



ASSESSING THE IMPORT OF SOCIO-ECONOMIC RIGHTS BEYOND JUSTICIABILITY IN NIGERIA

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Abstract

Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN 1999) embodies obligations of Government which is usually translated to mean socio-economic rights. The chapter is titled “Fundamental Objectives and Directive Principles of State Policy” but the enforceability of the obligation/rights therein are ousted by the operation of section 6(6)(c) of the CFRN 1999. Incidentally, the African Charter on Human and Peoples’ Rights (hereafter called African Charter) which, inter alia, encapsulates socio-economic rights have been ratified and incorporated as part of Nigerian legislation in compliance with section 12 of the Nigerian Constitution. By the incorporation of the African Charter into the Nigerian legal system, its provision are, therefore, enforceable by courts of law in Nigeria. However, the principle of supremacy of the constitution has been invoked to support the perspective that provisions of chapter II of the Constitution that have equivalent provisions in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act have been caught up by the operation of section 6 (6) (c) of the CFRN. In other words, rights not justiciable under the Nigerian Constitution cannot be made justiciable under the African Charter on Human and Peoples’ Rights (R&E) Act. This study sheds more light on the controversy and argues that, Nigerian Courts can dare to be creative in ascribing justiciability to socio-economic rights espoused in the African Charter by placing reliance on the validity and independence of the ACHPR (R&E) Act. The paper concludes that beyond the justiciability of Economic Social and Cultural Rights, government in Nigeria must play its role of ensuring compliance with judicial pronouncements and verdicts that uphold socio-economic rights of Nigerians to attain the desired and meaningful impact.

Keywords: Economic Social and Cultural rights, justiciability, Fundamental Objectives.

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Introduction

Economic Social and Cultural rights (ESCR) are commonly provided for in international, regional and municipal laws. These rights which include: the right to education, adequate standard of living, right to health care, security and are codified in the International Covenant on Economic, Social and Cultural Rights,¹ Universal Declaration of Human Rights,² the European Convention on Human Rights and African Charter on Human and People's Rights.³ In Nigeria, the ESCR are provided for in two major statutes: the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (herein after referred to as CFRN) and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁴ (hereinafter ACHPR Act). Whereas the provisions of the CFRN that provide for the ESCR are nebulous, equivocal and open to multiple interpretations, the equivalent provisions under the ACHPR Act are clear, unequivocal and unambiguous in defining the contents as rights. Thus various conflicting arguments have ensued as to whether ESCR are provided for in the CFRN and whether they are enforceable in view of the provisions of the CFRN and notwithstanding the provisions of the ACHPR Act.

This study seeks to illuminate the arena of conflict and underscore the importance of ESCR as a viable strategy towards improving the living standards of the majority of Nigerians. The first part examines the provisions of the CFRN regarding the ESCR and the interpretations given by the courts in view of its provisions. The second part articulates the ESCR in the ACHPR and discloses the legitimacy, validity and independence of the ACHPR, Act. The third part argues that the provisions of the ACHPR are not in conflict with the provisions of the CFRN and as such remains valid. The fourth part points out that the ESCR is a veritable tool for national development because its realization would advance the collective lot of the Nigerian people. The paper concludes that the Nigerian Government owes a duty to the Nigerian people to obey its courts' orders and double its efforts towards the realisation of national development.

¹International Covenant on Economic, Social and Cultural Rights (ICESCR), UNTS 993, p.3, entered into force 3 January 1976.

²Universal Declaration of Human Rights 1948 (UDHR) adopted 10 December 1948.

³*African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, (1982) 21; I.L.M. 58 (entered into force on 21st October 1986) (ACHPR)

⁴*African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*, 1983, cap A9, Laws of the Federation of Nigeria, 2010.



