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The Consequences of the Non-Justiciability of Socio-Economic Rights in the Provisions of the Nigerian Constitution

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Abstract:
Socio-economic rights and their enforcement is a reoccurring issue in Nigeria; this is a result of the non-justiciability provision of the Nigerian Constitution. In other jurisdictions, states have relied on the progressive enforcement of these rights utilizing the available resources within their territories and on international assistance depending on the circumstances in fulfilling these rights. Various factors are said to be responsible for Nigeria's current status as a developing country. These range from historical colonial experience, political instability, the monocultural nature of the national economy, and the persistent lack of commitment to focused development strategies on the part of the political elites. Chapter II of the Constitution provides guidelines to the government of Nigeria to promote democracy, social justice, and order. The said objectives appear to encompass social inclusiveness to reduce socio-economic and political inequality in status and opportunities in Nigeria. This paper aims to analyze the consequences of the nonjusticiability of the Nigerian Constitution. The findings of this paper reveal that there is no adequate constitutional and or legal framework put in place in Nigeria to protect socio-economic rights to develop or sustain the little existing development.

Keywords: The Nigerian Constitution, Non-Justiciability, Effects, Socio-economic Rights and Development

0.1 Introduction

The Merriam-Webster dictionary defines socio-economic problems as the combination of social and economic factors that have a negative influence on an individual.[105] Similarly, Dawud believes that socioeconomic problems include the challenges that people face in their lives and the society.[106]Ever since Nigeria attained independence in 1960, it has been challenged with so many irregularities and anomalies, and even to date she remains a third-world country,[107]yet it is largely believed and posited that Nigeria is very much endowed with natural resources. Sadly, while those in public offices continue to mismanage loot, embezzle, and misappropriate the public treasury to satisfy their selfish desires, the masses are there on the streets and at the grassroots suffering and

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[105] Merriam-Webster Dictionary (2021) Retrieved fromhttps://www.merriamwebster.com/dictionary/socio-economic 23rd March 2023.

[106] D Dawud, 'Socio-economic Problems of Ethiopian Young Adults as Reflected in Three Selected Ethiopian Young Adult Novels in English'. *International Journal of Engineering Technologies and Management Research* (Vol, 7(10), 28 – 65, 2020).

[107] Third-world countries are the underdeveloped nations of the world, especially those with widespread poverty. <http://www.dictionary.com/browse/third-world> accessed on 19 November 2016.

sorrowing with tears.[108] There are only a few good roads, no stable or regular power supply, no adequate or quality health, and no social security and housing facilities. Poverty and corruption are at all times high, and for the common man in sight, there seems to be no hope for a better tomorrow. [109]The general result of this is that there is little or no national development, and boundless feelings of insecurity, inflation, crises, and insurgency in Nigeria.

Understanding the impact of governance on the Nigerian economy will provide real insight into the gap that exists between the huge available national resources and the quest for development in Nigeria. The concerns emanating from evident gaps in the quest for and struggle by Nigerians for democracy vis-a-vis the fulfillment of pre-election promises of elected political elites; continue to generate debates in policy and academic cycles against the backdrop of unrepentant attitude of corruption by the political elites in the country. This concern is particularly evident in the apparent almost non-existent or grossly inefficient social amenities and dilapidated economic infrastructural facilities across Nigeria. Radical scholars consistently blame the persistent socio-economic challenges in Nigeria on the structural deficiencies created as a result of the country's colonial experiences.[110] In short, they claim, and rightly so, that colonialism was a system designed not only to exploit but also to keep African countries, indeed, Nigeria in a permanent vulnerable position of underdevelopment.[111]

On the contrary, the Nigerian Constitution appears to have placed the viability of the enforcement of the "Fundamental Objectives and Directive Principles of State Policy" under the legislative competence of the National Assembly via Item 60(a) of the Exclusive Legislative List. These constitutional concerns [112] have attracted our attention to inquire into, and interrogate the justiciability or otherwise of the provisions of Chapter II of the Constitution of Federal Republic of Nigeria 1999. Why would the provision of Item 60 of the Exclusive Legislative List contradict the ouster clause of Section 6(6) (c) of the Constitution?

It was noted that today, human rights issues have not only attracted a global concern; it has also become instructive that beyond the attraction of global concern, significant interest aimed at protecting and promoting universal fidelity and homage to human rights has also continually commanded attention and occupied fundamental or constitutional positions at the international, regional and national levels.[113] Human rights 'are regarded as those fundamental and inalienable

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[108] A T Shehu, 'The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience', *Afe Babalola University: Journal of Sustainable Development Law and Policy* Vol. 2 Iss. 1 (2013), pp. 101-120.

