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# Management and enforcement of economic rights for economic equality in Ghana: Prospects and challenges

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**Abstract**--Laws can play a crucial role in advancing economic rights and minimizing inequality in developing African countries, with Ghana serving as a case study due to its stable democracy and commitment to rule of law and equality. However, to achieve optimum enforcement of laws, there is a need to inculcate the management functions of planning, organizing, leading and controlling various stakeholders and resources for effectiveness. This paper analyses how the management and enforcement of economic rights, seen as essential for human dignity, may narrow significant gaps in economic inequality. The management principles provide operational, structural, and strategic mechanisms that are necessary for translating legal rights such as the right to work, fair wages, and social security into practice. Using normative and doctrinal legal research, the study reviews Ghanaian constitutional provisions, United Nations guidelines, and key Supreme Court and Commission for Human Rights and Administrative Justice (CHRAJ) decisions to establish how rights-based approaches foster equality. Findings highlight the importance of management of government institutions in realizing economic rights, recommending that state agencies rigorously plan to implement legal protections to decrease inequality. The research supports policy development and urges robust enforcement of laws to promote economic fairness.

**Keywords**---management, economic rights, economic inequality, developing economies, rule of law.

## 1. Introduction

In Ghana today, there are pockets of slums scattered across major cities. Some of these slums are occupied by migrants from Ghana's impoverished north who live in appalling conditions on the, finding shelter in makeshift shacks and earning what income they can from small-scale trade and odd jobs. These squatters trespassing on land owned by the city and slated for an ecological restoration project, and they gave an eviction order and loss of the shelters and livelihoods they have. The situation is sadly not uncommon to the developing countries in Africa (Mbah and Ojo, 2018). Indeed, it was a similar situation that led to the famous decision of the South African Constitutional Court in the 2001 case of *Government of the Republic of South Africa and Others vs. Grootboom and Others 2001 (1) SA 46 (CC)*. In that case, Irene Grootboom and others were part of a community of approximately 900 people who were living in intolerable conditions in an informal settlement near Cape Town. They were evicted while waiting for the government to provide low-cost housing. They sued praying the court to compel the Government to fulfil its constitutional obligation to provide access to adequate housing. Justice Zakeria Yacoob stated at at *para. 93* that:

*This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water and social security to those unable to support themselves and their dependants. The state must also foster conditions to enable citizens to gain access to land an equitable basis. Those in need have a corresponding right to demand that this be done.*

In the case of Sodom and Gomorrah in Ghana the constitutionality of the eviction order before the Accra High Court in the case of *(Issah Iddi Abass & 10 Others v Accra Metropolitan Assembly & Anor)* was challenged. The argument was Ghanaian's Constitution protects their rights to shelter and work. Counsel cited the South African case of *Grootboom (supra)* in support of their request for an injunction to stop the eviction until government provided them with an alternative place of live and work and the court refused. The loss of the squatters in the *Abass case* brings to question how the State views matters of economic rights and the considerations that the courts take in matters of recognition and enforcement of economic rights and other human rights. Suffice to say that, in the interpretation of laws on economic equality, it is important that we take into consideration the resources needed for the realization of the constitutional mandate of economic equality. In this regard, the application of management principles significantly plays a role in the enforcement of human rights through the translation of abstract human rights standards into operational, actionable, and measurable policies.

Successive governments in Ghana have implemented various policies aimed at improving the living conditions of the people and reduce the level of economic inequality. This notwithstanding, there is still evidence of poverty among a significant segment of the population, especially the rural population. The dominant developmental philosophy which has underpinned the development policy of many African countries is one that sees the achievement of high rate of

economic growth, instead of reduction of inequalities, as a primary objective of development (Atupare, 2022). The underlying argument of this philosophy is that economic growth has a critical role to play in the reduction of inequality and eventually poverty. (World Bank, 2009). Accordingly, the many national policies deployed in African countries are meant to speed up economic growth with the belief that it will facilitate rapid reduction of inequality through a trickle-down effect. Achieving high rate of economic growth has therefore been a primary objective of development policies in Africa.

There is, however, a respectable body of informed opinion in the literature that economic growth does not necessarily trickle down to the poor so as to reduce their poverty unless there is a deliberate and a conscious intervention of proper planning by the state to integrate the poor into the growth process and to provide them with social safety nets to enable them cope with threats to their well-being and putting in place strategies to reduce inequality (Atupare, 2022; Adagewine, 2009). According to this view, a development policy that combines principles of economic efficiency as well as principles of equity and social justice is much more likely to have a fair distributive structure that enables growth to take place while taking care of the needs of the poor than the trickle-down philosophy. Though the economy of many developing nations in Africa experienced some growth in the 1990s, this did not trickle down to the three poorest regions. The extent of economic inequality keeps increasing and the gaps continuous to widen. This therefore requires prudent management of all the sectors and relevant stakeholders with the understanding of the laws to achieve the needed results.

## **2. Statement of the problem**

A study by Mashego (2020) concluded that though economic growth has a positive role to play in the reduction of inequality, the concept of economic inequality is much more than growth in the national economy. The extent to which growth provides opportunities for individuals to improve their income through new jobs and business initiatives varies greatly depending on the sources of growth as well as how economic opportunities are either facilitated or limited by policy. If the state plans and organizes its scarce resources, then there will be growth which invariably provides opportunities for people to work and earn an income. If a policy seeks to produce goods that the poor do not need, it is not likely that growth can lead to a reduction in inequality. The growth process itself must create space for the poor to participate in the economy and benefit from it. The United Nations Guiding Principles on Business and Human Rights (UNGPs) apply management frameworks such as policy commitments, due diligence, and remediation in ensuring that states “know and show” they are respecting human rights.

