

NON-JUSTICIABILITY AND ENFORCEABILITY OF CHAPTER II OF THE NIGERIAN CONSTITUTION AS AN IMPEDIMENT TO ENJOYMENT OF ECONOMIC RIGHTS AND DEVELOPMENT*

Abstract

The whole of Chapter II of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (made up of 12 sections spanning sections 13 to 24) contain the political, economic, social, cultural and developmental rights of the citizens. However, this chapter is non-justiciable by virtue of section 6 (6) (c) of the same constitution. Examination of the implications of such non-justiciability shows that citizens cannot obtain redress from the courts if denied their socio-economic, developmental and other rights provided for in this Chapter of the Constitution. It is therefore a formidable impediment to socio-economic development. Furthermore, continuation of non-justiciability of Chapter II CFRN may result to lack of development and non-accountability by the Executive and Legislative arms of government, without any hope of a successful judicial challenge. It is further found that some other African countries and India now have provisions to allow Courts to adjudicate on socioeconomic rights relying on the African Charter on Human and Peoples Rights which should be applicable in Nigeria. It is recommended that Nigeria repositions to correct this aberration and allow for justiciability of this Chapter of the constitution in order to facilitate socio-economic development.

Keywords: Non-justiciability, justiciability, Constitution Impediment, Socio-economic rights, Development.

1. Introduction

It is a truism that provisions of Constitutions of most democratic countries remain the organic laws, the supreme laws and the *grundnorm* from which every other law must originate or be rooted. More so the provisions of such constitutions have binding force on all authorities, institutions and persons, such is the position in the Nigerian Constitution (FGN 1999) as held in *FRN v Ifeagwu*¹, to the extent that where any law or act that is inconsistent with the provisions of the constitution, it is to the extent of any inconsistency null and void². Any Nigerian constitutional provision which is made non-justiciable ought not to be in the constitution so that the Courts can carry out their constitutional duties of interpretation of the law inclusive of the constitution. Non-justiciability of Chapter II means that the courts cannot adjudicate on any provisions of Chapter II, thus such provisions cannot be interpreted. This situation leads to limitation to development and accountability of the government. Non-justiciability presupposes limitations on the organ of government entitled to interpret the constitution, which is the judiciary. It further amounts to denial of the rights (albeit; the economic rights) of Nigerian citizen who upon infringement of rights as provided in chapter II CFRN 1999 ought to seek redress in Courts of law. Such is simply an aberration since the Constitution is not just the Supreme law or *grundnorm*, but also the organic (living) law that must be progressive in order to achieve social justice, development as well as eschew corruption.

More so, the constitution as Supreme law of the nation ought to grow as the nation grows, as held in *Oyewunmi v Ogunesan*³. In the present era of issues of rights and development, no economic and/or social rights provisions in any constitution ought to be made non-justiciable, otherwise, the government cannot be held accountable to the people which in turn must propagate corruption and hinder development. Moreover, nation's constitution is the social contract between the government and the governed, targeting good governance, social justice, guaranteed peace, security and development of the people. Taylor of University of Bradford opines that there are constitutional issues where the courts seek to restrict the powers of the state, that such conflicts highlight the importance of an independent judiciary as part of existence of separation of powers⁴. Any Legislative or Executive legislation which ousts the power of the court to interpret any constitutional provision is not desirable to be in the constitution.

2. Explanation of Key Terms

For the purpose of clarity, some key terms are hereunder explained.

Non-justiciability

This cannot easily be defined, but is rooted in justiciable, whereby the Black's Law Dictionary (Garner 1990) explained justiciable to mean Developing Country Studies. Any issue to be examined in court of justice, subject to action in a Court of justice as held in *International Harvest Hat Co.v. Caradine Hat. Co* tried in a Court of law

*By Priscilla Ngozi NNAWUBA, PhD, Dean, Faculty of Law, Gregory University, Abia State. Tel: 08037578367.

Email:priscillannawuba@gmail.com

¹ (2003) Nigeria Weekly Law Report (NWLR) pt. 798.