[109] *Ibid*

[110] W Rodney, *How Europe Underdeveloped Africa* (London and Dar-Es-Salam: Bogle- L'Ouverture Publications, 1973); Lawrence Ekpebu, *South Africa: The Fall of the Last Imperial Outpost* (Sam Bookman Publishers, 1998); Claude Ake, *The Feasibility of Democracy in Africa* (CODESRIA, 2000).

[111] *Ibid*

[112] The ouster clause in section 6 (6) (c) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and the somewhat contradictory provision in Item 60(a) of the Exclusive Legislative List.

[113] Justice Muhammad Haleem has argued that "the quest for human rights and human dignity is a phenomenon of contemporary life of universal dimensions and immense significance. See M Haleem, 'The Domestic Application of International Human Rights Norms' in Developing Human Rights Jurisprudence, The Domestic Application of International Human Rights Norms (London: Commonwealth Secretariat, 1988) p. 93 cited in JA Dada, 'Human Rights under the Nigerian Constitution: Issues and Problems, Vol. 2 No. 12, 2012, p. 33.

rights which are essential for life as a human being.'[114] The issue of human rights, in the recent past, has penetrated the international dialogue, become an active element in interstate relations, and has even taken a voyage boldly beyond the ancient landmark and sacred bounds of national sovereignty.[115] While the preambles of both the ICCPR and the ICESCR state that the rights are interrelated and interdependent, many countries have treated the two sets of rights quite differently.[12] The rights (economic, social, and cultural rights) contained in the ICESCR have been heavily criticized and remain significantly underdeveloped in comparison to those contained in the ICCPR. The heavy criticism and the bid to treat the two sets of rights quite differently have occasioned somewhat historical consequences, one of which is that the development of socioeconomic rights has lagged behind their civil and political counterparts.

Thus, for many years, civil and political rights have commanded a much more prominent existence than socio-economic rights, both at the international and national levels; Nigeria is no exception in this regard. In Nigeria, many people now freely exercise and enjoy the fundamental rights recognized and guaranteed in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and in ratified agreements and charters such as the United Nations and the African Charter. However, the same cannot be said of socio-economic rights. 'Socio-economic rights are those human rights that aim to secure for all members of a particular society a basic quality of life in terms of food, water, shelter, education, health care, and housing'. [116] Socioeconomic rights aim to ensure that everyone has access to resources, opportunities, and services essential for an adequate standard of living.

By international agreements, governments have the following obligations: To create an enabling environment within which people can gain access to these rights and improve their quality of life and well-being; to remove barriers and limitations that prevent residents from accessing and claiming these rights; and to adopt special measures to assist the disadvantaged and vulnerable to gain access to these rights. Such access is achieved over some time and depends upon the availability of resources.

2.0 Implication of Chapter II of the 1999 Constitution of Nigeria: A Window Dressing? An inevitable implication of the non-justiciability school of thought on the justiciability of the provisions of Chapter II of the Constitution is that the provisions of Chapter II of the Constitution are merely declaratory. This implication appears to have received judicial blessing in the case of *AG Ondo v AG Federation*[14]*,* the Supreme Court held that those objectives and principles provided for under Chapter II of the Constitution remains mere declarations. Given the foregoing, it is rather obvious that Chapter II of the Constitution is undeniably non-justiciable.

Our question now is, of what purpose is the inclusion of that Chapter in the Constitution of Nigeria since, they are not enforceable against the government? Are those magnificent provisions in

[114] T W Wilson Jnr., *A Bedrock Consensus of Human Rights Dignity* in A H Henkin (ed) *The Internationalization of Human Rights* (New York: Aspen Institute For Humanistic Studies, 1979) p. 47.
[115] *Ibid* 34. [12] L M Keller, 'The American Rejection of Economic Rights as Human Rights & the Declaration of Independence: Does the Pursuit of Happiness Require Basic Economic Rights?' 19 *New York Law School Journal of Human Rights,* 557, 562 (2003).
[116] G Erasmus, 'Socio-Economic Rights and their Implementation: The Impact of Domestic and International Instruments' (2004) 32 *International Journal of Legal Information*, 243, 252. [14] (2002) 9 NWLR (Pt.772) 222.

