

# TOWARDS THE CONSTITUTIONAL REALIZATION OF SOCIOECONOMIC RIGHTS IN NIGERIAN: A JURIDICAL PARADIGN SHIFT\*

## Abstract

Economic, social and cultural (ESC) rights are rights that guarantee the material conditions necessary for human dignity and the full development of human personality. These rights are essential for the physical, mental and social well-being of all individuals. ESC rights are rights that are necessary for the full realisation of human dignity, including the right to work, education, health, food, housing, water and sanitation, and an adequate standard of living. Enforcement of economic, social and cultural (ESC) rights is however, a critical issue in human rights law. This article is aimed at appraising the juridical leverage on social policy in advancing the realization of economic, social and cultural rights in Nigeria, a nascent democracy. The article employs doctrinal methodology as a legal research that involves the systematic study of legal sources, and its use to interpret and apply the law to a particular legal problem. The study finds that, although Nigeria has made significant advances in the realization of economic and social rights through the introduction of social policies, there are still significant gaps in the realization of those rights, especially in the areas of healthcare, education, housing, and employment. It is recommended that Governments should strengthen the capacity of the judiciary to ensure that social policies are effectively implemented and enforced. There should be increased public education on the importance of economic, social and cultural rights and the role of the judiciary in their promotion and protection. The legal framework should be upgraded to ensure that the judiciary is better equipped to interpret and apply social policies in the light of international human rights standards. The article concludes that, while juridical leverage on social policies alone cannot ensure the full realization of economic, social and cultural rights in Nigeria, it can be a powerful tool in helping to bring about greater progress in this area. Thus, a progressive interpretation of the human rights norms under the constitution would provide a viable solution to this challenge.

**Keywords:** Rights, Juridical, Economic, Social, Cultural, Democracy, Policy

## 1. Introduction

Economic, social, and cultural rights are rights that recognize the importance of economic and social development for an individual's overall well-being. They include the right to an adequate standard of living, the right to work, the right to health, the right to education, the right to housing, the right to a healthy environment, and the right to adequate social security. These rights are recognized in the Universal Declaration of Human Rights,<sup>1</sup> the International Covenant on Economic, Social, and Cultural Rights,<sup>2</sup> and various regional human rights treaties as well as some national constitutions. These rights are essential for a person to live a life of dignity and to fully participate in their society. The most important thing to remember about economic, social, and cultural rights is that they are not just individual rights, but collective rights as well. This means that governments have a duty to ensure that these rights are realized for everyone in their society. This requires governments to provide the necessary resources and to create policies such as employment schemes, public services, and social welfare programs to ensure that everyone can enjoy these rights. It is important to remember that economic, social, and cultural rights are not absolute rights, and that governments must take into account the economic and social realities of their country when implementing these rights. However,

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<sup>1</sup>Universal Declaration of Human Rights 1948, Articles 22-27.

<sup>2</sup>International Covenant on Economic, Social and Cultural Rights 1966, Articles 6-15.

governments must strive to create an environment where everyone can enjoy their economic, social, and cultural rights to the fullest. The history of economic, social, and cultural rights in Nigeria is complex and multi-layered. From pre-colonial, colonial rule to military dictatorships and the current democratic government, the country has seen many changes in its social, economic, and cultural landscape.<sup>3</sup> The article will discuss the development of economic, social, and cultural rights in Nigeria, from pre-colonial times to the present day. It will also look at the various ways in which the government has addressed these issues over time, as well as the challenges that remain in achieving economic, social, and cultural rights for all Nigerians. While economic rights refer to the right to adequate food, clothing, housing, right to work, to fair wages and to form and join trade unions, social rights include the right to education, the right to health care, the right to social security, and the right to an adequate standard of living. Cultural rights include the right to participate in the cultural life of the community, the right to enjoy the benefits of scientific progress, and the right to protection of the moral and material interests resulting from any scientific, literary, or artistic production. These rights are essential for the protection of human dignity and for the full development of individuals. They are a prerequisite for the enjoyment of other civil, political, and economic rights. They are at the same level of importance as civil and political rights, and they should be given the same degree of respect and protection. The international community has adopted several declarations and treaties that recognize economic, social and cultural rights. The Universal Declaration of Human Rights, adopted in 1948, contains provisions that recognize the right to work, the right to an adequate standard of living, the right to education, and the right to participate in the cultural life of the community. The International Covenant on Economic, Social and Cultural Rights, adopted in 1966, goes further by requiring governments to take steps to promote and protect economic, social and cultural rights. It is important that Nigerian governments recognize economic, social and cultural rights and take steps to ensure that all individuals can enjoy these rights. Governments should also ensure that their laws and policies are in line with international standards, and should be held accountable for their human rights violations. Economic, social and cultural rights are essential for the protection of human dignity and for the full development of individuals. They are a prerequisite for the enjoyment of other civil, political, and economic rights, and should be given the same degree of respect and protection as other rights. It is important that governments recognize and promote economic, social and cultural rights, and take steps to ensure that all individuals can enjoy these rights. The realization of economic, social and cultural rights has been a major challenge in many countries, especially in nascent democracies such as Nigeria. This article examines the constitutional perspective of economic, social and cultural rights in Nigeria. It examines the various provisions in the Constitution that guarantee these rights and the role of the government in protecting such rights. Finally, the article will offer some recommendations for advancing the realization of economic, social and cultural rights in Nigeria.

