convince the other states to also adopt the emerging norm. If most of the states do not begin to adopt the new norm it will fail to become internalized. However, if the states begin to accept the norm, whether it be due to pressure to conform, want to enhance their standing in the international system, etc., the norm will begin to be internalized. This is the last stage where the norm begins to become more of a fact of life than a debated topic and begins to influence and dictate the roles and actions of states. These new norms are also integrated into the 'standard of appropriateness', which will affect later emerging norms.¹¹⁶

What are the origins or emergence of international norms? What processes through which norms influence state and non- state behavior? And which norms will matter and under what conditions? These are questions that were theoretical analyzed by Finnemore and Sikkink through their description of the Norm "Life Cycle".

This "life cycle" consists of three main stages: "norm emergence, "norm cascade" (or general acceptance of the idea as a norm), and "Internalization". Between stages one and two, there is a tipping point. This is the point 'at which a critical mass of relevant state actors adopt the norm'¹¹⁷ If there is not a large enough consensus, the idea fails to become a norm. The "life cycle" of a norm can be thought of as the norm's pattern of influence. What is most

¹¹⁶ "How Exactly Do Ideas & Norms Work?" Martha Finnemore and Kathryn Sikkink, *International norm dynamics and political change*, 'International Organization 52, No. 4: 887-917. <<http://utnorms.wikispaces.com/How+Ideas+Work>> accessed 2 January 2015.

¹¹⁷ Ibid. p.895.

important is not the “life cycle” itself but the different social processes and logics of action that take place at different points throughout the cycle. Finnemore and Sikkink argue, ‘Change at each stage... is characterized by different actors, motives, and mechanisms of influence’¹¹⁸. It is through these things that we gain an understanding of how norms function within the social environment.¹¹⁹

Three points need to be emphasized about this framework:

Firstly, it is an evolutionary framework (though implicitly so). Change in some agents alters the environment, driving change in other agents as all strive to do 'well'—act appropriately.

Secondly, the framework provides a mechanism for norm emergence—norm entrepreneurs supply the ideas that would be norms.

Thirdly, within this framework we see the seeds for norm change as well as emergence. Finnemore and Sikkink make clear that norm entrepreneurs always propose norms within a social environment already characterized by norms.¹²⁰

Indeed, norm entrepreneurs are often proposing a change in norms when they bring forth new ideas. Established norms can be altered when norm entrepreneurs convince agents to change their standards of appropriateness from an old norm to a new one. This framework is attractive because it explicitly addresses both the emergence of norms and contains within it a

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ *ibid.* p.897.

mechanism to explain the change of norms over time with an evolutionary framework and a norm entrepreneur.¹²¹

According to Finnemore and Sikkink, norms possess a quality of “oughtness.” This is what helps us to identify them. When there is a large enough group consensus on the “goodness” of an idea then it becomes a norm. “By definition, there are no bad norms from the vantage point of those who promote the norm”¹²² Norms are believed to be “good” by those who promote them. If not seen as good, then a norm cannot be established because norms require justification. How then do we explain slavery, race supremacy, or child labor? Surely, these are not justifiable acts. True, today they are not. However, at one time there was a large enough consensus group that saw the “good” in this idea for it to become the norm. Fortunately, with the influence of the social environment, either domestic or international, norms can be changed.¹²³

V. Analysis of Interview Data: The Nature, Attainments, Problems and Prospects of the Human Rights Cooperation between Nigeria and Canada

NATURE:

According to *informant 12*, the cooperation between Nigeria and Canada is a ‘good and subsisting’ one. *Informant 14* expresses that in terms of ESR, the cooperation is at its ‘best’. *Informant 14* also says ‘Canada pushes for health a

¹²¹ Matthew J. Hoffmann, ‘Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle’ <www.udel.edu> accessed 2 January 2015. P.7.

¹²² *ibid.* (Footnote 116) *Finnemore and Sikkink*.

¹²³ Martha Finnemore and Kathryn Sikkink, “International norm dynamics and political change,” *International Organization* 52, No. 4: 887-917. <<http://utnorms.wikispaces.com/How+Ideas+Work>> accessed 6 January 2015.

lot. They push for poverty reduction also.’¹²⁴ *Informant 16* says Canada has assisted in Safe guarding the life and properties of the less privileged, ‘even LGBT people in Nigeria,’ whilst according to *informant 17*, Canada has been vocal in asking Nigeria to address human rights abuses in Nigeria viz: ‘Torture, Extra-judicial killing, Summary execution, Detention without trial, Demolition and eviction etc.’. Giving a differing standpoint on the nature of the human rights cooperation between both states, *informant 8* says the relationship is lopsided because -

Canada sees human rights from their [Canadian] own angle alone. They do not see the Nigerian angle to human rights...this is because of the difference in the background of our [Nigeria’s] experience against the background of theirs [Canadian]... Their [Canadian] knowledge on Human Rights and our [Nigerian] own are on two separate spaces.

Most of the informants gave very positive feedback on the nature of the ESR cooperation between Canada and Nigeria. *Informant 15* says:

I’ve seen the participation of the Canadian Commission in Important human rights-related advocacy engagements with the Nigerian Government (visits, public statements from the Canadian High Commissioner). I’ve also seen some of the human rights work in Nigeria that is supported by grants from the Canadian High Commission and participated in roundtable discussions on different human rights topics organized by the Canadian High Commission for other members of the diplomatic corps in Abuja.

¹²⁴ *Interview with Informant 6*

Informant 25 describes Canada as a ‘big brother’ to Nigeria while *Informant 12* amazingly describes the nature of the corporation at that which is characterised by ‘harmony and love’.

The Canadian Foreign Affairs Minister, whilst visiting Nigeria in 2012 said:

Nigeria and Canada have a relationship that is rife with opportunity when it comes to economic, social and security cooperation.’¹²⁵ The Canada-Nigeria Foreign Investment Promotion and Protection Agreement (FIPA)¹²⁶ entered into by both nations in 2013, proposes the facilitation of investment flow, contributing towards job creation and economic growth.