Chapter II of the Constitution a mere window dressing? It is our view that if Chapter II of the Constitution is not judicially enforceable, then the Chapter stands in the Constitution as a mere window dressing, and that inevitably renders the inclusion of the Chapter in the Constitution an intended fraud and or a constitutional deception. In this line, some authors had submitted eruditely that: A literal interpretation of the above section 13 may mean that those exercising legislative, executive, and judicial powers are obliged to conform, observe, and apply the provisions of Chapter II. However, they observed immediately that a community reading of the said section 13 and section 6 (6) (c) which provides that 'except as otherwise provided by 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 conforms with the Fundament Objectives and Directive Principles of State Policy set out in Chapter II of this constitution', points out to the position, contention, suspicion or opinion that the makers or drafters of the Constitution intended Chapter II of the Constitution to be non-justiciable.

Realistically, section 13[117] created responsibility without liability. A government that cannot be liable for its failure to carry out its constitutional obligations cannot be said to bear any responsibility. Such a government cannot be accountable to the people who are the ultimate sovereign in a democratic system of government, which is purportedly in practice in Nigeria. Section 13 is an apparent publicity stunt by the makers of the constitution to attract the applause of the people even though they know that what is given by sections 13 to 24[118], which contain the national ideals without which there can be no meaning to national development, is taken away by section 6 (6) (c). This approbating and reprobating stance of the 1999 Constitution of the Federal Republic of Nigeria concerning Chapter II of the Constitution is a key to irresponsible governance and it is against this backdrop that men and women of goodwill from various quarters are calling for a constitutional amendment which will make Chapter II of the Constitution justiciable.[119]This appears as nothing but a constitutional fraud yet the preamble to the Constitution made bold to ascribe the making of the Constitution to the people. We use 'We the People of the Federal Republic of Nigeria' [120] to defraud ourselves and create room for our government to be irresponsible and unaccountable? We strongly doubt if 'We the People of the Federal Republic of Nigeria' could have intended to 'MAKE, ENACT, AND GIVE TOOURSELVES'[19] a Constitution by which we have donated governmental powers to the state but which turns around to slavishly absolve the state (the government) of failure to conform to, observe, and apply what ought to be the fundamental obligations of the government. This bogus statement gives room for lack of accountability, irresponsibility of the government, and accommodating corruption in our country and or the misappropriation of resources and wealth of our country, leading to the lack of implementation of our socio-economic rights. The researchers do not think that the statement 'We the People of Nigeria' could have been intended to create such an oppressive room for unemployment, abject poverty, insecurity, hunger, homelessness, lack of unfettered access to

[117] The 1999 Constitution of the Federal Republic of Nigeria (As Amended)
[118] *Ibid*
[119] G N Okeke & C Okeke, 'The Justiciability of the Non-Justiciable Constitutional Policy of Governance in Nigeria' (2013) 7, 6 *IOSR Journal of Humanities and Social Science*, 13.
[120] See the Preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[19] *Ibid*

justice, lack of quality and basic education and poor medical facilities which all form part of the rights in Section II of the Constitution.

3.0 The Effects of Non-Justiciability Provisions in the Constitution 3.1 Effect of Cause of Action

The Supreme Court of Nigeria has defined the term 'cause of action' to mean, the bundle, or aggregate of facts that the law will recognize, as giving the plaintiff a substantial right to claim relief or remedy being sought. The factual situation on which the plaintiff relied to support his claim must be recognized by the positive law giving rise to a substantive right capable of enforcement or being chained against the defendant. [121] The point deducible from the above definition is that the totality of the plaintiff's case (claim) must be under a positive law.

Hence, the factual situation on which he relied, to support his claim must be recognized by a positive law applicable in Nigeria, as giving rise to a substantive right which can be enforced by the court. Where no such recognition is in essence, then the action is held to have revealed no reasonable course of action. The effect of this position is that the statement of claim will be struck out and the action dismissed.[122] Hence, the court in applying the maxim*, ubi jus ibi remedium*, follows the law; it does not apply the maxim arbitrarily or slavishly. Though the maxim means that where there is a wrong, there is a remedy; the wrong in respect of which the court will enforce or grant a remedy or relief, must be recognized as a wrong by the law (positive law). It must constitute a wrong in the eyes of the law, and would not merely be a moral wrong. For instance, in the Tort of Negligence, the mere proof of damage that arose from the defendant's negligent act does not suffice. It must also be shown that the defendant owed a legal duty (duty affixed by positive law, as distinct from moral duty) to the plaintiff, the breach of which gave rise to the injury or damage suffered. The injury suffered must qualify as a legal injury, not merely a moral injury.