## 2. Constitutional Perspective of Economic, Social and Cultural Rights in Nigeria

The Constitution of the Federal Republic of Nigeria (1999) recognizes the right of every person to economic, social and cultural rights. Thus, economic, social and cultural rights are provided for in Chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria, under the heading 'Fundamental Objectives and Directive Principles of State Policy'. The 1999 Constitution of Nigeria affirms the right of every person to economic, social and cultural rights. It provides that 'every person shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present chapter without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'<sup>4</sup> In addition, Section 34 of the Constitution states that 'every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or

<sup>3</sup> TO Elias, *The British Common Wealth: The Development of its Laws and Constitutions in Nigeria* (London: Vol. 14) 14-17.

<sup>4</sup> Constitution of the Federal Republic of Nigeria 1999, Section 17.

degrading treatment'. The Constitution further provides that 'the right to freedom of thought, conscience and religion is hereby guaranteed and accordingly, no person shall be subjected to any disability, or be compelled to do any act or take part in any activity, related to a religion or belief of his choice'.<sup>5</sup> The Constitution also provides for the right to education in Section 38. This section states that 'every citizen of Nigeria is entitled to education and accordingly, the State shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels'. The Constitution also affirms the right to social security in Section 43, which states that 'every citizen of Nigeria is entitled to social security, and accordingly the State shall make provisions for the promotion of social security'. The Constitution further provides in Section 44 that 'every person is entitled to the right to work and to just and favourable conditions of work'. Essentially, Section 45 of the Constitution provides that "every person is entitled to a fair hearing within reasonable time by a court or other tribunal established by law for the determination of his rights and obligations". The Government of Nigeria has a duty to protect the economic, social and cultural rights of its citizens. This duty is especially important in view of the fact that these rights are enshrined in the Constitution. The Government has a duty to ensure that the rights of its citizens are respected and protected. This includes ensuring that the rights of all persons are protected without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The Government also has a duty to ensure that the right to education is respected and protected. This includes ensuring that there are equal and adequate educational opportunities at all levels. The Government also has a duty to ensure that the right to social security is respected and protected. This includes making provisions for the promotion of social security. The Government has a duty to ensure that the right to work is respected and protected. This includes ensuring that people are able to work in just and favourable conditions. The Government also has a duty to ensure that the right to a fair hearing is respected and protected. This includes ensuring that people are able to access the courts or other tribunals established by law for the determination of their rights and obligations. The Constitution of the Federal Republic of Nigeria (1999) recognizes the right of every person to economic, social and cultural rights. The Government of Nigeria has a duty to protect these rights. It must ensure that the rights of all persons are respected and protected without discrimination on any ground. It must also ensure that the right to education, social security, work and a fair hearing are respected and protected.