The FIPA includes an article on corporate social responsibility. ‘This demonstrates that both Canada and Nigeria encourage investors to voluntarily adhere to internationally recognized standards and best practices on issues such as labour and human rights.’¹²⁷ *Document 4* is a joint Communiqué report of the inaugural meeting of the Nigeria-Canada Bi-National Commission.¹²⁸

¹²⁵ Government of Canada: Foreign Affairs News Release ‘Baird to visit Nigeria, Austria and France’ October 7 2012. Available at <<http://www.international.gc.ca/media/aff/news-communications/2>> accessed April 1 2014.

¹²⁶ A FIPA is a treaty designed to protect and promote Canadian investment abroad through legally binding provisions as well as to promote foreign investment in Canada. By ensuring greater protection against discriminatory and arbitrary practices, and enhancing predictability of a market’s policy framework, a FIPA allows investors to invest with greater confidence. Canada has consistently supported strong, rules-based investment through the negotiation of FIPAs.

¹²⁷ Office of the Prime Minister of Canada, Stephen Harper ‘Canada-Nigeria Foreign Investment Promotion and Protection Agreement’, (1st May 2013), Para 5. Available at: <http://www.pm.gc.ca/eng/news/2013/05/01/canada-nigeria-forei> [Last accessed 5 March 2014]

¹²⁸ Joint Communiqué report of the inaugural meeting of the Nigeria-Canada Bi-National Commission. Available at: <http://www.canadainternational.gc.ca/nigeria/highlights->

The Inaugural meeting of the Nigeria-Canada Bi-National Commission (BNC) took place on October 8, 2012 in Abuja, Nigeria. The meeting was co-chaired by the Nigerian Minister of Foreign Affairs, Ambassador Olugbenga Ashiru and the Canadian Minister of Foreign Affairs, the Hon. John Baird, who had signed the BNC Framework Agreement in April 2012 in Ottawa.¹²⁹

The Canadian delegation included officials from Foreign Affairs and International Trade Canada (DFAIT) and the High Commission of Canada in Abuja. The Nigerian delegation included officials from the Ministry of Foreign Affairs, Office of the National Security Adviser and the Ministry of Trade and Investment, and other relevant agencies. Both countries pledged that the BNC would be the basis for constructing a lasting strategic partnership between the two federal, multicultural democracies.¹³⁰

Some NGOs and even stakeholders in policy-making on matters of ESR in Nigeria obviously seem to be ignorant of any direct cooperation between the Nigerian and Canadian government on matters relating to ESR or human rights in general.

Informant 1 works for one of the prominent government organizations in Nigeria; one that is charged with the responsibility of protecting the social rights of certain vulnerable class of individuals requiring international support. But *Informant 1* maintains that the only time the organization came in contact with Canadian government was in respect of a fraud case involving the state of Canada.

faits/20 accessed 30 March 2014.

¹²⁹ *ibid.*

¹³⁰ *ibid.*

According to *Informant 1*:

...The only time NAPTIP came in contact with Canadian authority was in 2011 when two Nigerians who claimed to be Canada Immigration experts recruited about eight thousand Nigerians at a cost of Sixty-Five thousand Naira (and an additional two thousand naira each), were arrested by operatives of NAPTIP.... NAPTIP wrote officially to Canada but there was no response, not even a commendation bearing in mind that two Canadian citizens were also involved in the illegal activity. Outside this, there had been no interaction with Canada whatsoever.

The Nigerian National Assembly also seems not to be aware or involved directly in the collaborative relationship between Nigeria and Canada in the area of Human rights.

Informant 3,¹³¹ an aide to the House Committee on Human Rights, stated the following:

...I am not aware of any official cooperation between Canada/Nigeria. I have however interacted with representations of the Canadian High Commission at various human rights conferences in Abuja. I consider the Canadian High Commission in Nigeria, National Human Rights Commission, Senate Committee on Judiciary/Human Rights, and House Committee on Human Rights said the main drivers of Canadian/Nigerian cooperation in the human rights field.

¹³¹ Interviewed on the 26th Day of November 2013, at 12 noon or so soon thereafter.

*Informant 2*¹³², who is a staff of the National Assembly of Nigeria, said:

...Nigerian cooperation with Canada has been carried out through Nigerian High Commission representing government and Canadian embassy in Nigeria and other Human Rights Activists in both countries.

In an interview with *Informant 4*¹³³, a prominent staff in a leading NGO, stated that: 'There might have been some work done with CIDA in the area of Human Rights in the past but currently none'. Quite a number of informants know nothing about any human rights cooperation between the two countries. *Informant 10* said 'I don't know anything about the human rights cooperation between Canada and Nigeria' the same was recorded from *informants 6, 11, 22* and a number of others.

Positively, both countries reaffirmed the underlying principles of the BNC, reflecting shared respect for human rights and democracy. The two countries recognized that effective political, economic, security, and development collaboration contributes to building a peaceful and prosperous Nigeria committed to promoting human rights for all, good governance, and democratic development. They also restated that they would work together on common regional and global challenges, including counter- terrorism, the Mali crisis, the Middle East, and Commonwealth reform. While recognizing that lasting security demands a multi-level approach including development, education, democracy and human rights, both countries resolved to enhance the operational capabilities of the Nigeria security services to enable them respond adequately to internal and regional security challenges.

¹³² Interviewed on the 22nd Day of November 2013 at 11:26am or so soon thereafter.

¹³³ Interviewed on the 20th Day of November 2013, at 2pm or so soon thereafter.

Despite these positive developments, lack of accountability and political will to devote needed resources and implement infrastructural change in order to protect and advance economic and social rights remain apparently a deterring factor for the advancement of these developments in Nigeria today. Conversely in Canada, economic and social rights are evidenced in the day-to-day existence of citizens and form major bedrock for political activism. One of the reasons for this disparity between both countries is the ineffective nature of legal frameworks on economic and social rights adopted in Nigeria.¹³⁴ However, there is still a need to look beyond the bare words of these documents to give true meaning to these rights. Words on paper alone do little justice to the aspirations inherent in these documents. The rights they contain must be humanised. But for several decades, Canada has funded or otherwise supported many human rights, judicial strengthening, institution building, democratization, and poverty alleviation efforts and struggles in Nigeria and in many parts of the rest of the West African sub-continent. Such support/cooperation, the anecdotal evidence suggests, has played an important socio-political and socio-economic role in the sub-region. Aid from Canada to Nigeria has been targeted at ESR provisions. Conversely, reviewing the data obtained from this research shows no evidence of Nigeria directly giving aid to Canada to support human rights causes.