In the light of the ouster clause contained in section 6(6)(c) of the Constitution,[123]it appears that there will be no redress or judicial remedy for an aggrieved person who happens to prove some injuries to him arising from public corruption, hunger, unemployment, abject poverty, poor education, poor medical facilities/services, unhealthy environment, poor conditions of work, poor road networks etc, directly or directly flowing from the progressive failure of all or some organ(s) of government, and person(s), exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of Chapter II of this Constitution. Thus, such claim or proof will go to no issue as long as the factual situation giving rise to the issue(s) or question(s) in such a suit is as to whether any act or omission by any authority or person or as to whether any law or any judicial decision conforms with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the Constitution.[124]

The non-justiciability school of thought therefore believes that the cause of action that would have been resolved in such a suit has been swallowed up by the ouster clause in section 6(6)(c) of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

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[121] Cookey v Fombo[2005] 15 NWLR (Pt. 947) 182.
[122] Cookey v Fombo, *supra*.
[123] The Constitution of Federal Republic of Nigeria, 1999 (as amended).
[124] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 6(6)(c).

3.2 Effect of Locus Standi

In its leading judgment, in the case of *PAM v Muhammed*[125] the Supreme Court of Nigeria, on the meaning of *locus standi*, held, *inter alia*, that the term *locus standi* denotes the legal capacity to institute proceedings in a court of law. It is used interchangeably with terms like standing or title to sue. It is the right of the party to appear and be heard on a question before any court or tribunal.[25] The capacity and right which a party must have to institute an action and to be heard on a question before the court is legal, and not moral or natural. In other words, the relevant capacity or right is that which is conceded, fixed, or recognized by positive law. Hence, where, for instance, the legal capacity or right of a person to sue is removed or suspended by positive law, then the person would lack the relevant legal standing or title (*i.e. locus standi*) to bring the levant action(s). Also, where a moral or natural capacity or right to contend a matter exists, such does not confer *locus standi,* save when or if such moral or natural capacity or right is recognized by the Government or State using the instrumentality of positive law.

On the meaning and connotation of locus standi, the Court of Appeal in *Sodipo v Ogidan,*[126]stated inter alia that, *locus standi* denotes the legal capacity to institute proceedings in a court of law.It is an aspect of justiciability and also an issue of jurisdiction. The fundamental aspect of *locus standi* is that it focuses on the party seeking to get his complaint before the court and not on the issues he wishes to have adjudicated.[127]The implication of the foregoing is that where a person is bereft of locus standi concerning a particular matter, the person cannot sue thereon. If the person insists, and 'smuggles' the matter into the court, that matter is more likely to be struck out or dismissed. Now we come quickly to the nexus of *locus standi* with the subject of this research work and its effect on the said subject. We submit that the Constitution, though *sui generics*, is a manifestation and form of positive law; it is the chief of all positive laws in every given polity, the *fons et origo* in every legal system wherein the Constitution binds all persons and authorities, and enjoys primacy and supremacy over all other laws.

We have repeatedly noted in this work that in Nigeria, the Constitution binds all persons and authorities and enjoys primacy and supremacy over all other laws. It therefore follows that where for instance, the legal capacity or right of a person to sue is limited, removed, or suspended by the Constitution, the people would lack the relevant legal standing or title (i.e. *locus standi*) to bring the relevant action(s) on the relevant issue(s) or question(s). That is exactly what the nonjusticiability school of thought opines and contends that section 6(6)(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has done. In effect, the legal duties imposed on the state (the federal, state and local government) via the provisions of Chapter II of the Constitution have been set at naught (rendered redundant) by the ouster clause contained in *Section 6(6)(c)* of the Constitution of Federal Republic of Nigeria, 1999 (as amended), thus the said ouster clause has practically stripped the people of Nigeria of the legal right to sue anyone who violates or breaches the legal duties specified in Chapter II of the Constitution. The duties of the state

[125] [2008] 16 NWLR (Pt. 1112) 1 SC.
[25]Per Oguntade, JSC.
[126] [2007] ALL FWLR (Pt. 393) 67 at 93, paras. A – B.
[127] See also *Adesanya v The President of Nigeria* [1981] 1 NCLR, [1981] 5 SC 112, [1981] 12 NSCC 146, [1981] 2 NCLR 358, [1985] 5 SC 113.

specified in Chapter II of the Constitution do not therefore confer correlative rights to sue (*locus standi*) an aggrieved persons or body of persons.