² Section 1(1) (3) of the 1999 Constitution as amended

³ (1996) 3 NWLR (pt 137) 182

⁴ C. Taylor, *Constitutional and Administrative law 2nd Ed.* England, Pearson Education Ltd., 2010..

for presentation of real interests instead of hypothetical or abstract ones. Therefore, non-justiciable simply means inability of any court of law to try any matter even where real interest and rights are being infringed. This definitely is against the spirit and objective of any good constitution in a democratic dispensation; where the rule of law and separation of powers of the arms of the government should prevail.

Justiciability

The term 'Justiciability refers to the ability to claim of remedy before an independent and impartial body when a violation of right has occurred or is likely to occur. Justiciability implies access to mechanisms that guarantee recognized rights.

Constitution

The Nigeria Supreme Court has in *FRN v Osahon*⁵ posits that the constitution of any country is the embodiment of what a people desire to be their guiding light in governance, their supreme law, fountain of all their laws. As such, constitution is not at any given situation expected to or presumed to contain ambiguity. All its provisions must be given meaning and interpretation even with the imperfection of the legal drafts man. Common sense must be applied to give meaning to all its sections and articles. The power to give such meaning and interpretation rests with the courts of law in Nigeria. Therefore, non-justiciability of Chapter II of the Nigerian Constitution 1999 as amended, to say the least, breeds ambiguity and ousts the constitutional powers of the judiciary to interpretation of the laws in protecting the rights (albeit the economic rights) of the citizens as well as allow the courts to perform their constitutional duty to act as a check on the other arms of government, to prevent arbitrariness as well as encourage accountability in governance.

Impediment

It refers to something that obstructs or delays the progress of a thing⁶. It further relates to an obstacle to achieving any objectives⁷.

Economic Rights

These are rights provided for in Chapter II of the CFRN 1999⁸ under the Fundamental Objectives and Directive Principles of the State Policy of the economic, social and cultural rights, otherwise referred to as Policy Directives Rights generally, and mostly non-justiciable, government claims that it is difficult to implement due to lack of funds⁹. 'Rights' means those things of which no one may be deprived of without a great affront to justice and God. Schuler (1997) posits that rights represent demands and claims which individuals and groups make on society, some of which are protected by law and have become part of the nations' laws (*Lex lata*) or municipal law, while others remain aspirations to be attained in future. Furthermore, it has been posited that human rights in its widest connotations, embraces those civil, political, economic, social, cultural group, solidarity and development rights which are considered indispensable to meaningful human existence¹⁰.

Development

Development is the gradual growth aimed at advancement and strength. Rodney presents the many-sided processes of development: at the level of individual - as implying increased skilled capacity, greater freedom and material well-being. Further, he states that a society develops economically as its members increase their capacity for dealing with their environment which entails exploiting the resources of nature¹¹. Rodney opines further the question of development that:

In contrast with the surging growth of the countries in the socialist camp and the development taking place, albeit much more slowly in contrast to majority of the capitalist countries, is the unquestionable fact that a large proportion of the so-called under developed countries are in total stagnation and due to exploitation, that the rate of economic growth is lower than that of population.

⁵ (2006)10 NWLR (pt 674) p. 264

⁶ A.S. Hornby, *The Oxford Advance Learners' Dictionary*, (Oxford, Oxford University Press), 2006

⁷ I. Brookes, *The Chambers Dictionary* (India, Chambers, Harrap Publishers Ltd., 2006.

⁸ Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24

⁹ O.V.C Ikpeze, *The Chambers Dictionary* (India, Chambers, Harrap Publishers Ltd .2008; O V C, Ikpeze, Right to Education: Case of the Rural Poor and Globalization in Nigeria, *Journal of Women and Minority Rights* (JWMR) Vol.1 Nos. 1. 2008.

¹⁰ O. Eze, *Human Right in Africa*, Some Selected Problems Nigeria (N.I.A.L.S.) MacMillan Nig. Publishers. 1984, p.5.

¹¹ W. Rodney, *How Europe Underdeveloped Africa* London Boyle – Looverture.1976.

His postulation is apt with the intentions to make justiciable the economic rights provisions in the Nigerian Constitution. This Rodney captures by stating that development was universal when conditions leading to economic expansion were universal.

3. Methodology

Data for this study was obtained by a critical study of the Constitution (CFRN 1999) as amended, from Court pronouncements, journals, books and internet resources.