¹³⁴ This is apparently because, under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) economic and Social Rights are not captured as 'Rights' so to speak. Rather, they are recorded under Chapter 2 of the Constitution as "Fundamental Objectives and Directive Principles of State Policy", in which case, they cannot be ordinarily enforceable as a Human Right like other Fundamental rights contained under Chapter 4 of the same Constitution of Nigeria. More specifically, they are referred to as Economic Objectives and Social Objectives under Sections 16 and 17 of the Constitution of Federal Republic of Nigeria.

ATTAINMENTS:

The Right to Health

CIDA manages Canada's assistance to Nigeria. In 2009-2010, total CIDA assistance to Nigeria amounted to \$60 million. CIDA does not provide assistance directly to the Nigerian government. Instead, assistance for various projects is provided to multilateral organizations, including UN bodies, and Canadian non-governmental organizations, which implement projects on the ground. The Government of Canada, through the *Muskoka Initiative*, supported the Nigerian Government's commitment to improving maternal, newborn and child health. Canada's efforts in Nigeria were focused on strengthening primary health care delivery at the community level and preventing and treating the most prevalent illnesses and diseases that cause maternal and child mortality. To that effect, CIDA planned to invest \$36 million over the 2010-2015 periods to improve maternal, newborn and child health¹³⁵. The bilateral program focuses on Children & Youth and Sustainable Economic Growth and targets most of its investments in two States: Bauchi State and Cross River State.

From 2011, the Foreign Affairs, Trade and Development Canada (DFATD) focused its bilateral program, which totaled almost \$26 million to support key government health institutions to deliver high-impact and cost-effective maternal and child health interventions at the community level. This assistance aimed at reducing the maternal mortality rate (MMR) in Nigeria, which at then 630 deaths per 100,000 live births in 2010. The neonatal, infant and under-five mortality rates were similarly high. In 2010, over 850,000 Nigerian children under five years old died, which is about 10% of the global child

¹³⁵ High maternal and infant mortality rates are major impediments to the development of Nigeria. In Nigeria, the maternal mortality rate is 840 deaths per 100,000 live births (global MDG target is 75/100,000). The country loses about one million under-five children annually, which is about 10 percent of the global child mortality figure.

mortality figure.¹³⁶ Both countries reaffirmed the underlying principles of the BNC, reflecting shared respect for human rights. The two countries recognized that effective economic and social development collaboration contributes to building a peaceful and prosperous Nigeria. Canada will continue to work with Nigeria in improving health care, especially maternal and child health. Both countries expressed satisfaction with progress made during the September 2012 visit of Canada's Minister of International Cooperation.¹³⁷ Canada spends US\$2,931 per person every year on health care whilst Nigeria spends only \$43.¹³⁸

Document 3 is a sensitive document, in that it categorically states the amount of assistance rendered by the Canadian state to Nigeria to the tune of \$60million through the instrumentality of CIDA and the *Muskoka Initiative*. Canada also developed special interest in the development of Nigerian maternal and child health related matters evident from *Document 3*. Due to the prevailing statistics in the area of maternal and child mortality in the country, Canadian Government is planning to invest about 36 Million Dollars to improve maternal, new-born and child health. The fundamental basis of this document as it relates to the Interrelationship between Nigeria and Canada vis-à-vis the development of economic and social rights is that it paves way for sustainable economic and social growth. This is a very crucial ingredient for the

¹³⁶ Factsheet, Canada-Nigeria Relations (May 2013). Available at: <http://www.canadainternational.gc.ca/nigeria/bilateral_relations_>[Last accessed 5 March 2014]

¹³⁷ Joint Communiqué of the inaugural meeting of the Nigeria-Canada Bi-National Commission. Available at: <<http://www.canadainternational.gc.ca/nigeria/highlights-faits/20>> [Last accessed 30 March 2014]

¹³⁸ UNDP Human Development Report 2005. "International cooperation at a crossroads: Aid, trade and security in an unequal world". Available at: <http://hdr.undp.org/en/media/hdr05_complete.pdf> accessed 30 March 2014.

continuing growth of every nation. Emphasis is placed on two specific locations in Nigeria, i.e. Bauchi and Cross-River States.

Document 2 is a fact sheet on Canada-Nigeria relations.¹³⁹ The fact sheet notes that in September 2012, Canadian Minister of International Cooperation, Julian Fantino, traveled to Nigeria to discuss health issues, the Sahel and economic growth. *Document 2* demonstrates the readiness of the Canadian government to participate in the health sector. The Government of Canada, through the Muskoka Initiative, supports the Nigerian Government's commitment to improving maternal, newborn and child health. Canada's efforts in Nigeria are focused on strengthening primary health care delivery at the community level and preventing and treating the most prevalent illnesses and diseases that cause maternal and child mortality. To that effect, CIDA is planning to invest \$36 million over the 2010-2015 period to improve maternal, newborn and child health. High maternal and infant mortality rates are major impediments to the development of the country. In Nigeria, the maternal mortality rate is 840 deaths per 100,000 live births (global MDG target is 75/100,000). The country loses about one million under-five children annually, which is about 10 percent of the global child mortality figure.¹⁴⁰

The Right to Education

In the area of promoting the right to education, Canada and Nigeria have shared a long history since Nigeria's independence. The High Commissioner was quoted saying:

¹³⁹ Canada-Nigeria Relations Fact Sheet. Available at: <http://www.canadainternational.gc.ca/nigeria/bilateral_relations_> accessed 24 February 2014

¹⁴⁰ *ibid.*

“Nigerians will recall the dedication of hundreds of Canadian teachers during the 60s and 70s who volunteered each year in grade schools across your country. I am told that both students and teachers found the educational exchange programme both enriching and rewarding. In fact, during my first four days in Nigeria, I have encountered many of your countrymen and women who received a Canadian education”¹⁴¹

According to *informant 14*, one attainment of the Nigeria-Canadian cooperation is the ‘promotion of integration especially relating to studies.’ Canada has been able to integrate some Nigerians into Her educational system by providing admissions and sometimes scholarships through her institutions especially in undergraduate and graduate levels. Besides schooling, *Informant 24* describes an attainment of ‘Education... in advocacy for human rights of women and young people’ in Nigeria.