Economic Social and Cultural Rights

ESCR have been defined as those rights that “relate to the realisation of basic human needs and include subsistence rights or basic rights.”⁵ Simply put, these are the range of human rights that oblige governments to promote the welfare and well-being of her citizens and they include the rights to social security, adequate health, education, living conditions and adequate shelter which are encapsulated in the International Covenant on Economic Social and Cultural Rights.⁶ They exact some obligations from the government to serve the people who established them. This category of rights are also referred to as second generation rights or positive rights because they require positive actions, or duties from the Government. For instance, for the right to education to be fulfilled, it requires significant commitment of funds on the part of the government to provide basic free education; it costs the US Government approximately \$20, 000,⁷ the UK Government £4, 200 per child,⁸ to provide free education every year. In the United States, this translates to roughly \$680 Billion per year.⁹ In the Federal Republic of Germany, the right to adequate housing is enforceable.¹⁰ Consequently, government provides social housing for citizens who are unable to afford adequate housing and these rights are enforceable.¹¹ The ESCR make citizenship meaningful in the sense that they are the live wires through which citizens realize happiness; they connect the citizens to their government in a delicate way and as such

⁵ Amanda Cahill-Ripley and Diane Hendrick, *Economic Social and Cultural Rights and Sustaining Peace: An Introduction*, (Friedrich-Ebert-Stiftung, Quaker United Nations Office, and Lancaster University, 2018), 13.

⁶International Covenant on Economic, Social and Cultural Rights (ICESCR), UNTS 993, p.3, entered into force 3 January 1976.

⁷Changing America, <https://thehill.com/changing-america/enrichment/education/3516518-free-college-how-do-you-pay-for-it/#:~:text=The%20cost%20of%20providing%20free,%246.82%20trillion%20in%20federal%20spending.>

⁸ Christine Farquharson, Luke Sibieta, Imran Tahir and Ben Waltman, ‘2021 Annual Report on Education Spending in England,’ <https://ifs.org.uk/publications/2021-annual-report-education-spending-england> last accessed on 31st January, 2023.

⁹Changing America, (n 7).

¹⁰ Federal Republic of Germany, Contribution by the Federal Republic of Germany to the Special Rapporteur on the responsibilities of sub-national governments with respect to the Right to Adequate Housing’ available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/sub-nationalgovernments/Germany.pdf> last accessed on 31st January, 2023.

¹¹*Ibid.*



invokes, the spirit of patriotism in citizens whose loyalties turn in the event that those rights are not guaranteed.

The ESCR are so crucial to the life and well-being of the citizens that they are often linked to the right to life. Accordingly, violation of the ESCR also amounts to the violation of the right to life. In *Mohini Jain v. State of Karnataka &ors*,¹² the petitioner was denied admission because she could not afford the exorbitant fees that was charged by a private Medical College. The fees charged was enabled by a notification issued by the Government. The petitioner contended that her rights to education had been violated by virtue of the said notification but the respondent opposed the arguments of the petitioner on the basis that they were not making profit and that the fees were not exorbitant. The Indian Supreme Court held that, “the dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings-forth the dignity of a man... an individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him.”¹³ The court further held that “the right to education flows directly from right to life. The right to life under article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.”¹⁴

Obviously, the Indian Supreme Court could not accept the reasoning that the right to education, which is an ESCR could be divorced from the right to life which is often referred to as civil and political right. This reasoning is consistent with the Vienna Declaration and program of Action, 1993 which declared that all rights are interdependent, interrelated and indivisible. This position is beginning to gain recognition in the Nigerian legal system. Thus, in *Gbemre v. SPDC*,¹⁵ a Nigerian court held that the violation of the right to a healthy environment amounted to the violation of the right to life. It is therefore, important to view human rights, whether ESCR or civil and political rights as indivisible whole. Separation or division of the rights with the aim of guaranteeing one category over the other should be discouraged.

¹² (1992) AIR 1858, 1992 SCR (3) 658

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ (2005) 6 AHRLR 152.