4. The Justiciability of Constitutional Provisions

The term 'Justiciability refers to the ability to claim of remedy before an independent and impartial body when a violation of right has occurred or is likely to occur. Justiciability implies access to mechanisms that guarantee recognized rights. Justiciable rights grant right-holders a legal course of action to enforce them whenever the duty-bearer does not comply with his or her duties. The existence of the legal remedy-understood both in the sense of providing of procedural remedy (effective access to an appropriate court or tribunal) when a violation has occurred or imminent, and the process of awarding adequate reparation to the victims of defining features of a fully fledged right. The Nigerian constitution mandates the three organs of government namely the legislature, executive and judiciary to observe, conform and apply the fundamental objectives and directive principles of state policy. In *Archbishop Olubunmi Okogie v. A.G. of Lagos State*, it was held that:

The fundamental objectives identify the ultimate objectives of the nation and the Directive Principles lay down the policies which are expected to be pursued in the effort of the nation to realize national ideals while section 13 of the constitution 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 same constitution makes 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 Principle of State Policy. It is clear therefore, that section 13 has not made Chapter II of the constitution justiciable'.

The case of *A.G. of Ondo State v. A.G. of the Federation and 35 Ors*, Is also instructive and illuminating in this regard. In that case the Supreme Court held that:

section 13 of the 1999 Constitution does not only impose a solemn duty to observe the mandate contained in chapter II on all organs of government and all authorities and persons exercising legislative, executive or judicial powers, but also on private individuals as well. The court rejected the argument that the section applies only to government officials and held that the argument does not take account of the undesirable fact that those organs do not operate entirely within their official cocoons. They do not, in performance of their duties act in isolation of the public.

The foregoing apart, there appears to be nobody overwhelmingly empowered for the purpose of enforcing these objectives. The absence of anybody or authorities saddled with the responsibility of enforcing the provisions of Chapter II constitutes a lacuna in the Nigerian constitution. Be that as it may, it is gratifying to note that despite this lacuna and of course, the non-justiciability clause, the provision of Chapter II may be justiciable under certain conditions. Firstly, it is within the legislative competence of National Assembly under the provisions of item 60(01) of the Second Schedule, Part 1 of the 1999 Constitution as amended or any part thereof for the promotion and enforcement of the fundamental objectives and directive principles contained in the constitution and to prescribe minimum standards of education at all levels. Thus, the provision of Section (6) (6)(c) is subjected to the legislative powers exercised by the National Assembly for the purpose of enforcing the provisions of Chapter II. In recognition of this the Court of Appeal in *Archbishop Anthony Olubunme Okigie & ors v. A.G. of Lagos State*, opines not only that 'the arbiter for any breach of the Objective and Directive Principles of State Policy is the legislature itself or the Electorate', but also that Chapter II is subject to legislative powers conferred on the state. Secondly, if a breach of the provisions of Chapter II also contributes an infringement of the provisions of Chapter IV, the former become justiciable as part of Chapter IV, if the facts constituting a violation of the former is on all fours with that of the latter. The enforceability of chapter II may be dependent upon Chapter IV. This has been referred to as an indirect approach to Justiciability. This indirect approach was employed by the High Court of Lagos State in the case of *Adewole v. Alhaji Jaokande* where the right to freedom of expression was held to encompass the right to establish schools in keeping with the provisions of Chapter II on the eradication of illiteracy.

The foregoing discourse on the justiciability of the provisions of Chapter II will not be complete without a highlight of the disheartening of retrogressive position of the law regarding an instance where an action for enforcement to based not on the provisions of the Chapter, but on the provisions of an International Instrument guaranteeing similar rights which Nigeria has domesticated. A good example is the African Charter on Human

and Peoples Rights (Ratification and Enforcement) Act. The law is as stated in *Abacha & Others v. Fawehimi*, where the court held: ‘that the African Charter on Human and Peoples’ Rights having been enacted into law in Nigeria by the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act was binding on the Nigerian courts and the rights and obligations enacted by it held enforceable’. In fact, the Federal High Court, per Nwodo J. (as he then was) has held that Chapter II rights such as the right to health of prison inmates can be enforced by the court via the provision of the African Charter which entrenches social and economic rights of individuals. These decisions notwithstanding, it is saddening to note that the charter, and indeed the municipal enactment, is subjugated to the supremacy provisions in Section I (3) of the 1999 Constitution, which makes any law inconsistent with the provisions of the constitution void to the extent of that inconsistency. The implication is that as these rights are consigned to Chapter II by the constitution, sections of the charter guaranteeing them would appear to be unconstitutional.