Aid effectiveness

Nigeria adheres to the Paris Declaration on Aid Effectiveness and international donors are working together to harmonize aid programs and align them with local priorities. Canada supports efforts to improve harmonization, information and accountability in the Nigerian health sector, and signed the 2010 Health Sector Compact, initiated by the International Health Partnership. Through this commitment, Canada has increased efforts to work in harmonization with other development partners and to align its programs with the plans and priorities of the Government of Nigeria,

¹⁴¹ ThisDay Newspaper, February 03, 2013 “Canada Promises Robust Bilateral Trade With Nigeria” accessed 24 February 2014.

particularly the Nigeria National Health Sector Development Plan (NSHDP 2010-2015) and the Integrated MNCH Strategy.

Through CIDA, Canada contributed to the Joint Donor Basket Fund with DFID, the EU, UNDP and others for *informant 24's* organization; 'Also in 2009, still in the push for gender equality, CIDA and UNIFEM supported us in organizing a validation workshop to promote gender equality and human rights policy in HIV/AIDS national response'¹⁴². A bilateral program focus on Children & Youth and Sustainable Economic Growth are targets investments in two States: Bauchi and Cross River. CIDA also supports a multi-donor funded initiative managed by the United Nations Development Program (UNDP) to improve key electoral institutions, foster stronger democratic accountability and build the foundation for strengthened democratic governance. The Government of Canada does not believe that cutting development assistance to Nigeria is an effective or appropriate response to the ongoing debate in Nigeria. Canada is engaged in Nigeria in recognition of the major development issues it faces. Suspending development assistance to Nigeria would reduce availability of and access to health services currently served by CIDA-funded program. CIDA will continue to advocate for equal treatment for all people during its interactions with the Government of Nigeria.¹⁴³

The Right to Food

From 2009 to 2011, CIDA helped eight pilot communities develop and use climate change adaptation measures — including adapting to rainfall variability and shortages by using different planting techniques and water management practices, rehabilitating ecosystems (to reduce desert

¹⁴² Interview on the 20th of December 2014 at 11:00am or so soon thereafter.

¹⁴³ *Ibid.*

encroachment), using energy efficient cooking devices, and diversifying livelihood opportunities — resulting in increased agricultural yields, and more food in households, with children better fed, and farmers able to pay school fees.¹⁴⁴ From 2011 through 2012, Canada helped Nigeria in its access to food by increasing the food security of 530 people in 7 communities through the introduction of improved early maturing crop varieties for sorghum, millet, cowpea, groundnut, beniseed, rice, soya beans, maize and cassava.

Informant 18 says ‘Canada has pushed for ...Right to Food... Water etc.’ whilst *informant 25* recounts that the Development Exchange Centre which is a product of a joint research conducted by the Canadian university services Oversea (CUSO) and the Adult and Non Formal Education Agency (ANFEA) Bauchi State empowered women through the provision of micro finance services and entrepreneurial skills development, including making provision for water supply amongst others.

Employment

From 1999 to 2011, both countries have advanced in the the right to employment and equal job opportunities especially for women. This is evidenced in the projects carried out by the organizations of *informants 5, 9, 10, 18, 24* and *25* which specified that the Canadian government is bent on improving the economic and social right of women by promoting their access to sustainable livelihood and jobs. Nigeria’s cooperation in accepting gender equality in this regard is evidenced by the abundance of NGOs in Nigeria who

¹⁴⁴ Nigeria - Foreign Affairs, Trade and Development Canada. Available at: <<http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/Eng/JUD>> accessed 23 January 2014.

promote women's equity and equality. *Document 5* even shows that CIDA as an organization employs more women.

Security

One document to be appraised is the Proceedings of the Canadian Senate Standing Committee on Foreign Affairs (*Document 1*).¹⁴⁵ Mr. Olufemi Oyewale George, the then Nigerian High Commissioner to Canada was a guest at the proceedings. Issue 8 of the proceedings notes that the Canadian Senate met to examine the development and security challenges facing Africa; the response of the international community to enhance that continent's development and political stability; and Canadian foreign policy as it relates to Africa. One major area discussed among others is the economic, social and cultural right of the Nigerian people.¹⁴⁶

Canada welcomes Nigeria's leadership in African and global affairs, most notably through its significant contribution to international peace operations.¹⁴⁷ In 2005, Nigeria became a major troop contributor to the African Union's Mission in Sudan, and the subsequent United Nations African Union Mission in Darfur. Nigeria is now the second largest troop contributing African nation to UN peacekeeping operations and the fifth largest globally, with around 4,700 personnel deployed in Darfur and Liberia alone. Since January 2013, Nigeria has contributed over 1,000 military personnel and several aircraft in support of the UN Security Council-mandated African-led International Support Mission to Mali (AFISMA). From 2005 to 2009, Canada provided equipment and training for Nigerian troops participating in

¹⁴⁵ Meeting of February 23, 2005. Available at: <<http://sen.parl.gc.ca/pdowne/english/Committees/Foreign>> accessed 28th March 2014.

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.*

the AU/UN mission in Darfur, Sudan. Nigeria has been a member of the Military Training and Cooperation Programme (MTCP) since 1965 and over 200 Nigerian military members have received training through this programme.¹⁴⁸

Canada recognizes and appreciates Nigeria's leading role in the 15-member ECOWAS, which is among the strongest and most coherent of Africa's international institutions. ECOWAS plays a key regional role in resolving armed conflict and political crisis, as in Côte d'Ivoire, Guinea, Guinea-Bissau, Liberia, Mali, Niger and Sierra Leone; handling security issues such as illicit trade in small arms and light weapons, terrorism and human trafficking; and promoting regional economic integration.¹⁴⁹

Document 1 demonstrates Canada's interest in the development and security of Africa. *Document 2* demonstrates the readiness of the Canadian government to participate in matters of Nigerian economic growth in 2012 with particular focus on Nigerian military/armed forces and their relentless contribution to peace keeping in Africa through the contribution of troops to troubled areas in the region. The Document also recognizes the active role of Nigeria in ECOWAS as a major stakeholder in the organization. This in our view is a laudable effort capable of directly or remotely fostering the Economic and Social rights in the African region. This is because peace and security are the foundational basis for the sustenance of these rights both in Nigeria and anywhere in the world.