Economic Social and Cultural Rights under the Constitution of the Federal Republic of Nigeria

The ESCR are not expressly provided for in the Nigerian Constitution; they are usually inferred from the provisions of Chapter II,¹⁶ which is tagged, ‘Fundamental Objectives and Directive Principles of State Policy.’ The chapter opens with section 13 which commands obedience to its provisions in the strictest terms. It provides that, “it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive and judicial powers, to observe and apply the provisions of this chapter...”¹⁷

The next section affirms that sovereignty belongs to the people and that security and welfare shall be the primary purpose of government.¹⁸ the remaining sections follow the tone of the opening section by enumerating the duties of government to provide security, promote welfare and common good. The sections impose on government, the duty to provide education at all levels, when practicable, adequate health care facilities for citizens, *et cetera*. The duties essentially fortifies section 14 which declares that security and welfare shall be the primary purpose of government. In short, the remaining provisions under the chapter codifies the duties of government. Section 15 of the CFRN, for instance imposes a duty on Government to provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation. This provision is taken to mean that citizens have a right to adequate facilities for transporting goods and services. A similar approach is accorded to section 17 (3) (d) of the CFRN which provides that “the state shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons;” and section 18 (1) of the CFRN which provides that, “[g]overnment shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels” to produce the effect that citizens have the right to adequate health facilities and education respectively.

¹⁶Obiaraeri, NnamdiOnyeka, *Human Rights in Nigeria: Millenium Perspective*, (Lagos, Perfect Concepts, 2001), 94, stating that, “for every right there is a correlative duty,” and arguing that the duties of government provided under chapter II translate to rights albeit unenforceable.

¹⁷ CFRN, s. 13

¹⁸*Ibid*, s. 14.



Scholars, argue that duties are on the flip side of human rights; that where there is a right, a duty inheres.¹⁹ Pieterse is of the view that where rights are provided for in the constitution, they automatically translate to obligations for the political arms of government which are the executive and legislative arms of government.²⁰ In alluding to the simplicity of the logic that rights are on the flip side of duties, Wellman states that, “to say that one person has a right is to allege no more than that someone else has a duty, so presumably the best account of rights will be nothing more than a mirror image of an accurate account of duties.”²¹ Accordingly, it is safe to say that those duties contained in chapter II of the CFRN translate to economic, social and cultural rights for citizens of Nigeria. It is, therefore, common place for writers to hold the view that ESCR are contained in chapter II. Akinseye-George, for instance, advances the view that those duties contained in Chapter II of the CFRN actually translate to human rights.²²

However, section 6 (6) (c) of the CFRN provides that, “except as otherwise provided by this Constitution, judicial powers shall not extend to any issue or question as to whether any act or omission by any authority or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.” In effect, this means that those duties enumerated in Chapter II, however they are construed, whether as rights or duties, courts have no powers to inquire into a question which seeks to determine whether those duties or rights have been performed or fulfilled. Following this reasoning, the Court of Appeal held in *Archbishop Olubunmi Okogie v. Attorney-General of Lagos*,²³ that the Fundamental Objectives and Directive Principles of State Policy contained in chapter II of the Constitution, could not be upheld to invalidate a law which impugned on the right to education which was considered to be subordinate to fundamental rights contained in chapter IV of the CFRN. The Supreme Court also toed this line of reasoning in *A-G Ondo v. A-G*

¹⁹Marius Pieterse, ‘Legislative and Executive Translation of the Right to have Access to Health Care Services, *Law Democracy and Development* (14) (2010); 3, noting that, “the constitutional presence of socioeconomic rights mandates the political branches of government to progressively translate them into demandable entitlements.”

²⁰*Ibid.*

²¹ Christopher Heath Wellman, Feinberg’s two Concepts of Rights, *Legal Theory II* (Cambridge University Press, 2005); 213, available on: <https://researchoutput.csu.edu.au/ws/portalfiles/portal/8723304/10676.pdf>, last accessed on 1st February, 2023.

²² Y. Akinseye-George, *Improving Judicial Protection for Human Rights in Nigeria* (Abuja: Centre for Socio-Legal Studies, 2011), 43, arguing that the duties of governments translate into rights for citizens.

²³(1981) 2 NCLR.