5. Non-Justiciability Constitutional Provision

This is elaborately provided in section 6 of the CFRN 1999. Section 6(1) provides thus: The judicial powers of the Federation shall be vested in the Courts to which this section relates, being courts established for the Federation.

Sections 6(6) provides that: the judicial powers vested in accordance with the foregoing provisions of this section; (a) Shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law; (b) Shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that persons; (c) Shall not, 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 is in conformity with the fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution. This section 6(6)(c) is therefore an aberration which, in a constitutional provision, rocks the root of its constitutionality and runs contrary to the preceding provisions of section 6 (a) (b) and indeed against public policy whereby a fundamental policy that cuts across economic rights purports to be created. It limits the extent to which the courts of law in Nigeria use their inherent powers to adjudicate on any matter and give sanctions where necessary to all matters between persons or between government, or authority and persons in Nigeria for the determination of any question as to civil rights and obligation of that person. Moreover, the Court of Appeal of Nigeria had in *Attorney General of the Federation (AG Fed) v Abubakar*¹² expounded the term; ‘Notwithstanding’ to mean without being affected by and in *Messin v Nwachukwu*¹³ the Court held that it means in spite of. The Supreme Court held in *NDIC v Okem Enterprises Ltd*¹⁴ that the word Notwithstanding is meant to exclude imaginary or impending effect of any other provision of the statute. ‘Notwithstanding’ used in Section 6(6)(a) of the Nigeria Constitution excludes any impending ouster of the inherent powers and sanctions of a Court of law, matter between persons or between government or authority and any persons in Nigeria. Section 6 (6)(c) purporting to oust the inherent powers and sanctions of a court in Nigeria on Chapter II is unconstitutional as well as an aberration.

Furthermore, in *A.G. Ondo State v A.G. Fed.*¹⁵ it is well established by Section 6 (6)(c) of the Constitution that rights under the Fundamental objective and Directive Principles of State Policy are not justiciable except as otherwise provided in the Constitution. See also *Okogie v A.G. Lagos State*¹⁶. The same court held ‘that the extent of the application of Fundamental Objectives and Directives Principles of State Policy (FODPSP) are meant for authorities that exercise legislative, executive and judicial powers only. Therefore, any enactment to enforce their observation can apply only to such persons in authority and should not be extended to private persons, companies and private organizations. This may well be so, if narrow interpretation is to be given to the provisions but it must be remembered that we are concerned not with the interpretation of a statute but a constitution which is our organic law or grundnorm. Any narrow interpretation of its provisions will do violence to it and will fail to achieve the goal set by the constitution as held in *Ishola v Ajiboye*¹⁷. In *Re A.G. Ondo* per Hon Justice Uwais JSC, the CJN as he then was, states on the issue of legislative competence of the National Assembly (NA) that:

The NA is competent to make laws to curb corruption by section 15(5) of CFRN 1999. He further stated that the Constitution of India has similar provisions to ours on Directive Principles of State Policy in Part IV thereof. That on the India case of *Mangru v Commissioners of Budge Bunde*

¹² (2007) 8 NWLR (pt 1035) 117

¹³ (1999) 6 NWLR (pt 605) 154

¹⁴ (2004)10 NWLR (pt 80) 107

¹⁵ (2002) 9 NWLR (pt 772)

¹⁶ (1981) NCLR 2187

¹⁷ (1994) 6 NWLR (pt 352) 506

*Municipality*¹⁸, where it was held that directive principles require to be implemented by legislation.