3.3 Effect on Jurisdiction of Courts

The competence of any court in Nigeria to entertain or hear any matter brought before it is fixed and determined by positive law, not by natural law or moral law. In legal parlance, this competence is otherwise termed jurisdiction. Jurisdiction is the competence or power of a court to decide a case or issue a decree.[128] Jurisdiction is fundamental to the exercise of judicial powers. It is the life-wire or spinal cord that a court must possess or have to enable it to exercise judicial powers in a matter. Where a court is bereft of jurisdiction on a matter, it should decline (further) adjudication on that matter. The reason for such a decline is that the law is trite and settled that the question of jurisdiction is a fundamental issue and that any decision reached without jurisdiction is a nullity.

It was held in the case of *Madukolu v Nkemdilim*[129] that before a court can exercise jurisdiction in respect of any matter, certain elements must exist, to wit:

1. The court must be properly constituted as regards the number and qualification of the members of the bench and no member is disqualified for one reason or the other;
2. The subject matter of the case must be within the jurisdiction of the court, and there must be no feature in the case that prevents the court from exercising its jurisdiction; and
3. The case must have come before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

The point here is that these essential elements of jurisdiction are fixed and determined by positive law (including the Constitution). The essential elements fixed by rules of positive law are not altered or affected by sentiments, natural law, or morality. Hence where a court is *prima facie* bereft of jurisdiction, the parties cannot by consent confer jurisdiction on the court.[130] It therefore follows that by section 6(6)(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), any issue or question bothering on the fundamental objectives and directive principles of state policy set out in Chapter II of the Constitution would constitute a 'feature in the case which prevents the court from exercising its jurisdiction[131]

The submission on this point summarizes that where a matter is non-justiciable, the court is robbed of its jurisdiction since that non-justiciable matter would most likely constitute a 'feature in the case which prevents the court from exercising its jurisdiction' which is one of the conditions that must be met for the court to properly assume jurisdiction in every matter as enunciated in the case of *Madukolu v Nkemdilim*.[132]More so, the non-justiciable status of Chapter II of the Constitution and the effect thereof on the jurisdiction of courts appear to have received judicial certification in the case of *Archbishop Anthony Okogie v. AG Lagos State*,[133]where it was held *inter alia* that:

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[128] BA Garner(ed), *Black's Law Dictionary* (8th edn, Minnesota: Thomson West Publishing Co., 2004) p. 867.
[129] (1962) 2 SCNLR 341.
[130] *F.A.B.S Ltd. v Ibiyeye* [2008] 14 NWLR (Pt. 1107) 375.
[131] *Madukolu v Nkemdilim,* supra.
[132] Supra.
[133] [1981] 2 NCLR 337 at 350.

while Section 13 of the Constitution[134] makes it a duty and responsibility of the judiciary among other organs of government to conform to and apply the provisions of Chapter II, section 6 (6) (c) of the Constitution[135] make it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear therefore that section 13 has not made Chapter II of the Constitution justiciable.

4.0 Attitude of Nigerian Courts to Chapter II of the Constitution

There is no clear-cut position of the court in Nigeria on the justiciability or otherwise of Chapter II provisions. Some precedents uphold justiciability in certain contexts, just as other precedents declare the same Chapter non-justiciable. However, the point may be made that where nonimplementation of specific socio-economic benefits is concerned, the predominant attitude of the Nigerian courts is the tendency to associate themselves with the non-justiciability school of thought and so hold that Chapter II is non-justiciable.

On the other hand, the courts have held that the provisions of Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) are justiciable where:

1. The implementation of any of the provisions of the Chapter (Chapter II) infringes on any of the fundamental rights provided for under Chapter IV of the Constitution, particularly on the right of the private sector to establish private schools, to impart ideas and information, and
2. Where statutes enacted under Item 60(a) of the Exclusive Legislative List to actualize Chapter II provisions are challenged or questioned.

5.0 Where Enactment of Legislation Based on Chapter II is Challenged

The courts in Nigeria tend to hold that Chapter II is justiciable in instances where statutes based on actualizing Chapter II provisions are challenged. Thus, in Attorney General of *Ondo State v Attorney General of the Federation & Ors.,*[136]the Ondo State Government, on the principle of federalism, challenged the constitutionality of the enactment of the Corrupt Practices and Other Related Offences Act under which the Independent Corrupt Practices and Other Related Offences Commission was established to fight corruption throughout the country, including through prosecution of alleged offenders. Recall that section 15 (5) of the 1999 Constitution[137] which donates power to the state (the government) to abolish all forms of corrupt practices is contained under Chapter II of the Constitution. The Supreme Court, per Uwaifo, JSC, justified the enactment of the Act on the Fundamental Objectives and Directive Principles of State Policy, borrowing from the Indian jurisprudence, as follows: Every effort is made from the Indian perspective to ensure that the Directive Principles are not a dead letter. What is necessary is to see that they are observed as much as practicable to give cognizance to the general tendency of the Directives. It is necessary therefore to say that our situation is of peculiar significance. We do not need to seek uncertain ways of giving effect to the Directive Principles in Chapter II of our Constitution. The Constitution itself has placed the entire Chapter II under the Exclusive Legislative List. By this, it simply means