The relevance of economic growth to freedom from servitude, it has been stated, is not that economic wealth increases happiness but that it increases a range of choices. However, the availability of choices does not mean everybody is capable of exercising them (Adagewine, 2009). Thus, growth per se cannot guarantee human well - being unless people are able to utilize the opportunities, which growth generates. As nations develop, it is not everyone who will be able to equally participate in the economic activities in a fair and equitable manner. In

fact, a lot of people will not be able to cater for themselves. For those who, through no fault of theirs are unable to fend for themselves, the rights-based approach makes it imperative for the state to directly provide for them. Economic rights impose obligations on the state to develop and distribute state resources in a manner that assures equal access to those resources by all sections of the society.

Economic inequality is one of the most significant developmental problems of many countries. Often it results in poverty and economic deprivation and the pervasiveness of poverty results in economic inequality. The realization of economic rights and the incorporation of principles like accountability, inclusion, participation, equality and non-discrimination as well as transparency in development policies are critical to sustainable and meaningful reduction of economic inequality. One of the basic arguments in this paper is that proper management, respecting, protecting and fulfilling all economic rights and freedoms of individuals can facilitate the reduction of economic inequality in a sustainable manner. The realization of economic rights creates the environment that enables the individual to take personal responsibility for the satisfaction of his basic needs and the fulfilment of other social goals. This study therefore explores the avenues that exist under the Constitution for the enforcement of economic rights in Ghana and the constitutional and legal principles that are relevant to economic inequality.

### **3. Objectives of the study**

The study focuses on the management of the concepts of economic rights and economic inequality; the rights-based approach to the reduction of economic inequality as well as an examination of the justiciability of the Directive Principle of State Policy (Directive Principle of State Policy in Chapter 6, Article 34 of Constitution of Ghana, 1992). By inculcating management principles of planning, organizing, leading and controlling various stakeholders and resources for effectiveness, this paper analyses how the management and enforcement of economic rights, seen as essential for human dignity, may narrow significant gaps in economic inequality. It examines how laws can be used to enforce economic rights to aid in reducing economic inequality in developing economies. The study also analyses relevant provisions enshrined in such International Human Rights Instruments as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as relevant provisions enshrined in the Constitution of Ghana and decided cases with the view to establishing the link between economic rights and the reduction of economic inequalities.

### **4. Methodology**

In this study, the normative and doctrinal approaches to legal research were used in this study. The normative approach is prescriptive in nature. Normative legal research involves the study of the law as an object and removes any non-legal material from the scope of this research (Christiani, 2016). The study analyses the Constitutions, legislations and judicial decisions in order to understand the

rationale for enforcement of economic rights provisions in the laws. The normative stems from the fact that, it is only economic rights that meet the laws, norms, public policy or culture of the society that ought to be recognized and enforced. A doctrinal approach to research focuses on case-law, statutes and other legal sources. It differs from other methodologies in that it looks at the law within itself (Christiani, 2016). This paper examines law as a written body of principles which can be discerned and analysed using only legal sources. The doctrinal methodology includes any form of purely legal analysis, including the history of the law on economic rights, what the law was previously, what the laws on economic rights are now and whether there are indications as to how the law might be evolving or developing (Amrit, 2018). This approach looks at what the law says, rather than examining the morality or effectiveness of the law.

### **5. Economic rights and economic inequality**

Economic rights have been and continue to be litigated in courts around the world (Mashego, 2024). Much of Europe already embraces the justiciability of economic rights although the situation is different in many developing countries in Africa. The European Social Charter covers the rights to housing, social protection, education, good working conditions, health, high-quality social services, the protection of migrant workers, and the protection against poverty and social exclusion. Human rights scholars recognize five broad categories of rights - civil, political, social, economic, and cultural. These rights are outlined in the 1948 Universal Declaration of Human Rights although they are not practiced in their totality. *“Economic rights are not deemed officially “justiciable,” meaning there remains significant controversy surrounding whether or not independent judiciaries should remedy a violation of the right through deeming government action or inaction unconstitutional and, to a certain extent, demanding legislative or executive response”* (Litinski, 2019). The obligations imposed by economic rights work must be approached in the same way as they are with respect to civil and political rights. These include providing freedoms, imposing obligations on the State regarding third parties and the state adopting measures or to achieve a particular result (International Commission of Jurists, 2008).

According to Litinski (2019) constitutionalizing economic rights can begin to ameliorate the gaping issues of hunger, unemployment, and poverty that disproportionately affect low-income and minority communities in many developing countries and countries in Africa are hardest hit. Economic inequalities are manifested in the following manner: millions go hungry; rates of poverty remain just as demoralizing; million people living in poverty, jobs offer very low wages at or below the poverty level; poor shelter; a steadfastly lowering of the standard and high unemployment rates. Many developing countries in Africa including Ghana have adopted the Universal Declaration of Human Rights, which states, under Article 25, that there is a *“right to a standard of living adequate for the health and well-being”* of each person and their family, including basic food, medical care, social services, and security in the event of unemployment or disability. It is these human rights that offer a means of articulating and fulfilling basic human needs. These needs are encompassed by the protections provided by economic rights. A right without a remedy raises questions of whether it is in fact a right at all (Mashego, 2020). This is not to say that judicial enforcement is the

only, or even the best, way of protecting economic, social, and cultural rights. However, judicial enforcement has a clear role in developing our understanding of these rights, in remedying clear violations, and in providing decisions on test cases that can lead to systematic institutional change and prevent future rights violations (Atupare, 2022). **Human Rights Due Diligence is a major** management process for identifying, preventing, mitigating, and accounting for countries address adverse human rights impacts thereby ensuring the realization of human rights into the development framework.