*Federation*²⁴ when it held that if Government intended to enforce a part of chapter II of the CFRN, it would take a further step by enacting that intention into law. This, without doubt is a harbinger for poor accountability in the distribution of the common wealth of the people of Nigeria as a rigid application of section 6 (6) (c) is capable of ‘stultifying that chapter of the CFRN.’²⁵Okeke, for instance does not consider the contents of chapter II to be rights; he refers to them as guidelines which directs the efforts of government.²⁶

However, it can be argued that since section 13 of the CFRN specifically provides that, it “shall be the duty of all organs of government... to conform to, observe and apply the provisions of this chapter of the Constitution,”²⁷ it can be said that the obligation arising is mandatory. It is trite in the Nigerian legal system that when the word, ‘shall’ is used in a statute, it is deemed that the legislature intended to make the duty mandatory.²⁸ In *Buhari v. INEC*, it was held that,

when the word “shall” is used in a statute it connotes the intendment of the legislator that what is contained therein must be done or complied with. It does not give room for manoeuvre of some sort, or evasiveness. Whatever the provision requires to be done must be done, and it is not at all negotiable...²⁹

The principles of interpretations simply suggest that the Nigerian Government have no room for evasiveness in terms of discharging the crucial obligations enshrined in chapter II of the CFRN. We consider this position valid even in view of the provisions of section 6 (6) (c) of the CFRN. This is because section 6 (6) (c) uses the phrase, ‘except as otherwise provided by this Constitution,’ meaning that the CFRN actually envisages the mandatory burden imposed by

²⁴(2002) 27 WRN, 160.

²⁵OluAwolowo, *Fundamental Objectives and Directive Principles of State Policy as Panacea for National Transformation and Sustainable Development*, Journal of Law, Policy and Globalization (2017) (65), 25.

²⁶ G.N. Okeke, *The Fundamental Objectives and Directive Principles of State Policy: A Viable Anti-Corruption Tool in Nigeria*, *Nnamdi.Azikiwe Journal of International Law and Jurisprudence*, vol. 2, (2011); 175, noting that, “[t]hese objectives merely provide a guide to any government in power in Nigeria and contain essential needs of the people in Nigeria on political, economic, social, educational, foreign policy, environmental, cultural, media, national ethics matters and duties of citizens.

²⁷CFRN, s. 13.

²⁸*ArabaShitta Dada & 8 ors v. AdeniranAdedokun Ventures & 6 ors* LER[2019]CA/L/578/2014

²⁹*General MuhammaduBuhari v. Independent National Electoral Commission (2008) LPELR – 814 (SC); Melaye v Tajudeen (2012) 15 NWLR (Pt. 1323) 315. Fidelity Bank Plc v Monye (2012) 10 NWLR (Pt. 1307) 1, Adeosun v Governor Ekiti State (2012) 4 NWLR (Pt. 1291) 581, Dantata v Mohammed (2012) 8 NWLR (Pt. 1302) 366.*

section 13 which uses the word ‘shall’ to prescribe the obligations of government. In other words, the operation of section 6 (6) (c) was not intended to trump the mandatory obligation imposed by section 13. It is, therefore, actually logical in our view to conclude that ESCR are enforceable even as it stands in the CFRN.

Economic Social and Cultural Rights (ESCR) in the African Charter on Human and Peoples Rights

The African Charter on Human and Peoples’ Rights (ACHPR) was successfully adopted by the Organization of African Unity (now African Union) in 1981. It is a regional human rights instrument which seeks to promote and protect human rights and basic freedoms in the African continent. By the dictates of this Charter the justiciability and enforceability of ESCR among other rights is guaranteed because the Charter is generally understood to impose a threefold obligation – to “respect,” “ensure” and “fulfil”– on State parties.³⁰ Accordingly, states are obliged to do more than enact the Charter into law but to ensure that it produces results. That was the recommendation of the African Commission on Human and Peoples’ Rights in *Association of Victims of Post Electoral Violence & Interights v. Cameroon*.