[134] *Ibid*
[135] *Ibid*
[136] Supra
[137] *Ibid*

that all the Directive Principles need not remain mere or pious declarations. It is for the Executive and the National Assembly, working together, to give expression to any one of them through appropriate enactment as occasion may demand. In a similar breath, in *AG Lagos State v. AG Federation*[138], the Supreme Court held that the National Assembly was competent to enact the Federal Environmental Protection Agency Act for the protection of the environment, in furtherance of Chapter II. The above two cases confirm an alternative route by which Chapter II could be enforced in the face of the court's general reluctance to enforce the Chapter.

6.0 Contradictions, Deception, and or Judicial Cowardice in Nigeria

Sections 6(6)(c) and 13 of the 1999 Constitution together with Item 60(a) of the Exclusive Legislative List appear to be contradictory in their respective provisions and or positions vis-à-vis the justiciability or judicial enforceability of the provisions of Chapter II of the Constitution. It is worrisome to us what the amendment of the ouster clause contained in section 6(6)(c) could be. If the duties/obligations that the Constitution pretends to impose on the government are in effect deliberately declared to be without any liability, then one may safely opine that the provisions, as magnificent/beautiful as they appear, are but for fancy or are deceptively inserted into the Constitution.

This paper submits that there is a need for an urgent review of the Constitution to cast out every seeming deception contradiction and or judicial cowardice which hinders or obscures the justiciability of those beautiful provisions contained in Chapter II of the 1999 Constitution. Meanwhile, judicial officers in Nigeria are humbly called upon to put on the robe of judicial activism to give effect to the provisions of Chapter II of the Constitution rather than allow that chapter to stand in the Constitution as mere window dressing or wishful thinking. Judicial cowardice should be shunned because such passivism especially vis-à-vis the justiciability of socio-economic rights in Nigeria may result in non-enjoyment or partial enjoyment of the rights set out in Chapter IV of the Constitution.[139] Human rights encompasses socio-economic rights and in that light, the Courts can find proper legal grounds to stand upon in giving effect (enforcing) the provisions of Chapter II of the Constitution.[140] It is the function of judges to keep the law alive, in motion, and to make it progressive to arrive at the end of justice, and to find every conceivable, but acceptable way of avoiding narrowness that spells injustice.[141] Short of being a legislator, a judge, to our mind must possess such an aggressive stance in interpreting the law because it is dangerous and would be tragic to reduce judges to a sterile role and make an automation of them.[42]

7.0 Challenges to the Successful Implementation of Socio-economic Rights in Nigeria Though one cannot ignore the fact that the availability of resources plays an important role in a state's ability to protect and enforce socioeconomic rights, it has been observed and contended that the

[138] [2003] 12 NWLR (Pt. 833) 1 SC
[139] The Constitution of Federal Republic of Nigeria, 1999 (as amended).
[140] *Ibid*
[141] Nnamuchi O**,** Ezeilo J & Anozie M**,** 'Justiciability of Socio-economic Rights in Nigeria and Its Critics: Does International Law provide any Guidance?' *The Age of Human Rights Journal,* pp. 137-164, 19 (December 2022), DOI: 10.17561/tahrj.v19.756. [42]C Odinkalu, 'Lawyering for a Cause: The Imperative of Justiciability of Socio-economic Rights in Nigeria' in Falana, F. and Aborisade B. (ed.) *The Imperative of Justiciability of Socio-economic Rights in Nigeria: Lecture in Honour of Femi Falana, SAN*. Lagos: Centre for Labour Studies (2013).

requirement of resources does not, of itself, necessarily mean that socioeconomic rights cannot be justiciable.

It is found in this paper that one challenge militating against the protection and enforcement of socio-economic rights in Nigeria is ignorance resulting from illiteracy and lack of basic or quality education. There is no doubt that education is essential in the fight for, and the exercise of human rights. In that regard, people require a certain minimum level of education to know their rights and how to enforce them. One cannot enjoy or enforce rights that one is not aware of. This is particularly crucial concerning the enjoyment and enforcement of socio-economic rights.