The preamble of the Constitutions of Ghana epitomises the moral aspirations of the people by providing for, among others, the values of justice, freedom and equality. In Ghana, these rights are found in the Constitution and captured under the heading “*fundamental Human Rights and Freedoms*” and “*Directive Principles of State Policy*”. This is a clear recognition of the fact that the economic rights of individuals ought to be protected at all times. The emphasis in the literature on equity and social justice as critical elements in the fight against poverty suggests that the problem of poverty is not simply about lack of resources but lack of equitable distribution of resources and opportunities. It also implies that the realization of economic rights is critical to poverty reduction and inequality (Cramer, Sender and Oqubay, 2020). This is so because these rights emphasize social justice in the distribution of resources and opportunities. The realization of economic social and cultural rights is therefore important in addressing the economic, social and cultural aspects of poverty. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are the key legal instruments that establish the International Bill of Rights and present the minimum social and political guarantees internationally recognized as necessary for a life of dignity in the world. These texts contain rights that enable individuals to exercise their liberty and autonomy of action in the pursuit of their economic survival and other goals (Fredman and Campbell, 2016). Economic rights are rights that enable individuals to participate in the economic, social and cultural activities in society. They include the right to work, the right to join and form trade union, the right to education and health.

The underlying theory of the instant study is that rights-based principles like accountability, participation, inclusion, transparency and non-discrimination and equality create an appropriate framework for the effective enforcement of the obligations of the state and other duty bearers to promote meaningful poverty reduction in developing countries (Cramer, Sender and Oqubay, 2020). This theory is based on the fact that the state has a role to play in reducing poverty in the country. Another aspect of the theory is that the rights - based approach can be an effective poverty reduction strategy if the poor themselves are able to utilize the avenues under the legal system to enforce the obligations of duty bearers (Fredman and Campbell, 2016; Mashego, 2024). The Constitution of many countries guarantees a range of liberties and some economic and social rights of the individual and makes them directly enforceable by the Court. It can thus be said that the Constitution establishes a right - based framework for development. The point however is that, these values remain mere constitutional prescriptions unless action is taken to have them enforced. For this reason, there is the need to

identify avenues in the legal system that can be utilized to enforce these principles so as to ensure their realization.

There is now worldwide agreement on reduction of inequality and poverty as an overriding goal of development policy (Young and Sen, 2019). The design of development policy must, therefore, emphasise the responsibilities of duty bearers to discharge their duties so as to realize the rights to which citizens are entitled (Young and Sen, 2019). Historically, economic rights have been used to challenge both the political legitimacy of social institutions and the moral appropriateness of their distributive functions (Mashego, 2024). These challenges produced social reforms that improved the living conditions of previously despised and disadvantaged group. According to Gomez (1999), economic rights as part of the broad human rights are inherently empowering; provide mobilization points for action and programme; provide standard for evaluating government actions and provide transformative dimensions. These attributes of the rights - based framework are effective as a tool for the reduction of economic inequality.

## **6. Economic rights in the Constitution of Ghana**

*Article 20(1)(a) of the Ghanaian's Constitution, 1992* provides for freedom from deprivation of private property. It protects the rights to adequate compensation where property is compulsorily acquired and such acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning ...'. In addition, Article 22 protects the property rights of spouses. This provision is intended to be 'mindful of certain cultural practices which do not recognize the marital rights and contribution of wives to husbands' estates.' (Busia, 2003) The rights of workers (employment rights) are provided for under Article 24 of the Constitution. These include the right to work under satisfactory, safe and healthy conditions; the right to equal pay for equal work; the right to a reasonable number of working hours and holidays as well as remuneration for public holidays (Article 24(1) and (2) of the Constitution of Ghana, 1992). Workers also have the right to form or join trade unions of their choice. (Article 24(3) of the Constitution of Ghana, 1992). The only justifiable restrictions on the right to join trade unions are those imposed by law in the interest of national security, public order and the protection of the rights of others (Article 24(4)). Article 25(1) of the Ghanaian Constitution provides for 'the right to equal educational opportunities and facilities with the view to achieving full realization of that right.' Article 25(1) also provides for the availability of free and compulsory basic educational and the general availability and accessibility of secondary and higher education. The right of individuals to establish and maintain private schools is also guaranteed. In addition to the rights mentioned above, there are a number of other provisions in the Ghanaian Bill of Rights that have a socio-economic bearing. It is interesting to note that Article 33(5) seems to give a *carte blanche* to the inclusion of other socio-economic rights in the Bill of Rights. It states that:

*"The rights, duties, declarations and guarantees relating to fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are*

*considered to be inherent in a democracy and intended to secure the freedom and dignity of man.”*

## **7. Implementation and enforcement**

Quite apart from the legislature and the executive (or administration), the judiciary in Ghana plays a pivotal role in the enforcement of economic rights. Article 125 that sets the Judiciary and the fact that justice emanates from the people and that the judiciary is not subjected to anyone except the Constitution. In that regard, courts are constitutionally mandated with the competence not only to interpret the rights in the Bill of Rights but also to entertain and adjudicate over rights claims where such rights are justiciable. It is important to note that, Ghana does not have a specialized Constitutional Court. Rather, the Supreme Court and the High Court have concurrent but shared jurisdiction on human rights matters (Article 130 (1) of the 1992 Constitution). The enforceability of socio-economic rights in Ghana is not limited to those that are contained in the Bill of Rights. It may, in fact, extend to those laid out in the Directive Principles of State Policy. This is according to *New Patriotic Party v Attorney General (1996–97 SCGLR 729)* which held, *inter alia*, that “*although the Directive Principles of State Policy are not in themselves legally enforceable by the courts, there are exceptions to this principle in that where the Directive Principles are read together with other enforceable parts of the Constitution they then in that sense become enforceable.*”