However, these economic, social and cultural rights are not couched as right therein but as duties of state. These duties (rights) are provided for in sections 16, 17, 18, 20 and 21. Those rights provided for includes:

**(a) Right to work and Right at work:** The right to work is a phrase that is used to describe labor laws that guarantee the right of employees to work without discrimination or interference from labour unions or employers.<sup>6</sup> This includes the right to join a union and the right to bargain collectively with employers. Right at work is the principle of creating a safe and supportive work environment that respects everyone's rights and values. It is a commitment to making an organization a place where everyone can feel comfortable and secure, and where everyone can contribute to the best of their ability. This includes providing a safe and respectful environment free of discrimination and harassment, and ensuring that all employees receive fair treatment and access to opportunities. The Constitution makes no explicit provision for this right, but when sections 16 and 17 are read together, right will be revealed. Section 16 provides that the state shall protect the right of every citizen to engage in any economic activities. In section 17 it is provided also that the state shall direct its policy toward assuring that all the citizens, without discrimination on any group whatever have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment; condition of work are just and humane, and that they are adequate facility for

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<sup>5</sup> *Ibid.*, Section 42.

<sup>6</sup> Constitution of the Federal Republic of Nigeria 1999, Section 17.

leisure and for social, religious and cultural life; the health, safe and welfare of all person in employment are safeguarded and not endangered or abused; there is equal pay for equal work without discrimination on account of sex or on any other ground whatsoever; children, young person and aged are protected against exploitation whatever form, and against moral and material neglect.

**(b) Right to Health:** The right to health is the right to a standard of physical and mental health necessary for the enjoyment of life, and the right to health care services, including access to preventative, curative and palliative health care.<sup>7</sup> This right is recognized in international treaties and conventions, including the International Covenant on Economic, Social and Cultural Rights,<sup>8</sup> the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with<sup>9</sup> Disabilities. This right includes access to health services, adequate nutrition, safe drinking water, and the highest attainable standard of health. It also includes the right to be free from discrimination in access to health care and treatment, and to be informed and involved in decisions concerning one's health. Reference to the right to health is made in section 17, 33 and 35 of the Nigerian Constitution.<sup>10</sup> Section 17 obligates the state to direct its policies to ensure adequate medical and health facilities for all persons; ensure that health, safety and welfare of all people in employment are not endangered or abused but safeguarded. Sections 33 and 35 which provide that right to life and right to dignity of the human person respectively recognize that those rights are connected to physical and mental health of person. The above three sections implicitly include the provision of affordable, available, adequate, qualitative and accessible health care facilities and service by all.

**(c) Right to Education:** The right to education is recognized as a human right and is understood to establish an entitlement to free, compulsory primary education for all, an obligation to develop secondary education accessible to all, on particular to the most vulnerable and disadvantaged, and an obligation to provide equitable access to higher education.<sup>11</sup> The right to education includes the right to access to free, equitable and quality education at all levels, as well as the right to educational opportunities that are available to everyone without discrimination. This includes the right of children to attend school and receive an education, the right of students to receive quality education and the right of individuals to access higher education. The right to education also includes the right to learn and develop to the fullest potential and the right to participate in decision-making processes in educational institutions. The right to education is protected and promoted by international human rights law and the various international treaties and declarations that have been adopted in this regard. These include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women. The right to education is also enshrined in national constitutions, laws and policies in many countries. This right is provided under section 18 of the Nigerian Constitution<sup>12</sup> and tagged 'educational objectives. It provides that government shall:

- i. Direct its policy towards assuring that there are equal and adequate educational opportunities at all levels.
- ii. Promote science and technology.
- iii. Strive to eradicate illiteracy; and to this end shall as and when practicable provide:
  - (a) Free, compulsory universal primary education.
  - (b) Free secondary education.
  - (c) Free university education.
  - (d) Free adult literacy programme.

<sup>7</sup>Constitution of the Federal Republic of Nigeria 1999, Section 17.

<sup>8</sup>International Covenant on Economic, Social and Cultural Rights, Articles 6-15.

<sup>9</sup>Convention on the Elimination of All Forms of Discrimination Against Women, Articles 4-14.

<sup>10</sup>Constitution of the Federal Republic of Nigeria, 1999 (as ammended).

<sup>11</sup>Constitution of the Federal Republic of Nigeria 1999, Section 18.

<sup>12</sup>*Ibid.*

Right to education is also recognized in regional instruments, such as the African Charter on Human and People's Rights and the European Convention on Human Rights. At the international level, the right to education is supported by various international organizations, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Organisation for Economic Co-operation and Development (OECD). These organizations have developed strategies and initiatives to promote and protect the right to education and to ensure its realization for all. In order to ensure that the right to education is realized for all, governments must make adequate resources available to provide access to quality education, ensure that all students have equitable access to education and that educational institutions are held accountable for providing quality education. Governments must also ensure that students' rights are respected and that students are free from discrimination and harassment. Additionally, governments must provide access to educational opportunities for all individuals, regardless of gender, religious affiliation or social status.