Fortunately, Nigeria, in compliance with section 12 of the CFRN, has domesticated the ACHPR and same is now tagged, ACHPR (Ratification and Enforcement) Act.³¹ It unequivocally guarantees the ESCR. Thus, in *Abacha v. Fawehinmi*³² the Supreme Court held that the ACHPR (Ratification and Enforcement) Act, was a valid statute and that its contents were enforceable albeit inferior to the CFRN. In that case, the rights that were in contention were the right to personal liberty and freedom of movement which are equally guaranteed by the CFRN; hence it was not extraordinary to obtain the ruling of the court in favour of the respondents. Reservations are, however, often expressed when the right sought to be enforced in the ACHPR is an ESCR.

³⁰ Communications No. 272/03, *Association of Victims of Post Electoral Violence & Interights v. Cameroon*, para 119; Communications No. 245 (2002), *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, para 171; *Barigha-Amange v. Adumein*(2016) 13 NWLR (pt.1530) 349 at 385.

³¹African Charter on Human and Peoples’ Right (Ratification and Enforcement) Act.

³² (2000) NWLR (pt. 600)



This situation is set against the background of the principle of Constitutional supremacy³³ meaning that since the CFRN is supreme law in Nigeria, a law which seeks to make justiciable that which is not justiciable by the CFRN will be ineffective. Enemo and Olorunfemi are of this view which they argued by saying that “although some of the provisions of the African Charter are also in chapter II of the constitution, unlike the fundamental rights in chapter IV, these economic, social and cultural rights of the African Charter are not enforceable because of their non-justiciability.”³⁴

But this argument overlooks the fact that the ACHPR Act of 1983 is a valid law independent of the operation of the CFRN. In *Abacha v. Fawehinmi*,³⁵ the Supreme Court held that upon the domestication of the ACHPR Act, the law “becomes binding and our Courts must give effect to it like all other laws falling within the Judicial power of the Courts... the African Charter is now part of the laws of Nigeria and like all other laws the Courts must uphold it.”³⁶ The court further remarked that since the law has international obligation inherent in it, it is presumed that the legislature does not intend to breach it. Further, the court agreed with the Court of Appeal that the Charter possesses "a greater vigour and strength" than any other domestic statute.³⁷

It is further submitted respectfully that even if Chapter II of the CFRN fell outside the scope of judicial powers, it does not mean that every law having similar provisions must suffer the same fate. Section 6 (6) (c) of the CFRN is specific in its language. It refers to the Fundamental Objectives and Directive Principles of State Policy (albeit with a clause which contemplates the force of section 13 of the Constitution) and no more. It is therefore surprising when writers force the condemn the ACHPR to the fate of chapter II of the CFRN. It is gratifying that legal jurisprudence is gradually building up to support the view that the ESCR in the ACHPR are enforceable notwithstanding the provisions of the CFRN.

³³ Constitution of the Federal Republic of Nigeria, 1999 (as amended) s. 1 (1) & (3) which provides that the Constitution is supreme and that any law that is inconsistent with the provision of the CFRN will, to the extent of the inconsistency be null and void.

³⁴Ifeoma P. Enemo and John Funsho Olorunfemi, Human Rights and National Development in Nigeria, Law and Policy Review vol. 2 (2011), 38.

³⁵6 (NWLR) 228, (2002) 3 LRC 296.

³⁶*Ibid.*

³⁷*Ibid.*



In *SERAP v. FRN*,³⁸ the petitioner approached the ECOWAS Court of Justice praying for the enforcement of the right to education of Nigerians. The petitioner invoked the ACHPR to fortify their arguments that the right to education was justiciable in Nigeria. The Federal Government of Nigeria objected on the basis that similar provisions in the CFRN are made non justiciable by the provisions of section 6 (6) (c) of the CFRN and as such, the ACHPR could not supersede the CFRN. The ECOWAS Court rejected the argument of the Federal Government of Nigeria and found for the petitioner. Furthermore, in the Fundamental Rights Enforcement Procedure Rules (FREPR) of 2009, the Chief Justice of Nigeria promulgated the procedure for enforcing rights contained in the CFRN and those contained in the ACHPR. Order II Rule 1 of the FREPR provides that,