The Commission on Human Rights and Administrative Justice (CHRAJ) established under Article 216 of the Constitution, and possesses quasi-judicial powers to entertain human rights claims. The functions of CHRAJ are provided in Article 218 of the Constitution, which are to: investigate complaints of human rights violations, injustices, corruption, or abuse of power; investigate complaints concerning the functioning of certain organs of state; investigate complaints concerning actions by persons, private enterprises and other institutions where human rights violations are alleged to have occurred; and take appropriate remedial and corrective action and reversal of instances specified in complaints investigated. CHRAJ combines the characteristics of an ombudsman and a Human Rights Commission. In that regard, CHRAJ in its capacity as a quasi-judicial body, CHRAJ has handled several cases involving socio-economic rights including the case of *Gabor v Ghana Reinsurance Co Ltd* in which the CHRAJ held that the employer could not suspend an employee unless it was expressly or impliedly provided for in the contract of employment or by statute.

## **8. Analysis of economic rights and economic inequalities**

The link between economic rights and economic inequality is analysed from two perspectives namely, from intrinsic and instrumental perspectives. From the intrinsic perspective, the point sought to be canvassed is that a condition of economic inequality is the same as the absence of some type of human rights among some members of society. From the instrumental perspective the argument is that the non-enjoyment of economic rights can prevent a person from moving out of poverty or push him into poverty. Thus, the argument is made that there are rights whose absence is characterized as poverty (intrinsic sense). When the individual enjoys these rights he experiences well – being in the sense of being

or doing what he values being or doing. On the other hand, there are rights the absence of which deprives the individual of the general conditions (instrumental sense) necessary for the individual to meet his basic needs and to pursue a variety of other purposes. The following are the thematic areas that borders on economic rights which when not satisfied could results in inequalities in Ghana.

**a. The right to adequate standard of living**

This right is contained in the UDHR and the ICESCR. The UDHR, under Article 25 recognizes the right of everyone to a standard of living adequate for the health and well - being of himself and of his family including, food, clothing, housing and medical care. It also recognizes the right of every one to necessary social services; security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article 11 of the ICESCR incorporates the provisions of Article 25 (1) of the UDHR. In addition, the ICESCR recognizes the right of every one to the continuous improvement of living conditions and the right of every one to be free from hungers. It can be seen that the elements that make up the right to adequate standard of living are the resources identified and discussed the constitutions of Ghana are necessary for guaranteeing an individual's physiological well - being as well as providing him with the general capability to fulfil other goals. The non-availability of these resources in their right quantity and quality, in relation to an individual, not only threatens his physical well - being but also deprives them of the capability to fulfil other goals in life. It is obvious then that there is a direct link between economic inequality and the non-enjoyment of the legal right to adequate standard of living as contained in both the UDHR and the ICESCR.

**b. Work related rights**

The UDHR recognizes a person's right to work; free choice of employment; just and favourable conditions of work and protection against unemployment. It also recognizes the right to equal pay for equal work; just and favourable remuneration for an existence worthy of human dignity. The ICESCR incorporates the same rights including the right to safe and healthy working conditions; rest, leisure and reasonable limitation of working hours and periodic holidays with pay. Employment is one way by which a person participates in economic activities of society. From such participation individuals earn income and their livelihood. The various resources which every individual requires to survive and pursue their goals in life are acquired with income. Employment is therefore a critical means for individuals' livelihood, the denial of which creates poverty. Employment is also the means by which individuals contribute to the development of the society. When freely chosen it is a source of personal fulfilment to the individual, which is an end in itself. A person who is capable, ready and willing to work but not working not because of a voluntary choice but because of lack of opportunity to work is deprived of the means of livelihood as well as the opportunity to participate in the economic life of society. Though work is the means of livelihood and income for the individual, it does not mean that work under any condition is desirable. The conditions under which a person works must promote their dignity as a human being. Thus, the right to safe and healthy working conditions is a means for promoting a dignified working

environment for the individual. The freedom to choose the type of work an individual values is also crucial to their dignity. Thus, the enjoyment of the right to work and related rights guaranteed under international human rights law corresponds to a state of well-being.

**c. The right to freedom of opinion, expression and information**

As indicated, the UDHR and the ICCPR both recognize the right of every one to freedom of opinion and expression. This right includes the freedom to seek, receive and impart information and ideas. A similar right which the two instruments recognise is the right to freedom of thought and conscience. Freedom of expression, opinion and information is a critical capability that individuals require to communicate their views on policies that affect them for the purpose of contributing to the way in which they are governed. In chapter three, the point is made that political participation has an instrumental role in poverty reduction. It enables individuals to contribute to decision making on the way in which resources should be allocated. It is by means of free speech, expression and information that citizens are able to hold their rulers accountable in respect of policies they implement. Denial of the freedom of expression therefore deprive a person of a critical capability for working their way out of poverty or ensuring that he does not fall into it (Mashego, 2024). Free expression of opinions has been identified as critical to governmental accountability to the poor. According to this view information dissemination facilitates public scrutiny and debate of government policies leading to the correction of errors and helping to precipitate a more effective public policy. It has also been observed that the lack of information can result in inefficient resource allocation and corruption. Freedom of information and free expression can go a long way to preventing these ills and there by facilitating poverty reduction.