Additionally, another challenge to the protection and enforcement of socio-economic rights which has been noted particularly in Nigeria is corruption. Although Nigeria, through certain legislations, has set up anti-corruption agencies/institutions, these have not solved the problems of corruption as monies are being embezzled and misappropriated continually.[142] Monies being stolen from government coffers and hidden in individual/private coffers, bribery in the public and private sectors, corruption in the judiciary, and embezzlement of public funds are good examples of practices that lead to violations of socio-economic rights. It is therefore observed, that the struggle to enforce and protect socio-economic rights and the campaign against corruption share a great deal of common grounds and attention, as the misappropriation, embezzlement, and misuse of public funds meant for the provision of economic and social services all fall within the province of corrupt practices. Little wonder that in countries where corruption is rampant, human rights violations (especially denial of socio-economic rights) also abound. In such countries, any talk of the protection and enforcement of socio-economic rights is rather meaningless because the leaders are looters of national wealth and resources that are meant for the protection and enforcement of socio-economic rights. The challenge of corruption has been difficult to tackle. The outgoing administration has provided the institutional and legal framework by establishing the AntiCorruption Commission and the Economic and Financial Crimes Commission. Although the latter organization has been criticized as being too partisan in the performance of its duties, no one can claim that it has not been a 'thorn in the flesh' of corrupt officials in the private or public sectors. To strengthen these organizations, it is recommended that the enabling legislation be amended to guarantee their financial and operational independence. Unless and until public officials know that their actions in and out of government could be the subject of investigation, accountability, and transparency levels will continue on a downward spiral.

Poverty and ignorance are formidable inhibitions on the path to realizing socio-economic rights.[143] Many Nigerians struggle to meet the basic requirements of food, clothing, and shelter. Some literarily live from 'hand to mouth'. It is therefore inconceivable for this category of Nigerians to look in the direction of the courts. For the ignorant, enlightenment and empowerment are important tools. Civil society groups must play a role in mobilizing and organizing the poor and deprived populations like SERAC did to engage the government where necessary. *Morka* argues, in this

[142] L Adedoyin Isola and others, 'Towards Achieving Millennium Development Goals (MDG) in Nigeria: Prospect and Challenges' Journal of Economics and Sustainable Development, 3 (3) 74. [2012].

[143] Nigeria is ranked 158 of the 177 countries on the UNDP's 2005 Human Development Index. The 2005 Human Development Report paints a grim picture of Nigeria's state of development. According to the Report, 70,2% of Nigerians live below the poverty line. See http://www.hdr.undp.org.

regard, that poverty eradication warrants the evolution of 'processes that enable the poor and other marginalized groups, communities or nationalities to participate in both envisioning and shaping outcomes on matters that concern them'.[144]

Similarly, another challenge is the issue of massive rigging of elections and high levels of electoral malpractices thereby leading to the emergence of leaders who are not true representatives of the people and whose plan is to loot the national wealth and spend the same upon their diverse lusts. This has significantly affected the protection and enforcement of directive principles and or socioeconomic rights even in Nigeria.

One notable challenge faced in Nigeria and common to the other jurisdictions, is the legal framework for the enforcement of these rights. This is termed the 'Constitutional Framework Challenge'.[145] The Constitutions of most of the states do not expressly vest the Courts with the power to decide upon issues relating to socio-economic rights. The Constitutions of many of the countries merely provide for these [or some of these] socio-economic benefits/rights as mere directive principles without making [express] provisions for [protecting] its justiciability under the Constitutions. The only exception in this regard is the Constitution of South Africa. Akin to the above challenge is the attitude of the courts in Nigeria. The courts as noted in this work have generally been reluctant in deciding issues that border on socio-economic rights. The South African Courts however stand out in this regard as the courts have in several ways decided this issue. In fairness to the attitude of courts of other African countries reviewed, their Constitutions do not empower them to decide issues on socio-economic rights.[146]

However, the Constitutions also provide a leeway to resolve this issue. The leeway here is that the provisions on directive principles are contained in other provisions of the Constitutions, it would be enforceable that way. Secondly, most of all of these countries have ratified many of the abovediscussed international legal instruments on socio-economic rights. It therefore means that what is left in the meantime to make it enforceable is the active posture of the courts, in other words, judicial activism.