Housing

¹⁴⁸ *ibid.*

¹⁴⁹ *ibid.*

Document 1 suggests Canada's concern on the standard of living in Nigeria but no data collected in this research shows an active move towards the right to housing from either of the countries. However, quite notably, informant 13 says 'In 2012, the Canadian High Commission tried to assist victims of Mpape demolitions, through our organization'. The Canadian High Commission in Nigeria aided in the empowerment victims that were affected by the demolition of the Mpape market in Abuja, Nigeria - to help them get reestablished as they lost practically their entire means of livelihoods.

PROBLEMS

The problems that were identified from the informants include but are not limited to the following:

Funding contention:

There seems to be a tie between the NGOs and the MDAs for who should receive Canadian funding on ESR projects in Nigeria. The NGOs prefer that the funding go to them in order to advance ESR from the grassroots whilst the MDAs prefer that as the government bodies, the funding should boost already existing structures. In this regard, there seems to be a sense of competition and not collaboration. The Canadian agencies have been able to work with both parties depending on the project or objective, although it is almost never all encompassing. *Informant 13* says 'Planned funds for assistance were recalled severally.'

Insufficient documentation:

There is a huge problem with documentation especially from the Nigerian angle. Many of the informants are aware of Nigerian-Canadian cooperation on ESR provisions but are unable to substantiate same due to the unavailability of

documentation or data on these partnerships. Some are unaware even if there may have been some partnership or work on ESR issues. *Informants 26, 27, 28, 29 and 30* couldn't provide any data on Nigeria-Canada partnership

Power asymmetries:

The term 'cooperation' is not a one-way street. The promotion of ESR should be symbiotic between both countries just like the igbo proverb of "when the right hand washes the left hand and the left hand washes the right hand, both hands become clean". Analyzing the data obtained for the research shows Canada as the benefactor, and Nigeria the beneficiary; Canada as performing the "washing" and Nigeria as "being washed". Why is there little or no intervention from Nigeria towards Canada? Is it because of the development inequality between two states hence the reason why *Informant 25* describes the relationship to be 'Like a big brother. They show us how it is done because they are more advanced.' *Informant 23* says 'I consider both countries to be driving human rights because Nigeria provides the platform but Canada supports.' One is tempted to conclude that this cooperation not like a partnership but as one party funding the promotion of ESR and the other one observing same.

Has the politics and tradition of aid affected this cooperation? Is this structure aligned with local priorities? Are Canadians happy to see millions of dollars every year being donated to Nigerians for ESR funding? Would it be rare for Nigeria to support a human rights cause in Canada? According to *Track*, Canada is not yet the perfect haven for ESR enforcement and according to *informant 8*:

Canada will not even look at Nigeria as a "Driver". There is no basis or even room for dialogue because of our own

situation whereby politicians for example, have messed themselves up. They can just say “look at those fools”... that’s the kind of thinking they have. For example, look at when the military came in; they closed down their mission. It is basically one sided. Most of the Nigerians they come in contact with will kotow to them because they want one thing or the other.. . I remember when I was fighting for reciprocity, people were asking me to slow down. Even from headquarters. In fact, I was prepared to be recalled.

Reciprocity?:

On another account, *informant 21* believes that there is no free lunch; ‘if Canada isn’t getting any trade benefits from Nigeria, will they still give? I dont think so.’ Is Canada supporting ESR in Nigeria for the benefit of trade leverages? *Informant 24* says ‘Yes, if trade relations are poor or stringent, it will affect the cooperation of both countries to play their international relations role and responsibilities.’ *Informant 12* supports this notion too: ‘they do this to benefit their economy so that they can gain good trade networks and better import/export relationship.’ *Informant 6* says ‘...the wire of politics connects human rights with trade’.

The problem with this belief is that if NGOs in Nigeria think that Canada is promoting ESR for benefits in trade, hence they may not fully appreciate the value of ESR being promoted as a human rights necessity. Majority of the informants however do not think Canada is supporting Nigeria for any benefits. Majority of the informants see this gesture as charity, benevolence and genuine aid.

Visas and Immigration:

A number of the informants expressed dissatisfaction with the slim chances of securing visas from Nigeria to Canada.

‘Do you know that General Gowon was refused a visa? A former Head of State of Nigeria? . I can name many other prominent Nigerians [who have been denied visa]’¹⁵⁰.

Also, the Visa Section of the High Commission of Canada is only operative in Lagos. Nigerians who hope to travel to Canada have to go all the way to the Visa Application Centre (VAC) in Lagos with an alternative to submit applications online (which will still require attendance in Lagos in order to conduct the compulsory biometrics). With a country of an area of 356,669 sq. miles (923,768 km²) and a population of 173.6 million people¹⁵¹ ‘one visa application office is not enough... it is not fair’¹⁵² especially as there is ‘subsisting’ partnership between both countries.

Informant 8 expressed said:

Another problem was the expulsion of illegal immigrants... We were explaining to the international community in Geneva the implications of what had happened... it was shocking to us. We felt disappointed.

Informant 1 also raised similar concern. UNHCR estimates that Canada resettled 9,378 Nigerians between 1996 and 2005¹⁵³. Nigerians seek asylum in

¹⁵⁰ *Informant 8*.

¹⁵¹ World Bank, Nigeria Country Report <<http://data.worldbank.org/country/nigeria>> accessed 1 January 2015.

¹⁵² *Informant 25*.

¹⁵³ Keshi, J. (2010). Keynote Address Delivered To Nigerians in the Diaspora Calgary, Alberta, Canada, On the Occasion Of The Inauguration Of The Nigerians in the Diaspora Organization (NIDO), Canada, Calgary Chapter, Saturday 8th May, 2010, Greenwood Inn NE, Calgary

Canada because of the ongoing conflicts that force some to flee, others are seeking to escape poor socioeconomic conditions in a country where political conflicts, turmoil, violence, and dislocations are routine¹⁵⁴.

Communication gaps:

There is a communication gap between the foreign relations of both countries. According to *Informant 8*, on the expulsion of illegal immigrants:

They did it without even letting the Nigerian Foreign Affairs Ministry know what had happened. It was a decision taken by their internal affairs. They just announced it in the news and it was shocking to us. We felt disappointed. If they had told us, we would have brainstormed on the best way to deal with the issues. Yes, there were human rights issues but there are better ways to solve them especially if they informed the foreign affairs ministry here.'