**d. The right to participate in public life**

Related the above right is the right to participate in public life and the right to equal access to public facilities. The UDHR and the ICCPR recognise and guarantee the right of every one to take part in the government of his country, directly or indirectly through chosen representatives and the right to equal access to public service in his country. Political participation enables individuals to contribute to the decision-making process on the way society's resources should be utilised. One of the suggestions in the literature on poverty common to contemporary commentators on the subject is that public policy should focus on the needs of the poor (McKay and Vizard, 2005). Participation by the poor in decision making regarding what policy to pursue and the resources to be allocated for the purpose is often identified as a critical way for the poor to influence the content and form of public policy. The claim is also made that participation by the poor in policy making helps prevent the elites and powerful social groups capturing the policy making space for the advancement of their own interest while ignoring the needs of the poor. The point is then made that when the poor participate in decision making, the likelihood of they getting out of poverty is high. Access to public facilities such as education, health care, security and justice enable the individual provides the individual with the general conditions which he requires to meet their basic needs and participate in

the life of their community. This then leads to the individual experiencing well - being while denial of such services to a person leaves him without the basic capability to live a life of value.

**e. The right to equality before the law and equal protection of the law**

The UDHR and the ICCPR both recognise the right of every citizen to equality before the law and equal protection of the law. According to Rawls (1971) in his book, "A theory of Justice, one basic function of the basic structure of society is to allocate rights and duties and to distribute the benefits and burdens of society. Viewing society as a cooperative venture for mutual advantage, it is imperative that in its distributive function, the law guarantees equal opportunity to everyone in the society. Equality before the law and equal protection of the law in essence guarantees equal opportunity to everyone in accessing the resources and facilities in the society for the purpose of meeting their basic needs and to further other goals. Denial of that right is denial of a critical capability to be and to do the things that are of value to the individual. The analysis above establishes that the things that are required to ensure that human beings live in dignity are the things that have been enshrined as rights under the various international human rights instruments outlined above. It can be seen that there is a critical link between poverty and human rights. This link clearly shows that the enjoyment of economic rights can facilitate the reduction of economic inequality. The enjoyment of economic rights reduces or eliminates inequality. It can thus be concluded that the fulfilment by duty bearers of their economic rights obligations can facilitate the reduction of inequality. It is argued in this study that the justiciability of human rights obligations generally and economic rights in particular is critical to the realisation of rights that tends to facilitate the reduction of economic inequality.

**9. Justiciability of economic rights and directive principles of state policy, and reduction of inequality in Ghana**

In the Ghanaian constitution, article 34(1) provides that the Directive Principles of State Policy (DPSP) "*shall guide all citizens, parliament, the president, the judiciary, the council of state, the cabinet, political parties and other bodies and person in applying or interpreting this constitution or any other law...*" That is to say that, the DPSP are meant to guide judges in Ghana when they are "*applying or interpreting*" the Constitution and other laws. It has been said that although "*Ghana comes in a poor second*" to South Africa on this point, "*justiciability of the socio-economic rights is more certain in Ghana*" than in other African countries (Mubangizi, 2006). In fact, as the Abass case mentioned above suggest, direct judicial enforcement of the socio-economic rights contained in the Directive Principles is not allowed by the courts in either Ghana. It is important to note that any jurisprudence suggesting that socio-economic rights dressed in the plain clothes of Directive Principles are absolutely non-justiciable is footed on a shaky foundation. The courts in Ghana do not ignore the Directive Principles completely, if an asserted right under the DPSP is or can be linked to one of the justiciable fundamental rights in the case of Ghana as shown in the *New Patriotic Party vs Attorney General [1996-97] SCGLR 729 (CIBA case)*. There is strong presumption that any infringing law or executive action is unconstitutional. But in Ghana

there seems to be judicial fear in creating justiciable rights from constitutional provisions that do not prima facie suggest justiciability, even if a deeper understanding of the founding constitutional values would support justiciability. According to Atupare (2022), *“this judicial hesitancy is tied to the semantics of constitutional positivism – the idea, that is, that courts must obey written constitutional provisions, including, in this case, those that appear to settle questions as to what rights are justiciable and what rights are not”*

It is important to address some background issues with respect to the legal debate on the justiciability of socio-economic rights first, it should be clear by now that explicit legal protection of socio-economic rights in a legal system does not, in and of itself, completely resolve all theoretical issues about justiciability. At the outset, justiciability may speak to the extent to which a matter is suitable for judicial determination (Azmanova, 2018; Atupare, 2022). In our quest to enforce economic rights in Africa, legality and enforceability may be important but are not always the exclusive determinants of justiciability. The basic idea of justiciability simply refers to the ability to determine judicially whether or not a person’s right has been violated or whether the state has failed to meet a constitutionally recognized obligation to respect, protect or fulfil a person rights. The determination may be made with or without a remedy. However, the debates about the justiciability of economic rights tend to emphasise the simultaneous existence of the three constitutive elements of justiciability: judicial competence, separation of powers and the political character of questions on such rights and in addition, there is a presumption that the enforceability is inevitably a species of justiciability on such matter.

The scepticism that exists about the justiciability of economic rights may be due not to the prevalence of constitutional positivism, but simply to a general concern about judicial ability to address the moral and political problems that must be resolved when constructing a just socio-economic order. Christian Starch argues that making socio-economic rights justiciable amounts to a necessary breach of the principle of separation of powers (Starch, 1982). Their enforcement by the courts leads to an intrusion into the legislative domain, the principle of “separation of powers...encompasses the notion that there are fundamental differences in governmental functions – frequently but not universally denoted as legislative, executive and judicial – which must be maintained as separate and distinct each sovereign in its own area, none to operate in the realm assigned to the other” indeed there is a growing body of literature that insist that an African theory of human rights one that fits normative demands of constitutionalism within the developing democracies in Africa, must encompass a robust understanding of socio-economic rights (Mashego, 2020; Atupare, 2022; Nyinevi, 2018). The rationale in part is to demonstrate a commitment to social integration, solidarity and equality, including tackling the question of income distribution in the larger society (Cramer, Sender and Oqubay, 2020). It also illustrates a major concern for the protection of vulnerable groups such as the poor and the handicapped. These are human needs which should not be at the mercy of changing governmental policies and programmes but should be defined as entitlements.