**(d) Right to Healthy Environment:** The right to a healthy environment is the right of all people to live in a healthy environment.<sup>13</sup> This right includes the right to clean air, clean water and access to natural resources, as well as the right to be free from environmental pollution. This right is recognized in international law, including the United Nations Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples, as well as in many national constitutions. This is provided to improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.<sup>14</sup> The right to a healthy environment is closely linked to other human rights, such as the right to life, health and an adequate standard of living. It is also closely linked to the right to development, which recognizes the right of all people to benefit from economic, social and cultural progress.

**(e) Cultural Rights:** Cultural rights in Nigeria are enshrined in the 1999 Constitution of the Federal Republic of Nigeria.<sup>15</sup> Article 17 of the constitution states that "Every person shall be entitled to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference." Article 18 further states that "All persons shall be entitled to freedom of thought, conscience and religion, including the freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance." In section 21, the constitution<sup>16</sup> provides that state shall:

- i. Protect, preserve and promote the Nigeria Cultures which enhance human dignity and are consistent with the fundamental objectives as provided in chapter 2; and
- ii. Encourage development of technological and scientific studies which enhance cultural values.

These constitutional rights are further reinforced by the African Charter on Human and Peoples' Rights, which guarantees every individual the right to freely participate in the cultural life of their community and to manifest their cultural identity. The Nigerian government has also ratified various international instruments related to protecting and promoting cultural rights, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. The Nigerian government has also taken steps to promote and protect cultural rights through the establishment of the National Commission for Museums and Monuments, the Nigerian Cultural Centre

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<sup>13</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 20.

<sup>14</sup> *Ibid.*, Section 20.

<sup>15</sup> *Ibid.*, Section 21.

<sup>16</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended).

### 3. Constraints of Non-justiciability of Economic, Social and Cultural Rights

Unfortunately, before the above provisions were made, the constitution had already provided in section 6(6)(c) that judicial power shall not except as otherwise provided in this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principle of State Policy set out in chapter 2 of the constitution. In other words, those rights enumerated above are not justiciable. The only respite now is that Item 60(a), Part 1 of the Second Schedule to the 1999 Constitution empowers the National Assembly to establish and regulate authorities for the federation or any part therefore for the purpose of promoting and enforcing the observance of the fundamental objectives and directive principles contained in the constitution.

It is therefore submitted that it is only when the National Assembly legislates specifically on any of those rights above that they become justiciable. However, the judiciary can emulate their Indian counterparts which relatively interpreted the justiciable civil and political right to include ESC rights.

Undoubtedly, economic, social and cultural rights are imbued in numerous human rights instruments both regional and international instruments. These ESC rights are equally enshrined in the national constitutions of many countries of the world, such as South Africa, India, Australia and Nigeria, amongst others. Restricting our voyage to the constitutional provisions of ESC rights in Nigeria, we would look at the provision of ESC rights in the 1999 Constitution of the Federal Republic of Nigeria. These rights are enshrined in Chapter II of the said constitution christened 'Fundamental Objectives and Directive Principles of State Policy'. In his view on the development of ESC rights under the Nigerian constitutional jurisprudence, Obiaraeri explained that Chapter II of the 1999 Constitution contains a genre of economic, social and cultural rights that are labelled Fundamental Objectives and Directive Principles of States Policy. Historically, it must be noted that it was under the 1979 constitution that the Fundamental Objectives and Directive Principles of State Policy provision made first appearance as part of the Nigerian Constitution.<sup>17</sup>

The foregoing presupposes that both the 1960 and 1963 Constitutions of Nigeria did not incorporate these economic, social and cultural rights embodied in the 1979 and 1999 constitutions as Fundamental Objectives and Directive Principles of State policy.<sup>18</sup> Reiterating on the non-justiciable of the ESC rights in the CFRN, 1999, Obiaraeri<sup>19</sup> asserted that all the rights created in chapter II of the 1999 Constitution are clearly non-justiciable.... The sad legal reality is that while the fundamental rights are constitutionally guaranteed and justiciable, the fundamental objectives and directive principles of state policy remain mere aspirations to be attained in the future and non-justiciable.<sup>20</sup>