Informant 1 also said:

NAPTIP wrote officially to Canada but there was no response, not even a commendation bearing in mind that two Canadian citizens were also involved in the illegal activity.

Unawareness:

One of the problems highlighted by *informant 12* is that there isn't enough publicity on the ESR cooperation of both countries: 'I think one issue is that of publicity. I don't think many NGOs know what the Canadian government is

¹⁵⁴ Mberu and Pongou, MPI, 'Nigeria: Multiple forms of mobility in Africa's demographic giant' <<http://www.migrationpolicy.org/article/nigeria-multiple-forms-mobility-africas-demographic-giant>> accessed 3 January 2015.

up to. They do not do adequate publicity on their human rights work despite the fact that they are one country who has helped Nigeria in so many ways. *Informant 18* says ‘the media have not done enough to support the relationship between Nigeria and Canada. They haven’t promoted this relationship or cooperation we are talking about.’

Other problems mentioned include Corruption,¹⁵⁵ Poverty¹⁵⁶, Religion¹⁵⁷ and human rights illiteracy¹⁵⁸

PROSPECTS

According to Senator Raynell Andreychuk¹⁵⁹ in *document 6*:

¹⁵⁵ “Corruption has overtaken both the public and private space; therefore the challenge of anticorruption and the battle against corruption can only be fought where both countries establish strong frameworks to combat it. This requires high level of commitment, not only from the governments but also at the various arenas of associational life, starting from the family, through the schools, and other social institutions, as well institutionalized arenas for the reproduction of popular cultures, like the media.” – *Informant 18*

¹⁵⁶ “Poverty is another problem. There is an organic linkage between poor human rights compliance and poverty. There is also linkage between poverty and corruption, especially petty corruption. While poverty does not necessarily lead to bad human rights compliance, it seriously lowers the resistance capacity of the individual to illegal and corrupt practices. Moreover, socio-economic insecurity, especially the fear of postretirement welfare is greatly encouraged by poverty.” – *Informant 18*

¹⁵⁷ “Religion is another problem. Nigerians are very religious unlike Canadians. But in Nigeria religion could provide the framework for cultivating the core values of honesty, integrity, hard work and moral rectitude required in the fight against human rights abuses. However, religion itself has been abused, bastardized and exploited by religious groups and leaders for selfish gains.” – *Informant 18*

¹⁵⁸ “...[E]ducation has significant role to play in inculcating positive values, teaching the core ideals of human rights especially to the youths and children and in the general advocacy for human rights compliance. In Canada, there is human rights education from primary school up to university. This has not been properly assimilated in the current Nigerian structure.” – *Informant 18*

¹⁵⁹ Senator Raynell Andreychuk is the Chair of the Senate Committee on Foreign Affairs and International Trade, Senate of Canada, Ottawa.

Canada-Nigeria relations are evolving in the way that I have been advocating for many years. We are starting to witness a shift away from the previous approach of development assistance. Instead, we are beginning to move toward an approach of international cooperation. This marks a transition from the hierarchical aid models of the past. The new approach is one in which developed and developing countries' advantages are leveraged to create mutual, long-term benefit. Instead of promoting dependency, the new model recognizes the critical role of the private sector in promoting local, sustainable growth. It also involves supporting national institutional capacity and resource distribution priorities.¹⁶⁰

The essentiality for an effective Nigeria-Canada cooperation under this new model is worthy. Both countries are Commonwealth countries and share similar institutions with a common official language. The economies of both are premised on a strong resource with promising agri-food sectors. Both feature important and growing innovative and technological capabilities even if Canada is more advanced.

VI: Exemplification or otherwise of the couple theories

¹⁶⁰ Senator Raynell Andreychuk (The Nigerian Canada Forum), <<http://www.nigeriacanadaforum.org/index.php/policy-series/109-canada-s-relations-with-the-new-nigeria>> accessed on 3 January 2015.

Is there any interconnection between the evidence reviewed above on the nature/character of Canada-Nigeria cooperation in the area of ESR (from 1999 to 2011) with the theoretical positions framing this research? In other words, can we, by looking at the evidence, find any linkage with the theoretical positions advanced by Finnemore and Sikkink and Upendra Baxi, respectively? If so, to what extent does the evidence validate, or shed light on the theoretical positions?

Upendra Baxi

To provide an analytical assessment of the possible explanatory power of the TREMF thesis in relation to the evidence that was discussed in the preceding section, it will be apt to conduct this evaluation through a consideration of the sub-claims of the TREMF thesis that were discussed briefly in section IV above.

Baxi argues that the emergent paradigm of trade-related market-friendly human rights is working to put an end to ‘human rights oriented, redistributionist governance practices’ in ways that foreclose the possibility of progressive realization of ESRs, and is engendering the reinterpretation of actually existing rights, such as the right to development or the right to food, in ways that reflect the new market ethos.¹⁶¹ *Informant 8* who asked a question has identified this “marketization”: He said, ‘is there anything that doesn’t affect trade these days? ...Human rights hinder trade if the understanding is not parallel...trade affects every country’s relationship’. According to *informant 25*, ‘If trade relations are poor or stringent, it will affect the cooperation of both countries to play their international relations role and responsibilities.’ It is important to note that about 25 informants out of 30 do not see human rights

¹⁶¹ *ibid.* (Footnote 95) Baxi, p.139

to be hindered by trade. What is indeed remarkable is the fact that the articulation of this TREMF assertion is a consideration being examined under the United Nations system.

Starting with the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, formulated by a Working Group of five independent experts,¹⁶² - to the UN Guiding Principles on Business and Human Rights developed by *John Ruggie*, transnational corporations and other business enterprises stand conceived as networks of corporate governance and business conduct. Ideologies of voluntarism stand replaced by those of regulation and implementation. If the communities of human rights and social activism have already begun to see businesses as a potent human rights stratagem, Baxi claims that emergent also, is the silhouette of global corporate resistance.

If not for anything, one major reason to agree with Baxi or see his theory, as correlating with this study is his futuristic realization of a trade related paradigm in human rights, which is evident and true. *Informant 6* says ‘the wire of politics connects human rights with trade and even government regimes as they change’.