Therefore, it is incidental or supplementary for the National Assembly to enact the law that will enable the ICPC to enforce the observance of the provisions of section 15(5) of the Constitution. To hold otherwise is to render the provisions of item 60(a) – idle and leave the ICPC with no authority whatsoever. This cannot be the intendment of the Constitution. The writer states that this is judicial activism by the apex Court. It has pronounced section 15(5) under the FODPSP and gave example of the attitude of India Court since 1951. With reference to Section 15 under the FODPSP particularly S. 15(3) (a) provides that ‘the State is to: (a) Provide adequate facilities for goods and services throughout the Federation. (b) Secure full residence rights for every citizen in all parts of the Federation. (5) They shall abolish all corrupt practices and abuse of power. The vital questions are: 1) Whether Chapter II of the CFRN 1999 is an ouster clause. 2) Is it proper in a democratic constitution? 3) Where the answer is No why are its provisions still non-justiciable? To answer the above questions, the writer posits that, Chapter II of the CFRN 1999 is clearly an ouster clause which is improper in a democratic regime. Although the Supreme Court of Nigeria in *AG Fed v Sode*, Belgore JSC on what the reaction and position of the Court should be on any purport of ouster clauses, states thus:

the purport of ouster provisions in decrees is clear that is, no Court of law or tribunal should look into any matter. The Courts are so prevented from looking into. This is the peculiarity of the military regime, which makes the constitution subjected to their decrees. The original sources of jurisdiction is the constitution itself; but when a military regime by a decree promulgated ousts jurisdiction of courts or tribunals in any subject matter as provided by the constitution or any other law, the decree must be followed.

It must be noted that it is trite that the courts of law guard their jurisdiction jealously so as to make sure it is not tampered with or diminished by mischievous construction. What remains worrisome is the sneaking in of section 6(6) (c) into a constitution that will operate in a democratic regime. Thus, this clarion call for repeal of the ouster provision with reference to non-justiciability of Chapter II of the CFRN 1999 as amended. This is paramount as a democratic government (regime) must be accountable to the people as demonstrated by a community reading of section 15 (3) (a) (b) (5) set out above.

6. Chapter II of 1999 Constitution as Amended Otherwise Referred to as the Fundamental Objectives and Directive Principles of State Policy

This constitution issue can be found in Chapter II of the 1999 constitution as amended. They are stipulated in Sections 13 to S.22 of the constitution. It begins with the provisions that it shall be the duty of the all authorities and persons exercising a legislative, executives and judicial powers to conform to, observe and apply the provision of this chapter of the constitution. A quick look at this section points to the fact that, the provision of the constitution relating to the fundamental objectives and directive principles of state policy should be strictly adhered to. We should remember that Section 1 Chapter I of the constitution provides that the Constitution is supreme, and its provisions shall have binding force on all authorities and persons within the Federal Republic of Nigeria¹⁹. Chapter II sets out a synergy of rights and duties, which are supposed to be the roadmap that guides state policy, and act as barometer with which both government and citizens are judged. Therefore, it is evident that chapter II of the constitution is the social contract between Nigerian Government and its citizens. This social contract, lays out the minimum standard which if achieved would guarantee good governance, social justice, peace, security and national development. These provisions are not peculiar to 1999 constitution in Nigeria. In India for instance, courts have come to the conclusion that the purpose of the directive principles of state policy is to fix certain social and economic goals for immediate attainment. However, the rights and duties contained in sections 13 to S.22 of the constitution are said to be non-justifiable. To define justiciable, the Black’s Law Dictionary, defines justiciable as capable of being disposed of judicially. The Merian-Webster Dictionary defines justiciable as liable to trial in a court of justice or legal principles simply put. Justiciable issues are matters than can be bought before and determind by a court of law. See the case of *Ugwu. Ararume per Hon. Justice Mohammed J.S.C.* held ‘An enactment is justiciable if only it can be properly pursued before a court of law or tribunal for a decision. But where a court or a tribuna cannot enforce such enactment, it becomes non-justiciable. Take particular note of section 46 of the constitution: ‘Any person who alleges that any of the provisions of the Chapter in the Constituion has been is being, or likely to be contravained in any state in relation to, may apply to a high court in that state for redress’; Contrary to what obtained in Chapter IV, Chapter II rights and duties are non-justiciable

¹⁸ (1951) 87 CLJ 369

¹⁹ 1999 CFRN Chapter I Section 1

Section 14 provides for the government and the people; 'The federal republic of Nigeria shall be based on the principles of democracy and social justice. It is hereby declared that: a) Sovereignty belongs to the people of Nigeria b) Security and welfare of the people shall be the primary purpose of the government. c) The participation by the people in this government shall be insured in accordance with the constitution. d) It also provides that the top position of the government of the federation or its agency shall reflect the federal character of Nigeria.