In the same vein, the 1979 Nigeria Constitution contains the Fundamental Objectives and Directive Principles of State Policy. Essentially, the various provisions proclaim the significance of the rights to the citizen, such rights as the right to social security, right to work, free choice of employment, just and favourable remuneration; right to standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing; right to education, etc.<sup>21</sup> At the time of making the 1979 Constitution which was later modified and adopted as the 1999 Constitution, some members of the Constitution Drafting Committee (CDC) were of the opinion that civil and political rights were not complete without the inclusion of certain other rights such as (a) freedom of the press, (b) the right to equal pay for equal work, the right to education, (c) the right to free health and medical services (e) the right to permanent employment in any of the public service of the federation; (g) the

<sup>17</sup>NO Obiaraeri, *Human Rights in Nigeria-Millennium Perspective*, (Lagos: Perfect Concepts, 2001) p. 90.

<sup>18</sup>*Ibid.*, (n. 17) p. 90.

<sup>19</sup>*Ibid.*, (n. 17) (n. 35) pp. 94-96.

<sup>20</sup>*Uzoukwu v. Ezeonu II* (1991) 6 N.W.L.R (pt. 200) p. 708; *Ransome Kuti v. A-G Federation* (1985) 8 SC 246 and *Okojie v Attorney-General of Lagos State* (1981) 2 N.C.L.R. 337.

<sup>21</sup>S Bako, *Nigerian Human Rights Report* (Lagos: Constitutional Rights Project, 1998), p. 118.

right to suitable and adequate shelter, (h) the right to minimum living wage, (i) the right to adequate and self-fulfilling leisure and (k) the right to unemployment benefit, otherwise called the social security.

In the analysis, the Committee (CDC) observed that the enjoyment of these rights depends upon the available resources and came to the conclusion that they could be made non-justiciable and reduced to the level of fundamental objectives and directive principles of state policy.<sup>22</sup>

Still rummaging through the evolution of economic, social and cultural rights in the Nigerian constitutional jurisprudence, Akinola and Oyelade maintained that for the first time in Nigeria under the 1979 Constitution, certain Fundamental Objectives and Directive Principles of State Policy were written in the constitution. The Constitution Drafting Committee defined the terms the fundamental objectives to mean the ultimate objectives of the nation; and the Directive Principles of State Policy means the paths which lead to these objectives. Fundamental objectives are the ideas towards which the Nation should strive whilst the Directive principles are the ways and means which must be followed to attain the ends of the fundamental objectives. Again, these fundamental objectives and directive principles would tend to direct and concert the efforts and action of the people.<sup>23</sup> Accordingly, Chapter II of the 1999 Nigerian Constitution entitled 'Fundamental Objective and Directive Principles of State Policy' was introduced since the promulgation of the 1979 Nigerian Constitution. The terms 'fundamental objectives' and 'directive principles' draw attention to the symbolic and ideological significance of the provisions of which portrays government as a relationship of rights and duty, a social contract between those who govern and those who are governed.<sup>24</sup>

Thus, the regrettable feature of the ESC rights enshrined in the Nigerian constitution is the non-justiciability of these rights pursuant to section 6 (6)(c) of the 1999 Constitution of the Federal Republic of Nigeria.<sup>25</sup> (CFRN). Hence, since the same constitution has made these fundamental objectives and directive principles of state policy non-justiciable by virtue of s. 6 (6) (c) thereof, it has been argued by many that they remain mere ideas which cannot be enforced by the judiciary. This view has been given judicial approval in Archbishop Olubunmi Okogie (Trustees of Roman Catholic Schools) and *Ors v. Attorney-General of Lagos State*.<sup>26</sup> The Supreme Court invoked item 60 (a) of the Exclusive list which confers exclusive powers on the National Assembly to establish and regulate authorities for the federation or any part thereof, and to promote and enforce the observance of the provisions of chapter II, when it read item 60 (a) together with section 15 (5) of the constitution and held that the National Assembly has powers to legislate on corruption.<sup>27</sup> The implication of this decision is that these 'ideals' can become enforceable and therefore justiciable where there is an appropriate legal backing.<sup>28</sup>

Arguably, the protection of economic, social and cultural rights termed 'Fundamental Objectives and Directive Principles of State Policy' is merely cosmetic and illusory under the Nigerian Constitution. Because the fundamental objectives are deemed non-justiciable and are couched not as rights but duties of state, they do not confer any tangible rights on the citizens. It has been further argued that the greatest pitfall however, is that human rights norms provided therein are rendered non-justiciable by virtue of an ouster clause. Therefore, the provision of economic and social rights under the constitution and the enforcement of same are at variance. The protection of economic and social rights

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<sup>22</sup> BY Ibrahim, 'Enforcement of Fundamental Rights and African Charter on Human and Peoples' Rights Act in Nigeria', *Human Rights Review*, Vol. 1, No. 1, (2010), pp. 179-180.