“[a]ny person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress...”³⁹

What this means in effect is that a person who believes that his ESCR have been, are being or will be violated, and those rights are protected under the ACHPR, such a person has the liberty to approach the High Court for redress. The FREPR does not discriminate between the rights contained in the CFRN and those in the ACHPR. One can then say that the ESCR are actually enforceable in Nigerian courts. Although a cloud of controversy hovers over the enforceability of ESCR in Nigeria, those rights are justiciable in Nigeria by virtue of the ACHPR (Ratification and Enforcement) Act. It is safe to say that the decisions of the ECOWAS Court of Justice in *SERAP v. FRN* and the Supreme Court in *Abacha v. Fawehinmi* collectively provide a good spring board for the enforcement of ESCR in Nigeria. This also serves as the background upon which the

³⁸ Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria and Universal Basic Education Commission, No. ECW/CCJ/APP/0808.

³⁹ Fundamental Rights Enforcement Procedure Rules, 2009, Order II Rule 1.

Court in *Gbemre v. SPDC &ors*⁴⁰ was decided. In that case, the applicant sought to enforce his fundamental rights by praying the court to declare that his right to life and those of the community he was representing, that is to say Iwherekan Community in Delta State, Nigeria, was being violated in view of gas flaring by the respondent. Thus, the applicant applied for a declaration of the court to the effect that his right to life also included his right to a clean and healthy environment. In short, the court accepted his prayer and held that his right to life included the right to a clean environment and that the continuous flaring of gas constituted a violation of his right to life and that of the people in the community.⁴¹ This decision is a bold step in the right direction which other judicial officers are enjoined to emulate even though courts in Nigeria are somewhat reluctant to adopt the liberal and purposeful approach to the interpretation of the ESCR in the CFRN.⁴² It has also been opined that the courts are under obligation to construe the rights into justiciable legal claims in view of the provisions of the African Charter⁴³ as being exemplified in other jurisdictions.⁴⁴ To do otherwise, would be tantamount to continued denial of Nigerians the needed mechanism to hold government accountable to their social and economic responsibilities. It is in this respect that we say in our considered opinion, that constitutional justice can be a yardstick to usher into Nigeria, the much desired democratic progress in terms of education and health care which are fundamental components of rapid economic development of a nation.

The Importance of Economic Social and Cultural Rights

The Fundamental Objectives and Directive Principles of State Policy as encapsulated in Chapter II of the CFRN, serves multi-dimensional purposes. It serves as a yardstick for measuring the performance of government and facilitating the realization of the civil and political rights, an accountability mechanism, an impetus for national development and a live wire for strengthening judicial functions.

⁴⁰(2005) AHRLR 151

⁴¹*Ibid.*

⁴² Anthony O. Nwafor, 'Enforcing Fundamental Rights in Nigerian Court: Processes and Challenges' in African Journal of Legal Studies; for further reading

⁴³ L. Stewart, 'Adjudicating Socio-Economic Rights Under Transformative Constitution'. 20 *Penn State International Law Review* (2009) 506

⁴⁴ObiajuluNnamuchi, *Rethinking Justiciability of Socio-Economic Rights in Nigeria: A Critique of the Dominant Position*, Centre for Health, Bioethics and Human Rights, December 20, 2012

Chapter II of the Constitution of the Federal Republic of Nigeria as a Benchmark for measuring and Inspiring the Performance of Government

The ESCRs constitute a viable benchmark that a State like Nigeria can adopt and rely upon to monitor and regulate the welfare and standard of living of its people. Therefore, these rights are veritable tools for attaining adequate standard of living, basic human needs such as food, clothing and housing for the citizens. Awolowo is also of a similar view. According to him, “the directive principles of State Policy could also serve as the yardstick for measuring the performance of government at all levels, be it local, state or federal government especially in a multi-party system.”⁴⁵ It is a compass which guides government in charting the path of development and realizing the collective happiness of the Nigerian people. Restricting its application in line with section 6 of the CFRN is, therefore, undesirable and counter-productive to the growth of the nation and has regrettably continued to deny the Nigerian citizens the fundamental basis for a constructive evaluation of government’s efforts at fulfilling its primary obligations as provided for in section 14 (2) (b) of the CFRN which provides that “the security and welfare of the people shall be the primary purpose of government.”⁴⁶