Section 15 provides for political objectives: It provides that the motto of the federal republic of Nigeria shall be, 'Unity, faith, Peace and Progress'. For the purpose of achieving the motto, discrimination, on the grounds of place of origin, sex, religion, statues, ethnicity, linguistic association or ties, shall be prohibited. To achieve National integration, it shall be the duty of the state to: a) Provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation. b) Secure full residence rights for every citizen in all parts of the federation. c) Encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association. d) Encourage or promote formation of associations that cut across ethnic, linguistic, religious or other sectional barriers.

Section 16 provides for economic objectives: This provides that, the state shall within the context of the ideals and objectives for which this provides are made in this constitution: a) Secure maximum welfare, freedom and happiness of every citizen and the basis of social justice and equality of statues and opportunity. b) Provides for the rights of citizens to participate in areas of the economy. c) Provide the practice of every government to control the economy of the nation for the benefits of the citizens. a) It equally protects the right of every citizen to engage in any economic activities, outside the major sectors of the economy. The above provision has led to the conclusion that the economic system in Nigeria is a mixed economy.

Section 17 provides for social objectives: It provides that state social order is founded on ideals of freedom, equality and justice. It further provides as follows: a) Citizens shall have equality of right, obligations and opportunities before the law. b) Sanctity of human person shall be recognized c) Governmental actions shall be humane. d) Exploitation of human national resources, for whatever reason shall be prevented. e) The independence, impartiality, and integrity of courts of law and easy accessibility shall be maintained. For ensuring that these objectives are achieved, section 17 provides for ways to achieving social objective as follows: i) Without discrimination, citizens shall have adequate means of livelihood, ii) Conditions of war shall be just and commensurate iii) Health and safety in employment shall be safe guarded, iv) There shall be adequate medical facilities for all persons. v) Children, young persons and aged are protected against exploitation. vi) Family life is encouraged.

Section 18 provides for economic objectives: It provides for equal and adequate educational opportunities at all levels. It equally provides for: a) Promotion of science & technology b) Eradication of illiteracy. In order to achieve these objectives, the following principles are to be applied; i) Free, compulsory and universal primary education ii) There shall be free secondary education iii) There shall be free university education iv) Free adult literacy programme.

Section 19 provides for foreign policy objectives: It provides for the following: a) Promotion and protection of national interest, b) Promotion of and support for African unity, c) Promotion of international co-operation , d) Promotion of just world economic order.

Section 20 provides for Environmental objective: it provides that, the state shall protect and safeguard the environment, water, air and land, forest and wildlife. Section 21 provides for directives on cultural objectives: It provides for the following: a) Protect, preserve, promotes Nigerian cultures, which enhance human dignity. b) Encourage the development of technological and scientific studies, which enhance cultural values. Section 22 provides for the obligations of the mass media. The press, radio, television, and other agencies of the mass media, shall at all times, be free to uphold the fundamental rights contained in this chapter II and uphold the responsibility and accountability of the government, to the people. Section 23 provides for National Ethics: It provides that the National ethics shall be discipline, integrity, dignity of labour, social justice, religious tolerance, self-reliance, and patriotism. Section 24 provides for duties of the citizens: This provides for duties the citizens owe to themselves and to the government. a) Respect to the National, flag, anthem, pledge and legitimate authorities. b) Help to enhance the good name of Nigeria, defend Nigeria and render such national service as may be required e.g. NYSC c) Respect the dignity of other citizens and the rights and interest of others. d) Make useful contribution towards the development of the nation and community where he resides. e) Help to render assistance to lawful agencies in the maintenance of law-and-order f) Declare his income/honestly to appropriate and lawful agencies and pay his tax promptly.