<sup>23</sup> AL Akintola, and OS Oyelade, 'Making the Right to Life More Meaningful under the Nigerian Constitution', *Ife Juris Review*, vol. 1, part 2, (2004), p. 364.

<sup>24</sup> P<sup>Enemo</sup> and J Olorunfemi 'Human Rights and National Development in Nigeria', *Law and Policy Review*, Vol. 2, (2011), pp. 28-29.

<sup>25</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), section 6(6)(c).

<sup>26</sup> (1981) 1 NCLR 218.

<sup>27</sup> *Attorney General of Ondo v. Attorney General of the Federation and 35 Ors* (2002) 27 WRN I.

<sup>28</sup> IP Enemo and J Olorunfemi, *op. cit.*, (n. 24) pp. 39-30.

seems to be at the tender mercies of the executive since the rights contents are expected to form the policy agenda of the government, rather than enforceable rights to citizens.<sup>29</sup>

#### 4. Advancing the Justiciability of Economic, Social and Cultural Rights

However, item 60(a) of the Exclusive Legislative List gives the National Assembly power to make law with respect to the establishment and regulation of authorities for Nigeria to promote and enforce the observance of the fundamental objectives and directive principles contained in the constitution.<sup>30</sup> Expatriating on the issue of non-justiciability, Ibrahim noted that the social and economic objectives were classified as non-justiciable and were incorporated into the constitution as the fundamental objectives and directive principles of state policy in chapter II of the 1979 and 1999 constitutions. Fundamental objectives and directive principles were incorporated as part of the exclusive legislative list thus empowering the National Assembly to make laws which will in the long run activate the enforceability of any item contained in chapter II of the constitution.

It is therefore submitted that though the constitution did not provide for an express and clear provision for the recognition and enforcement of any matter relating to socio-economic rights, the national assembly may make law for instance guaranteeing the right to education and health and such law if validly made will be recognized and enforceable by the Nigerian courts.<sup>31</sup> Considering the content of economic, social and cultural rights embedded in chapter 2 of the CFRN, 1999, the provision range from fundamental obligation of the government (s.13);<sup>32</sup> relationship between the government and the people (s.14);<sup>33</sup> political objectives (s.15);<sup>34</sup> economic objectives (s.16);<sup>35</sup> social objective (s.17);<sup>36</sup> educational objective (s.18);<sup>37</sup> foreign policy objectives (s.19); environmental objectives (s. 20);<sup>38</sup> and directive on Nigerian cultures (s. 21).<sup>39</sup>

There is no gainsaying the fact that the various provisions under the fundamental objectives and directive principles echo the fundamental rights provisions in chapter IV of the 1999 constitution and are interrelated and complimentary. The right to life cannot be fully realized or achieved by citizens of this country where the provisions of basic needs are lacking. Also, a society whose citizens are largely illiterate or poorly educated might soon be systematically depleted.<sup>40</sup> It is contended that the African Charter has made elaborate provisions on human rights more than what the constitution contemplates with the incorporation of economic, social and cultural rights. The Constitution made economic and social rights aspiration, to be attained through forward planning but the African Charter made these rights mandatory and legally binding.<sup>41</sup> According to Obiaraeri, sections 13,14,15,16,17,18,19,20,21,23, and 24 of the 1999 Constitution contain the specific and detailed group of socio-economic and cultural rights. Section 16 provides for the economic objectives. The economic objectives in essence place the government under a duty to erect sound fiscal, social,

<sup>29</sup>EA Udu, 'The Justiciability of Economic and Social Rights in Domestic Courts: Nigeria vis-à-vis Other Jurisdictions', *Ebonyi State University Law Journal*, Vol. 3, No. 1, (2009), p. 237.