On another the sub-claim propounded by Baxi, he differentiates between politics *of* human rights and politics *for* human rights. The former is the use of the discourse of human rights for the pursuit of power. This correlates with the study especially with the evidence of Canada who is the giver in the

¹⁶² See the Sub-Commission on the Promotion and Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 13 August 2003, E/CN.4/Sub.2/2003/12/Rev.2 (2003); For the Commentary on the Norms, see E/CN.4/Sub.2/2003/38/Rev.2 (2003).

cooperation. She keeps giving Nigeria funding for ESR fulfillment and does not receive a reciprocal gesture from Nigeria. Millions of dollars every year moves from Canada to Nigeria in the form of aid towards human rights advancement to the right to health, primary education, job creation and ESR advocacy etc. This power pursuit had been attained by Canada who is now a 'big brother' to Nigeria, described by *Informant 25* and can threaten Nigeria to withdraw aid if they do not comply with certain standards.

Baxi also makes reference to a strategic/political deployment. Politics *for* human rights, on the other hand seeks to make 'the state more ethical, governance progressively just, and power increasingly accountable'. *Informant 21* posed a question '...if Canada isn't getting any trade benefits from Nigeria, will they still give? I don't think so.' *Informant 12* describes the nature of human rights cooperation between Canada and Nigeria as 'such that while Canada contributes to human rights projects in Nigeria through CIDA for the NGOs as well as support our government parastatals, they do this to benefit their economy so that they can gain good trade networks and better import/export relationship.' These are minority opinions from the bulk of evidence accrued on this subject but they give some credence to the politics of/for human rights described by Baxi. Is Canada supporting Nigeria in order to maintain a "progressive" status? Does Canada gain power from being a 'big brother' to Nigeria? It is important to note that the generality of evidence from informants and documents analyzed resolve that Canada's support of ESR to Nigeria is majorly motivated by charity.

Addressing another sub-claim, Baxi describes the 'third world state' as one that is in reality more accountable to the IMF and the WB than to its own citizens. In this context, can Nigeria be said to be more accountable to Canada than its own citizens because of the funding it receives? Or is Canada giving money to

Nigeria to promote ESR even when some of its citizens do not also enjoy these rights? Perhaps it is possible that Nigeria excludes the realization of its ESR obligations (if any) purposely, to ensure that it still receives funding from Canada to help it forbear its ESR obligations? These questions could only have arisen with the theoretical justification of Baxi's theory.

Other than the aforementioned, Baxi fails in any attempt to bring together the worlds of human rights theory and practice, mainly because its theoretical side, in the final instance is unconvincing. However Baxi is definitely correct when he notes in that his undoubtedly raises more questions than it answers.

Finemore and Sikkink

Canada keeps supporting Nigeria in the promotion and advancement of ESR because of the emerging global norms regarding ESR. The protection and fulfillment (or perhaps interpretation) of human rights no longer stop at the traditional CPR. Norms have emerged from the international community and have been of persuasive force towards states to recognize that human rights obligations without ESR is incomplete. Even with a great CPR record compared to Nigeria, Canada is repeatedly criticized by UN treaty bodies for her failure to respect, protect and fulfil the ESR of its citizens.

With the emergence of ESR norms, and within the study period of 1999 to 2011, Canada has begun demonstrating an internalization of ESR norms by taking active steps towards fulfilling such ESR obligations. Another emerging norm that is inseparable from ESR in this context is the altruistic motives of Canada behind aid to Nigeria. The constructivist Finemore & Sikkink, using the ongoing Canadian-Nigeria cooperation as a case study, provides insight

into the ESR actions of states and validation for forcible aid intervention to Nigeria for its poor ESR enforcement.

Regarding the first stage, which is norm emergence, where norm entrepreneurs attempt to persuade a critical mass of states to adopt their proposed norm, ESR can be said to have emerged as an international community's agenda. The ESR norm emerged with the notion that ESRs are concerned with basic human needs—for food, shelter, and water, and for the means to provide those things for oneself. International organizations recognize that a person who is starving, who is homeless, who does not have the means to provide for their own basic needs, cannot realize any other human right. This norm cascaded with states adopting the ICESCR from 1966. With 162 parties to the ESR instrument, a tipping point has reached as empirical evidence suggests that it happens when about two-third of the total states in the system adopt the norm. However looking at the evidence in this research, credit can be given to the transnational advocacy networks of Nigeria and Canada, the NGOs and the Foreign Service that has acted as norm catalysts in promoting ESR in both countries.

A norm cascade follows, where norm leaders, representing a critical mass of states, “attempt to socialize other states to become norm followers.”¹⁶³ From this research, Canada is attempting to socialize Nigeria to become a norm follower of ESR. For example, with the donation of 36 million dollars to Nigeria over only a 5 year period for improving MNCH as evidenced by *document 2*, this socialization process and received a rich investment. This socialization can also be seen as a reference point for Canada to show its commitment to ESR not only in her country but also in the ‘third world’.

¹⁶³ *ibid.* (Footnote 112) *Finnemore and Sikkink*. p.895

The perplexity in this cooperation is that whilst both parties have not given full legal force to ESR in their *grundnorms*, reasons that can be identified from the research data is that Canada supports ESR in Nigeria (a one way traffic) for both moral and political. Finnemore and Sikkink argue that states often begin to comply to norms because norm entrepreneurs attempt to socialize states to adopt the norms they are promoting. ‘State preferences are malleable...’¹⁶⁴ and their interests and preferences can be formed and changed by international norms that provide international political life with structure and meaning.

With the principle of sovereignty being quite sensitive, this norm influence is only materialized in this cooperation through aid and consensus. When asked if there is a problem regarding interference with sovereignty or any sensitivity to same, *Informant 25* says the issue of sovereignty comes up only when ‘Nigeria does not support the act or statement of Canada on an issue’ and *informant 15* says:

Nigeria tends to be quite sensitive to interference with its sovereignty on human rights issues. However, I have not particularly observed this reaction with statements made by the Canadian High Commission as much as with other diplomatic missions such as the UK or US.

However 25 out of 30 informants do not see any problem regarding interference with sovereignty.