Chapter II of the Constitution of the Federal Republic of Nigeria Facilitates the Fulfillment of Civil and Political Rights

There is no gainsaying that the enjoyment of civil and political rights significantly depends on the protection of ESCR and as such interrelated.⁴⁷ This point was emphasized in *Mohini Jain v. State of Karnataka &ors*,⁴⁸ where the Indian Supreme Court held that civil and political rights cannot be realized unless the ESCR are fulfilled. For instance, the right to life would be meaningless if the right to shelter and health care were denied. Thus, in *SERAP v. FRN*, the applicant argued before the Economic Community of West African States (ECOWAS) Court that

⁴⁵Awolowo, op. Cit. 26.

⁴⁶CFRN, s. 14 (2) (b).

⁴⁷ Daniel J. Whelan, Untangling the Indivisibility, Interrelatedness and Interdependence of Human Rights, Economic Rights Working Papers Series, (Human Rights Institute, University of Connecticut, 2008) 1; LanseMinkler and Shawna Sweeny, On the Indivisibility and Interdependence of Basic Rights in Developing Countries, *Human Rights Quarterly* vol. 33, (2011) 353, acknowledging that linkages between human rights do exist.

⁴⁸ (1992) AIR 1858, 1992 SCR (3) 658

poor accountability and corruption in the institutions in charge of education was the leading cause of decay in the infrastructures and systems of education in Nigeria. In this context, that argument translates to canvassing the argument that the failure to enforce section 15 (5) of the CFRN, which mandates the state to “abolish all corrupt practices and abuse of power” is the prime suspect for the violation of the right to education in Nigeria. Accordingly, if the ESCR were adequately protected, accountability measures would have become better secured and the quality of life of citizens would improve.

Chapter II of the CFRN as Instrument for National Development

The above postulations underscore the importance of human rights as a tool for national development. The United Nations also utilizes human rights as a tool for development. In 2003, the Secretary-General of the United Nations, Kofi Annan, directed that human rights should be integrated into all of the UN interventions. Consequently, the UN Children Fund (UNICEF) implemented the directive by issuing a Guideline on the Rights Based Programming.⁴⁹ Subsequently, *the UN developed a ‘Common Understanding’* at an Inter-Agency Workshop on human rights-based approach, in the context of United Nations reform held on the 3rd to 5th of May 2003,⁵⁰ *for the implementation of the human rights-based approach.* It is the ESCR that makes citizenship meaningful, otherwise, one would be better off fending for oneself in the hinterlands. The CFRN 1999 itself is open to being interpreted in such a way that it becomes a major restraint to the attainment of the socio-economic well-being of the Nigerian people.⁵¹ So, if the ESCR were not justiciable, the consequences would be retarded development and non-accountability by the government to its populace.

Chapter II of the Constitution of the Federal Republic of Nigeria will Protect the Sanctity of the Judiciary

⁴⁹ Tobin John, “Understanding a Human Rights Based Approach to Matters Involving Children: Conceptual Foundations and Strategic Considerations,” in *The Human Rights of Children: From Vision to Implementation*, ed. Antonella Invernizzi and Jane Williams (Surrey, Ashgate Publishing Limited, 2011), 62.

⁵⁰ United Nations, “The Human Rights-Based Approach; Statement of Common Understanding,” last accessed on June 1, 2017, <http://www.unicef.org/sowc04/files/AnnexB.pdf>.

⁵¹ Olaniyi Olayinka, ‘Implementing the Socio-Economic and Cultural Rights in Nigeria and South Africa: Justiciability of Economic Rights in African Journal of International and Comparative Law, 27(4), p.564.