The management and legal enforcement of the rights and freedoms guaranteed in the 1992 Constitution of Ghana and envisaged by Article 33(5) of the Constitution of Ghana ensures that and enables individuals to enjoy those rights. It is also argued in this study that the enjoyment by individuals of these rights will improve their living conditions in ways that cause poverty to disappear. Therefore, the various arms of government in the implementation of the laws must plan and organize the resources required to achieve results. The justiciability of the fundamental human rights and freedoms provided guaranteed in the Constitution is not in doubt (Article 21(1) of the 1992 Constitution). The DPSP are relevant to the enjoyment of the fundamental rights and freedoms guaranteed in the Constitution. If realised, the DPSP will create the general conditions that enable individuals to personally or in free and voluntary association with others enjoy and exercise their rights and freedoms in ways valued by them. In this respect, the justiciability of the DPSP is crucial. It has been argued that the justiciability of the DPSP 'carries with it a higher risk of conflict and friction between the judiciary and the executive. The issue here is whether the judiciary is prepared to exercise an oversight responsibility to ensure the implementation of these provisions by the Executive. It has also been argued that though the DPSP impose constitutional obligations on the state and can therefore be interpreted by the courts, the problem is how the courts can enforce their decisions without invading the territory of the Executive or Parliament (Atupare, 2022; Atupare, 2011). This view argues that consequential orders made by the courts to give effect to their declarations are likely to lead the courts to second guess the functions of the Executive or Parliament.

It is submitted that the above views give such deference to the Executive and Parliament in a manner that put the realisation of the DPSP at serious risk. Much of the DPSP is made up of economic, social and cultural rights. These rights have direct relevance to the economic and social well - being of the people. It is, therefore, submitted that the justiciability of the DPSP will expand the scope of economic and social rights in Ghana and make their enjoyment a reality for the poor. The mere fear of perceived conflict between the judiciary and the Executive or Parliament should not be a reason to backtrack on the justiciability of DPSP. Rather efforts should be directed at exploring innovative and creative ways for enforcing these principles. Judicial enforcement of DPSP entails reviewing decisions already taken by either the Executive or Parliament. The objective of such review is to ensure that the decisions or actions in question promote or give effect to the objectives of the DPSP. As guides to public policy, DPSP play a crucial role in the political, economic as well as the social governance of the country. They determine the content and direction of public policy. As correctly noted by Adjetey (1992-1995), DPSP are the philosophical and ideological foundation of the 1992 Constitution. The preamble to the 1992 Constitution also provides that the Constitution is to secure for generations of the Ghanaian society the blessing of liberty, equality of opportunity and prosperity; the rule of law, the protection and preservation of fundamental human rights and freedoms, probity, accountability and freedom.

It is submitted therefore that the vision of a just and free society which the realisation of DPSP is intended to establish risks being jeopardised if these are construed as not justiciable simply because of the fear of a conflict between the

judiciary and those organs of state whose actions the judiciary may review for the purpose of ensuring compliance with the DPSP. The declarations and consequential orders which the judiciary may make in relation to a review of a policy can have ramifications for the allocation of resources by the Executive. For instance, the judiciary may review the Executive's allocation of resources in its budget and declare that the allocation does not give effect to a particular DPSP. The judiciary may then proceed to order the Executive to re - allocate the resources in a manner that give effect to the relevant DPSP. Another example is the situation in which the judiciary declares that a specified item of expenditure not included in the Executive's budget ought to be included. It may then proceed to order the inclusion in the budget of the said item. Both situations may seem to create a basis for a conflict between the judiciary and the executive as to who has the authority to determine the allocation of resources. Perhaps this is the kind of conflict that commentators have in mind when they caution against the justiciability of DPSP.

The response to this concern is in two ways. In the first instance, it can be said that the perceived conflict, as a matter of fact, is not really between the Judiciary and the Executive. It is between the Executive and sections of the public. The Judiciary only comes in as an arbiter. It resolves the dispute that has arisen about the law. This is how the matter should be looked at. Article 2 (1) of the 1992 Constitution states that a person who alleges that an act or an omission contravenes or is inconsistent with the Constitution may bring an action to the Supreme Court for a declaration to that effect. When reviewing an act of the Executive, what the Judiciary does is simply resolving a dispute that has arisen between the Executive and the person who has made the allegation.

Secondly, the Constitution provides for separation of powers (SOP). In this respect the determination of the general policy of government is vested in the Cabinet and the President as espoused under Article 76(2) of the 1992 Constitution. Thus, it is the prerogative of the President and his cabinet to determine the kind of policy to formulate and implement for the governance of the country. However, under Article 34 of the Constitution, in exercising this prerogative, the president and his cabinet are to be guided by the DPSP. The Constitution also provides for checks and balances. Under this principle the judiciary, particularly the Supreme Court, has authority to determine the extent to which a policy formulated by the Executive promotes the objectives of the DPSP. It is submitted that the Executive has a duty to respect the constitutionally assigned role of the Judiciary as the final arbiter on disputes that arise about the law and the values that underpin the country's political, economic and social governance. Those who exercise powers of government under the Constitution are required to exercise such powers for the welfare of the people and to do so within the limits of the Constitution (Article 1(1)). The constitutional role of the judiciary is to ensure that this is done. Thus, when the judiciary interprets the DPSP, which are part of the Constitution, it is simply discharging its constitutional responsibility.