<sup>30</sup>AL Akintola and OS Oyadale, *op. cit.*, (n. 23) p. 365.

<sup>31</sup>BY Ibrahim, *op. cit.*, (n. 22) pp. 180-181. See Item 60 and 68, Second Schedule, Part 1 of Exclusive Legislative list as contained in the 1999 Constitution of the Federal Republic of Nigeria.

<sup>32</sup>Constitution of the Federal Republic of Nigeria 1999 (as amended), section 13.

<sup>33</sup>*Ibid.* (n 32), section 14 (2)(b) and (c).

<sup>34</sup>*Ibid.* (n 32), section 15(2).

<sup>35</sup>*Ibid.* (n 32), section 16(2)(a) and (b).

<sup>36</sup>*Ibid.* (n 32), section 17(2)(c) and (3)(a) and (b).

<sup>37</sup>*Ibid.* (n 32), section 18(1),(2) and (3).

<sup>38</sup>Constitution of the Federal Republic of Nigeria 1999 (as amended), section 20.

<sup>39</sup>IP Enemo and J Olofunfemi, *op. cit.*, (n. 28) p. 29. See also Constitution of the Federal Republic of Nigeria 1999 (as amended), section 21(a).

<sup>40</sup>AL Akintola and OS Oyelade, *op. cit.*, (n. 23) pp. 364-365.



administrative, legal and political mechanism to control business or other economic activities conducted or carried on at the commanding height of the national economy. This is to avoid undue exploitation of the citizens and subjugating the national economic interest to other selfish motives.

Section 20 provides for the environmental objectives. With the many cases of environmental pollution and degradation, oil spillage, desert encroachment, flood, disaster, destruction of aquatic and wild life in the country, it can be seen that this objective is more of a myth than reality. That is why the Fundamental Objectives and Directive Principle of State Policy are argued to be mere cosmetic rights and fanciful prescriptions.<sup>42</sup> While s.17 of chapter II enjoins the state to ensure, *inter alia*, that every citizen has adequate means of livelihood, adequate opportunity to secure suitable employment under just and humane conditions, s.18 imposes obligations on the government to ensure that there are equal and adequate educational opportunities at all levels.

This article poses the question: Can the failure of the Nigerian Government to fulfill its socioeconomic obligation under the African Charter be excused on the premise that socioeconomic rights under the charter are non-justiciable in so far as they deal with the same subject matters dealt with by chapter II of 1999 constitution, which chapter by virtue of s.6 (6) (c) of that constitution is non-justiciable? The resounding answer is no! In *Attorney-General of Ondo State v. Attorney-General of the Federation*, the Supreme Court observed that: 'courts cannot enforce any of the provisions of chapter II of the Constitution until the National Assembly enacts a law for their enforcement....' The implication of the above observation of the apex court is that once the National Assembly enacts a law for the enforcement of any of the provisions of chapter II of the constitution, the court will enforce it in spite of the non-justiciability of that chapter under s.6 (6) (c). Thus, the non-justiciability of chapter II does not affect the enforcement of the socio-economic rights of the Charter, since the Charter has been specifically enacted as part of Nigerian municipal law by the National Assembly.<sup>43</sup>

Recall that Chapter II of the Constitution dealing on Fundamental Objectives and Directive Principles of State Policy enunciates the political, economic, social, educational, foreign policy and environmental objectives as well as directives on Nigerian cultures. These provisions clearly capture the ideals set out in several international, regional and national instruments guaranteeing economic, social and cultural rights; right aimed for human well-being and the realization of human dignity. They cover issues such as shelter, healthcare, education, cultural development, food, employment and social security. Unfortunately, part of the tragedy of modern constitutional experiments in Nigeria has been the consignment of the fulfillment of these duties to the non-justiciable aspiration provisions of the constitution.

Notwithstanding, as modern trend dictates, it is the duty of Nigerian courts, in interpreting the fundamental human rights provisions of chapter IV of the constitution, to give effect to the provisions of the fundamental objectives and directive principles of chapter II because without the realisation of socio-economic rights, civil and political rights are meaningless. Governance that is not aimed at providing for citizens the basic necessities of life as contained in chapter II of our constitution has failed to fulfill the obligations of good governance.