The guarantee of ESCR as fundamental rights will strengthen the position of the judiciary as guardian of the CFRN which is the ordinary duty of courts. In *Abdulkarim v. Incar Nig. Ltd.*⁵² the Supreme Court espoused the role of the judiciary which includes a regulatory function over other arms of government. It remarked *per* Nnaemeka-Agu JSC that, “it is the role of the Supreme Court to ensure that all the arms of government play their roles in the true spirit of the principles of separation of powers as provided for in the CFRN.”⁵³ Thus, it is natural for the courts to perform regulatory roles otherwise the other arms of government would run amok. It has been further declared by the Supreme Court in *Safekun v. Akinyemi&Ors*⁵⁴ as follows:

It is essential in constitutional democracy such as we have in this country, that for the protection of the rights of citizens, for the guarantee of the rule of law, which include according to fair trial to the citizen under procedural irregularity, and for checking arbitrary use of power by the executive or its agencies, the power and jurisdiction of courts under the Constitution must not only be kept intact and unfettered but also must not be nibbled at... Indeed, so important is that preservation of and non-interference with the jurisdiction of the Courts that our present Constitution has specifically provided in S.4(8) that neither the National Assembly or House of Assembly shall enact any law that ousts or purports to oust the jurisdiction of a Court of law or a judicial tribunal established by law.⁵⁵

Thus, it follows to argue that no democracy can thrive where the jurisdiction of courts are circumscribed in relation to the human rights of the citizens. In other words, the protection of human rights is tantamount to arrogating to the judiciary the powers that are inherently due to them.

Chapter II of the Constitution of the Federal Republic of Nigeria reflects Nigeria’s Disposition to International Law

⁵² (1992) 7 NWLR(pt. 251) 1, (1984) 10 SC 1.

⁵³ *Ibid.*

⁵⁴ (1980) 5-7 SC, p.25.

⁵⁵ *Ibid.*

The status of the rights contained in chapter II of the CFRN is a statement by Nigeria regarding its obligations in international law. Nigeria's obligations arise from the Universal Declaration of Human Rights (UDHR), ICESCR, the ACHPR and many other treaties. These treaties or Charters require Nigeria to uphold and fulfill the ESCR. The provision of Chapter II does not seem to help in that direction. Therefore, Nigeria should make effort to improve its standing in international law by deleting section 6 (6) (c) of the CFRN. It may, however, be argued that the section 6 (6) (c) of the CFRN is reminiscent of article 2 of the International Covenant for Economic Social and Cultural Rights⁵⁶ (ICESCR) which states that,

each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.⁵⁷

This provision opens gaps for government to escape obligations. For instance, it states that state parties may adopt measures that would allow it to 'progressively' achieve its obligations under the Covenant. This means that state parties are not obliged, in the eyes of the ICESCR to achieve the immediate realization of the ESCR. This is capable of diminishing the effect of the Vienna Declaration and Program of Action which declared that human rights are interrelated, indivisible and interdependent. Be that as it may, Nigeria is also under the obligation imposed by the ACHPR to respect, ensure and fulfill the ESCR.

Conclusion

Although the justiciability of ESCR is essentially hinged on the ACHPR, it remains an enforceable right in Nigeria. This is in spite of the provision of the CFRN which casts confusion on the issue of enforceability of the ESCR and the decisions of court that have adopted the restrictive approach of interpretation. Citizens who want to enforce their ESCR are at liberty to

⁵⁶ICESCR, article 2 (1).

⁵⁷*Ibid.*



approach the court using the FREPR but this also depends on the willingness of the court to adopt a more liberal approach in interpreting the CFRN. The justiciability of ESCR will ultimately empower the judiciary to make the executive and legislative arms of government more accountable for the equitable distribution and use of natural resources to the benefit and well-being of the Nigerian people. Undoubtedly, ascribing justiciability to socio-economic rights will lead to the improvement of the well-being and standard of living of the citizenry and ultimately facilitate rapid improvement in the quality of education and health care. It would also accelerate the realization of the Fundamental Objectives and Directive Principles of State Policy. Therefore, recourse to liberal interpretation by courts in Nigeria on the justiciability and enforceability of socio-economic rights is a forward thinking approach as the well-being and standard of living of Nigerians will improve tremendously.