Mashogo (2024) has argued that where a court finds that provisions made in a budget by the Executive for the allocation of resources do not sufficiently provide for the priorities the government is required to realise under a Constitution, the court has several options regarding the remedy it can make. According to the

learned author, where the court feels unable to make decisions regarding the allocation of resources as a result of lack of expertise, the court can send the policy back to the executive for application of resources that meet the constitutional priorities in question. The court may also pronounce upon a clear misallocation of resources and give the order that the misallocation be remedied. On whether or not the judiciary has competence to allocate resources, it can be said, based on the above that, the relevant question is not whether or not the judiciary has competence to allocate resources; but whether it has competence to evaluate the allocation of resources against constitutional and human rights standards such as the DPSP. Thus, properly formulated, the answer becomes obvious. The Judiciary has expertise and competence to evaluate the allocation of resources against the application of human rights and constitutional standards. Blitz (2007) observes that the judiciary has a variety of remedies that allows it to draw on the expertise of other bodies of government where it becomes necessary. In relation to Ghana for instance, Article 2 of the 1992 Constitution which deals with the enforcement of the Constitution and Article 33 which deals with the protection of fundamental human rights, give wide powers to the Supreme and High Courts respectively to make such orders and give such directions they consider appropriate in order to give or to enable effect to be given to declarations they may make as well as for the purpose of securing the enforcement or enforcing fundamental human rights and freedoms. These wide powers create the framework that enables the Courts to make creative and imaginative as well as responsible orders which are effective and appropriate to ensure the realisation of the ideals of the Constitution.

From the foregoing, it is submitted that the judiciary has the constitutional legitimacy and the professional competence to enforce DPSP in terms of reviewing actions of the Executive and legislation of Parliament for the purpose of evaluating their compliance with the constitutional principles which the DPSP embody. It is submitted that the position of Blitz (2007) on the judicial enforcement of DPSP is a progressive position. It is a position that promotes the realisation and development of economic and social rights, the enjoyment and exercise of which are crucial to the reduction of poverty. It is also a position that is more in tune with contemporary development discourse that sees the realisation of economic and social rights as critical to poverty reduction. Even though some commentators hold the view that DPSP are not justiciable, they nonetheless acknowledge that there are situations in which DPSP are justiciable. One such situation is where a DPSP is elaborated and embodied in a particular piece of legislation that itself is justiciable. It is also said that some of the DPSP reflect existing law and to that extent are justiciable. Those DPSP that are not justiciable are nonetheless required to be considered by the courts in interpreting any provision of the Constitution or any other law that comes before the courts for interpretation and enforcement (Article 34(1)). This approach, it is submitted, makes the justiciability of DPSP the exception rather than the rule. The rule should be that DPSP are justiciable, subject to certain situations that may legitimately justify their non-justiciability.

On the relationship between the enforcement of DPSP in Ghana and the realisation of economic rights, it has been stated that in appropriate circumstances, the DPSP may be the very basis or may give impetus to the

enforcement of these rights (Premo, 1999). There has since been a Supreme Court decision in the case of *Ghana Lotto Operators Association vs. National Lottery Authority [2007 - 2007] SCGL1088*. The Supreme Court in this case held that provisions of chapter six must be enforced except in situations in which it can be demonstrated that a particular provision does not lend itself to legal enforcement. This way, the court argued, would deepen democracy and ensure the protection of the liberty of the individual. There is therefore a rebuttable presumption in favour of the justiciability of the provisions of chapter six. This approach is more progressive than the case-by-case approach adopted by the Supreme Court in the *Ciba case*.

In relation to the justiciability of DPSP in Ghana that is more progressive than those cases on which the learned author bases his analysis and conclusion. The current judicial position is that DPSP are justiciable but that there may be situations in which it may be legitimate to hold that a particular DPSP is not justiciable. The difference between the two positions is that the earlier position sought to justify the justiciability of DPSP by linking them to the fundamental rights and freedoms provisions of the Constitution or any other expressly enforceable provision of the Constitution. The current position however holds that DPSP are by themselves justiciable independent of any other provision. Bimpong – Buta, (2007) referring to Article 35(4) – which states that the state shall cultivate among all Ghanaians respect for fundamental human rights and freedoms and the dignity of the human person – argues that it is merely academic to argue that such a provision is not justiciable. The learned author argues that Article 35(4) and the provision in Article 41 (I) (b), which Article imposes a duty on every citizen to uphold and defend the Constitution and the law, <sup>are</sup> not only to be respected by the Executive, Parliament, the Judiciary and all natural and legal persons but shall also be enforceable by the courts. It is to be noted that the learned author arrives at his conclusion on the justiciability of Articles 35(4) and 41 (1) (b) by linking them to Article 12(I) of the Constitution. This approach is in line with the reasoning of the Supreme Court, especially in the views of Bamford - Addo, JSc.

Bimpong – Buta's (2007) position does not promote the expansion of the scope and the deepening of the content of economic and social rights in Ghana. It is a position that seems to give primacy to civil and political rights which are provided for in chapter five. This approach flies in the face of the rights-based approach to development which sees the two classes of rights as interrelated, indivisible and interdependent. Apart from the scholarly and extra judicial commentaries discussed above on the justiciability of the DPSP, the judiciary has had its share of debate on the matter. This debate is reflected in the views of judges as well as decisions of the Supreme Court. In *New Patriotic Party vs. Attorney General (1996 97] SCGLR 279 (CIBA CASE)*, Bamford - Addo JSC, as she then was, stated the circumstances in which the DPSP are justiciable. According to her Lordship, of and by themselves, the DPSP are not justiciable. They become justiciable if they are read in conjunction with other enforceable provisions of the Constitution. In addition, if any of them can be interpreted to mean the creation of a legal right, it will be justiciable. With due respect to Her Lordship, this position is unsatisfactory. It is a position that subordinates the provisions of the DPSP to other provisions of the Constitution without any legal basis. Given the fact the DPSP contain in a large measure economic, social and cultural rights, Her