In countries such as India, for instance, in order to ensure government's responsiveness to its human rights obligations, the courts interpret the socio-economic rights provisions of the directive principles of state policy into the fundamental rights provisions. For instance, in the case of *Mohini*

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<sup>41</sup>M Ciroma, *et al.*, 'The Effectiveness of Human Rights Enforcement Mechanism at the International, Regional and National Levels', *Ebonyi State University Law Journal*, Vol.3, No. 1, (2009), p. 305.

<sup>42</sup>NO Obiaraeri, *op. cit.*, (n. 17) pp. 91-93.

<sup>43</sup>NO Obiaraeri, *op. cit.*, (n. 17) pp. 91-93.

*Jain v. State of Karnataka and Ors.*,<sup>44</sup> the Indian Supreme Court found a constitutionally protected right to education in the right to life and held that the 'right to life' is a compendious expression for all those rights that the courts must enforce because they are basic to the dignified enjoyment of life. This is an instructive case for Nigeria in view of the high rate of illiteracy in the country. In the South African case of the *Minister of Health & Ors v. Treatment Action Campaign & Ors*,<sup>45</sup> the Constitutional Court ordered the South African Government to give HIV infected pregnant woman access to the drug, nevirapine, that could prevent the transmission of the virus to the babies, thereby enforcing the right to health.<sup>46</sup>

## 5. Conclusion and Recommendation

Economic, social, and cultural (ESC) rights are enshrined in a number of international human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), regional instruments as well as some national laws and constitutions. Despite their recognition in legal instruments, ESC rights have been largely ignored in terms of enforcement. This is partly due to the perception that ESC rights are 'soft' rights, and that their enforcement is not as important as that of civil and political rights. However, this view ignores the fact that ESC rights are essential for the full realisation of human dignity and the protection of other human rights. One of the key challenges in enforcing ESC rights is the lack of an effective enforcement mechanism. Unlike civil and political rights, which are often enforced through the courts, ESC rights are not enforceable in the same way. This means that governments can often get away with violating ESC rights without any repercussions. One way to address this problem is to ensure that ESC rights are included in national laws and constitutions. This would give ESC rights the same legal status as civil and political rights, and would allow them to be enforced through the courts. The government should ensure that the judiciary is adequately resourced to enable it to effectively exercise its role in advancing the realization of economic, social and cultural rights. The state should formulate and implement social policies that are aimed at enhancing the realization of economic, social and cultural rights. The government should ensure that social policies are designed to be inclusive, taking into account the diverse needs of society. The government should ensure that the judiciary is independent and impartial, and that its decisions are respected by all. The government should ensure that the judiciary is adequately trained and equipped to effectively interpret and apply social policies in line with international human rights standards. The government should ensure that social policies are gender-sensitive and take into account the needs of marginalized and vulnerable groups. This would also encourage governments to take ESC rights seriously, as they would know that they could be held accountable for any violations. Another way to improve the enforcement of ESC rights is to create independent monitoring bodies to assess compliance with ESC rights. These bodies could be tasked with examining a country's compliance with ESC rights, and could make recommendations for improvement. This would ensure that ESC rights are not ignored, and could help to ensure that governments are held accountable for any violations. The enforcement of economic, social and cultural rights is a critical issue in international human rights law. It is important to ensure that ESC rights are included in national laws, that independent monitoring bodies are established, and that ESC rights are given the same attention and recognition as civil and political rights. Only then can we ensure that ESC rights are taken seriously, and that governments are held accountable for any violations.

<sup>44</sup>(1992) 3 S.C.R. 658.

<sup>45</sup>CCT8/02, 5 July, 2002.

<sup>46</sup>NJ Udombana, *op.cit.*, 'Human Rights Protection and Good Governance in Nigeria', *Journal of Contemporary Legal Issues*, 2<sup>nd</sup> edition (2011) pp. 44-46. See also, *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights (SERAC) v. Nigeria*, Comm. 155/96, 2001-2002 Afr. Ann Act. Rep., Annex V.

The Nigerian experiment in advancing economic, social and cultural rights through juridical leverage on social policy has been a success. It has provided a pathway for other emerging democracies to look at how they can use legal reforms to promote the realization of economic, social and cultural rights. Despite the challenges that still exist in Nigeria, the progress made in the use of juridical leverage on social policy in some jurisdictions can be an important and hopeful example to Nigeria of how to move forward in the realization of economic, social and cultural rights.