The challenge of monitoring and enforcement is one for the National Human Rights Commission and human rights NGOs. The Commission was established by the Human Rights Commission Act of 1995 to, inter alia, create an enabling environment for extra-judicial recognition, promotion, and enforcement of all rights recognized and enshrined in the Constitution and under the laws of the land. It was also designed to provide a forum for public enlightenment and dialogue on human rights issues. Unfortunately, it is limited by its dependence on the executive for the appointment of key officers and funding. It is therefore recommended that the Commission's Act be amended

[144] F Morka 'Combating Poverty through the International Human Rights Framework'; Morka and the Social and Economic Action Rights Centre v. Nigeria. ACHPR/COMM/A044/1 African Commission on Human and Peoples' Rights. (May 2002).

[145] L Adedoyin Isola and others, 'Towards Achieving Millenium Development Goals (MDG) in Nigeria: Prospect and Challenges'; [2012]3 (3) *Journal of Economics and Sustainable Development*, 74.

[146] D C Dakas, 'A Panoramic Survey of the Jurisprudence of Indian and Nigerian Courts on the Justiciability of Fundamental Objectives and Directive Principles of State Policy' in Epiphany Azinge & Bolaji Owasanoye, eds, Justiciability and Constitutionalism: An Economic Analysis of Law (Lagos: Nigerian Institute of Advanced Legal Studies Press, 2010) 262.

to make it financially and operationally independent to guarantee efficiency and effectiveness. NGOs have been active in monitoring violations of civil and political rights, but very few have bothered to monitor violations of socio-economic rights. It is therefore recommended that more NGOs should focus on these important human rights, without which civil and political rights lack any significant meaning.

The indifference of the international community is one that Nigeria can do very little about. The challenge is to embrace African Charter provisions on socio-economic rights, and expand and create the necessary mechanisms for protecting them. Happily, Nigeria has escaped the debt burden. The government must use resources otherwise reserved for debt servicing and repayment to improve the living standard of Nigerians.

Finally, one essential factor that largely restricts the realization of socio-economic rights in Nigeria is the high level of tribal conflict, religious intolerance/crises (including politically motivated religious crises), and or political strife. In Nigeria, a lot of crises such as the Niger Delta crisis, the Boko-Haram crisis in the north, the Jos crisis, etc also in one way or another other affect the protection and enforcement of socio-economic rights. There is no doubt that such conflicts lead to widespread human rights violations, economic decay, and poverty. Inevitably, this leads to economic collapse as economic activities are abandoned, infrastructure is destroyed and social services are disrupted or neglected. Moreover, conflicts lead to death, disability, and poor health.

Conclusion

From the foregoing discussion, we found that sustainable development is achievable through the instrumentality of adequate constitutional protection of socio-economic rights and directive principles in the Constitution of Nigeria just as in those of the European countries and South Africa. This work therefore noted that there is no adequate constitutional and or legal framework put in place in Nigeria to protect socio-economic rights to develop or sustain the little existing development. The historical antecedent of Nigeria and her constitutional evolution reveal that there were and are still gross human rights violations, and poverty amidst plenty, of human and material resources in Nigeria. Yet, Nigeria is still under-developed or finding it difficult to sustain the existing meager developments. This therefore justifies the clamours and clarion calls for adequate constitutional protection of socio-economic rights.

From the existing legal framework to protect socio-economic rights in Nigeria and the other African countries surveyed, one can see that South Africa stands out. This is because the socioeconomic provisions are made justiciable in South Africa unlike Nigeria, which has merely provided most of such rights in their Constitutions as directive principles and rendered it nonjusticiable by an ouster clause in the Constitution. Comparatively speaking, South Africa provides the most conducive constitutional climate for the constitutional protection and enforcement of economic, social, and cultural rights, followed by India and, then, Ghana in a pitiably decreasing order of quality. The judicial attitude to the justiciability of these is, in any case, sacrosanct. Extrajudicial protection or promotion or enforcement of socio-economic rights in Nigeria appears to us to command little or no prosperity and there is an urgent need to chart a course of solution.

In terms of prospects, the future is seen to be bright as democracy, which thrives on constitutionalism, rule of law, political pluralism, religious tolerance, and interest in/independence

of the judiciary and judicial process is now in place in Nigeria. However, the challenges to realizing adequate protection of these rights are enormous. All these contribute in no small measure to the realization of sustainable development through socio-economic rights thereby retarding the development of the countries under review and its sustainability. Where these challenges are surmounted, there would be sustainable development through the instrumentality of socioeconomic rights.