Lordship's position does not encourage and promote the expansion of the scope of enforcement of these rights which are critical to the reduction of poverty (Mashego, 2024). In *Ghana Lotto Operators Association vs. National Lottery Authority [2007 -2008] SCGL1088*, The Supreme Court, after reviewing existing authorities stated that the DPSP is presumed justiciable in the head notes thus:

*“A presumption of justiciability in respect of chapter 6 of the 1992 constitution ... would strengthen the legal status of Economic, Social and Cultural Rights in the Ghanaian jurisdiction. There may be particular provisions in chapter 6 which do not lend themselves to enforcement by a court. The very nature of such a provision would rebut the presumption of justiciability in relation to it. In the absence of a demonstration that a particular provision does not lend itself to the enforcement by courts, however, the enforcement by the court of the obligations imposed in chapter six should be insisted upon and would be a way of deepening the country's democracy and the liberty under the law it entails.”*

## **10. Enforcement of economic rights**

Practically speaking, democratic constitutions often compel the court to gag itself to counteract judicial overextension and relegate jurisdiction to the State. The court has an obligation - similar to the positive duties imposed on the State to intervene if unconstitutional legislation unreasonably infringes on the basic rights and liberties of individuals to functionally engage in society. This obligation is as rooted in human rights and economic justice as it is in the Constitution. Although the citizens of Ghana have the theoretical equal right to free speech, free expression, entry into contracts, or ownership of property, these rights are not equally felt in practice. This has everything to do with economic injustice. Laws must be established on the principle of legitimacy, rooted in a confidence that all reasonable people would be able to ascertain their merits in a legal claim. Legislation is legitimized through this public endorsement and agreement of reasonable citizens. The State cannot call on its members to accept and participate in their democratic system if it does not conduct itself in a way that properly sustains each individual as a valued contributor in social, political, and economic life. This can be achieved through constitutionalizing social rights. To the extent to which the court is entrusted with interpreting the Constitution, it must equally attend to constitutional moral goals of ensuring that individuals' material needs are met. Thus, judges have a commitment to positive legal ordering because if the Constitution does not guarantee economic rights, it is failing its moral purpose. Because legislatures make policy choices independent of constitutional law considerations, there is a clear interest in having the court police legislative actions. The judiciary is not surpassing its constitutional role by making decisions pertaining to economic rights (Nyinevi, 2018).

Generally, the concerns regarding the constitutionalization of economic rights stem from logistical and bureaucratic fears about the unprecedented expansion of a coercive judiciary and the provision of changes in wealth distribution. But the implementation of weak-form judicial review challenges the sentiment that any judicial interaction with justiciable economic rights must emerge in the form of coercive orders. Through weak-form judicial review, economic rights are *“enforced through politics backed up and encouraged by the courts”* (Tushnet, 2015). In so

doing, rather than rendering the non-justiciable rights “legally irrelevant,” traditional fears of judicial overextension are generally allayed while the rights are rightfully granted government attention and serve foundational roles in defenses to actions of ordinary torts and contracts (Tushnet, 2015). On the other hand, weak substantive rights, or those rights that are recognized as judicially enforceable yet largely legislatively discretionary, also serve as a viable alternative to strong justiciable economic rights. Rather than providing relief to individual plaintiffs, the court would call for the “reasonable” protection of economic and social welfare rights, allowing and holding governments accountable to adopt social welfare rights.

## **11. Conclusions and recommendations**

Regardless of the solution, the enforcement of economic rights remains important both in ensuring the adequate and equal operationalization of individuals’ civil and political rights and in ensuring adequate standards of living. By observing, respecting, and adhering to the goals of economic justice, government actions toward protecting human dignity transition from aspirational to productive. It has been established that economic inequality is a multidimensional phenomenon that comprises various forms of deprivation that not only render a person incapable of meeting his survival needs but also render him incapable of pursuing other goals in life. From this perspective, poverty and inequality is not simply about lack of income and resources but the lack of the general and basic capabilities that enable a person to pursue diverse goals of value to him. It has also been established that human rights are the things that a person requires in order to survive and to maintain a life of dignity. The things that a person requires in order to avoid poverty are the same things that constitute human rights and have been incorporated into both international human rights instruments and the Constitution of Ghana. There is therefore a link between poverty reduction and the enjoyment of human rights in the sense that the enjoyment of human rights leads to the disappearance of poverty. Furthermore, it has been shown that the rights-based approach creates a framework in which rights holders are empowered to require duty bearers to discharge their duties for the benefits of the rights holders. The key principles of the rights-based approach Accountability, transparency, inclusion and non-discrimination as well as equality before the law are the key principles underlying the rights-based approach. The study has also established that there are a number of legal avenues through which principles of the rights-based approach can be enforced in a manner that facilitates reduction of inequality in developing countries. In addition, it has been established that the justiciability of the Directive Principles of State Policy can expand economic and social opportunities which are critical to the reduction of inequality. Although the laws have attempted to confer rights on individuals, the realisation of which enables them meet their needs and fulfil other objectives. However, the mere fact that rights and constitutional principles are justiciable does not guarantee a reduction in inequality unless the poor are able to utilise the legal avenues available in the legal system to enforce those rights and principles. Governments must apply the principles of management such as planning, leading, organizing and controlling to create, adopt, and implement policies that progressively ensures the realization of economic rights within the scarce resources available. Given the fact that the utilization of these

legal avenues requires resources and other expertise which the poor lack, it is unlikely that the mere fact that avenues exist for the enforcement of human rights and constitutional principles will benefit the poor unless prudent management practices are applied to ensure equitable distribution of resources.

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