Finally, the process of norm internalization occurs, where the norm is no longer debated or questioned. This may be one aspect where Finnemore and Sikkink’s theory will not be in line with the evidence obtained. There are many

¹⁶⁴ *ibid.* Finnemore, ‘National Interests in International Society’.

debates and unsettled questions regarding ESR in both countries as explicated in the evidence gathered. *Document 7* still describes ESR as aspirations of government¹⁶⁵ because they are limited by their status as being non-justiciable; hence the courts have not completely enforced all ESRs. *Philip Alston*, the former chairperson of the ESR Committee, has explained, ‘the claim that ESR are justiciable does not imply that every issue arising in relation to the implementation of these rights is best determined by a court nor even that individuals should be able to bring a legal claim in respect of every single dimension of a particular right.’¹⁶⁶ However, as the Committee has also explained, there are ESR ‘which could not...be considered to possess at least some significant justiciable dimensions.’¹⁶⁷ The question here is: Does this ESR norm as propounded by Alston and the ESR committee, as well as the recognition by Canada and Nigeria buy acceptance to a level of internalization as described by Finnemore and Sikkink? Is there enough evidence to conclude that Nigeria and Canada has fully absorbed this norm? Is the cooperation between both states evidential of having attained internalization? Our answer is in the negative or at best inconclusive.

Finnemore and Sikkink’s conclude that “mutually reinforcing and consistent norms appear to strengthen each other; success in one area...strengthens and legitimates claims in logically and morally related norms.”¹⁶⁸ This Nigeria-Canada evaluation in the ESR normative context has changed over time, and

¹⁶⁵ “Economic, social and cultural rights are merely aspirations and not real rights. They represent the world we might like to have, but not the one in which we live and which States are able to guarantee”

¹⁶⁶ Philip Alston, “Putting Economic Social and Cultural Rights back on the Agenda of the United States”, Center for Human Rights and Global Justice, Working Paper No. 22 (2009) 11.

¹⁶⁷ ESC General Comment No. 9, “Domestic Application of the Covenant”, E/1999/22 (1998) Annex IV, para 10.

¹⁶⁸ Finnemore, Martha. “Constructing Norms of Humanitarian Intervention.” 105.

as internationally held norms and values change, this has created coordinated shifts in both countries' interests and behavior across the system. This is evident in the increasing advocacy in the international community and foreign relations for intervention in healthcare, food, water, housing and free primary education amongst others. But there is still some journey to cover.

VII. Conclusion

From this research covering 12 years of the Nigerian and Canadian experience in ESR corporation, it is clear that there is a strong expectation from NGOs, CSOs and citizens for their governments to secure several needs such as education, housing, health care and an adequate standard of living which are some of the core components ESR. With a partnership to cooperate in the area of ESR, Canada has supported Nigeria immensely with aid in promoting ESR majorly through the institution: CIDA. With an emerging market with specific opportunities for Canadian business, Nigeria has provided a good platform for foreign investments in many ways. On the subject of ESR and a thriving partnership between both countries, there is willingness and an emergence of the ESR norm, which recognizes ESR as fundamental, interrelated, indivisible and interdependent of other human rights but a new paradigm of human rights relating to trade and market friendliness has redistributed these rights onto a new paradigm. The reality however is that the partnership between both countries is lopsided because Canada is more economically developed and advanced than Nigeria in terms of Human Development Index.

This article, which has been investigating Canadian-Nigerian cooperation in the area of ESR, forms a part of a larger study involving a three-year collaborative research and joint knowledge mobilization/dissemination analyzing and theorizing the nature, attainments, problems and prospects of Canadian-Nigerian cooperation in the protection of human rights (between 1999 and 2011). Two important theoretical positions on human rights framed the investigation. One is by Finnemore and Sikkink, with the application of “strategic social constructivism” to the human rights area in conceptualizing a theory of the “norm life cycle” and the centrality of the agency of the “norm entrepreneur” in catalyzing human rights change. The other, by Upendra Baxi, theorized on the emergence globally of a TREMF paradigm/discourse, which was steadily supplanting the paradigm of the UDHR. By using the findings of the field research exercise carried out in Canada and Nigeria, the article explored the nature/character of this cooperation, how it has proceeded, how the parties have behaved and what implications it has had for policy, practice and theory; what have been the attainments of this cooperation in the specific context of democratization; what have been the problems of this cooperation; and what appears to be the prospects for this cooperation.

The authors resolve that the way forward for improving ESR by the cooperation of both countries is by the 3 R’s: *redistribution, representation, and recognition*.

The human rights cooperation between Canada and Nigeria in the area of ESRs can be integrated by *redistribution* into Nigeria’s organizational processes and practices through strategic planning, evaluation and other activities that flow from mandated functions such as investigations, monitoring and promotion. Integration of awareness and training across different sections and functions of the organization can help to promote a multidisciplinary approach

to addressing ESR. All bi-lateral arrangements like the Canadian/Nigerian cooperation should be explicitly stated to be bound by specific laws, i.e. UDHR, ICCPR and ICESCR and categorically, parties must volunteer as such so as not to turn around later and claim non-ratification as a defense for non-compliance.

The NHRIs of both countries need to be identified as a body of *representation* (not just CIDA or the NGOs). There should be a comprehensive understanding of their State obligations in relation to ESR and should both collaborate in assisting ESR projects in both countries. They will require competency and willingness to deal with ESR complaints within their jurisdiction and the necessary skills and resources to undertake related monitoring and promotional activities. The cooperation between both states should engage NHRI collaborations. The NHRIs should work towards the ratification of relevant treaties, reporting processes, and measures to ensure national legislative consistency with international obligations, education and outreach programmes and training. They should identify groups whose ESRs are violated or at risk, benchmarks from which movement can be measured and targets for performance. However, to move beyond denouncing violations, to actual cooperation and implementation of a strategy to improve the working and living conditions of the most vulnerable sectors, the people whose economic and social rights have been violated should be a part of the implementation process, which is not the case in both countries. The cooperation must take account of assistance being offered to receiving or benefitting countries and make annual or quarterly reports on how the form of assistance received are utilized with a view to show accountability and transparency. This is not an argument for cultural relativism, but an argument for modesty and effectiveness in the realization of economic and social policies, locally and internationally.

ESR must gain the highest level of *recognition* in the cooperation between both countries. There would be no justification for elevating a 'norm' to the status of right (with all the connotation that this concept is usually assumed to have) if its normative content could be so indeterminate as to allow for the possibility that the right holders possess no particular entitlement to anything. Each right must therefore give rise to an absolute minimum entitlement, in the absence of which a State is to be considered to be in violation of its obligation.