The provision in section 6(6)(C) is contrary to the provisions in Chapter IV (Four) of the Constitution which ranges from Section 33-46 and can be tried in a court of competent jurisdiction. In fact section 46 of the constitution states categorically that any individual who feels or thinks that his rights has been, is being or will be contravened should approach the high court for justice. This means that the provisions in chapter four are enforceable and justiciable. Going by the provision of Chapter II of the constitution, one would think that it is enforceable, but it is not. The constitution in section 1 notes that the Constitution is supreme, meaning that everyone is expected to abide by the dictates of the constitution. Section 13 of Chapter II also states that government and its appointed officials should abide by the provisions in the Chapter II of the constitution. This alone is enough for individuals or group of persons to sue government on the bases of Chapter II of the constitution. However, in the same Chapter II, it was stated that no action can be brought against the government on the bases of the provision therein. This makes it practically non-justiciable.

7. The Importance of Chapter II

The opening provisions of this chapter of discourse leave no one in doubt as to the intendment of all of its provisions which basically relate to duties of the three arms of government to ensure conformity, observation and application of this chapter which is aptly referred to as the socio-economic or living provisions of the CFRN 1999. Analysis of its provisions definitely buttresses the points. What is more, subsequent provisions within the said chapter II maintain that: The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. While section 14(2) (a) provides that sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority. Section 14(2)(b) provides that the security and welfare of the people shall be the primary purpose of government. It must be noted that Sections 16, 17, 18 were very elaborate on the rights of the citizens to economic and social justice predicated on economic empowerment, equality before the law, governance, peace and security. The ready questions are; (i) How will the rights of the citizens be ensured if no court of law will enquire into the provisions of chapter II (ii) What is then import of equality before the law (iii) Where there is seeming unequal treatment or action, is it not the court that should pronounce on it (iv) What will guarantee good governance but demand for accountability even before the courts of law of any nation (v) Do subsequent provisions not over-ride the preceding ones? The writer opines that a community reading of sections 6(6)(a)(b)(c) and chapter II suggest that the Courts must be accessed by the citizens and when accessed ought to demonstrate proactivism on issues on provisions of chapter II of the CFRN 1999.

8. The Position of the Courts in Nigeria

The Courts in Nigeria are reluctant to venture and interpret liberally the provisions of Chapter II of the CFRN 1999. This was best demonstrated in *Okogie v The Lagos State*²⁰ where the Court of Appeal in interpreting Chapter II of the 1979 Constitution which is similar to Chapter II of the CFRN 1999 held as follows: 'The Fundamental Objectives identify the ultimate objectives of the nation and the Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals'. While section 13 of the constitution 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 same constitution ensures 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.

The Import of the African Charter on Human and People Rights Act (ACHPR) 1981

No doubt, the ACHPR contains rights which reference economic, social, cultural and development rights have been incorporated as part of the laws of Nigeria. This has somewhat emboldened the Nigeria Courts and other Courts to make decisions based on the African Charter. In *Odofo & Ors v AG Federation*²¹, the Court decided on the socio-economic rights of prison inmates to medicare based on the provisions of the ACHPR. In *Ubani v Director SSS*, the court held that the state has a responsibility to the entire inmate in the prison regardless of the offence. In *Socio-Economic Right and Accountability Project (SERPA) v FGN*, Plaintiff sued in the ECOWAS Community Court to compel government to enforce the right to education of Nigerians. The Defendant submitted that the right to education is non-justiciable by section 18 of the CFRN 1999. However, the Court held that the Directive Principles of State Policy of the FRN are not justiciable *per se* before the court and if they were, it should be heard at the Federal High Court of Nigeria, but that the plaintiff came under Article 17 of the African Charter which is justiciable in the Court as it is independent of the provisions of chapter II of the CFRN 1999. These are activism in action and the courts must be commended for her boldness. The status of human rights presently calls for specific legislation for justiciability of economic and social human rights in the Nigeria

²⁰ Supra

²¹ Supra

constitution. It will make it easier for the judiciary to carry out with ease its duty if interpretation of the Constitution. This is what South African has done as demonstrated in *Government of the Republic of South African v Grootboom* where the court held:

Their interconnectedness needs to be taken into account in interpreting the socio-economic rights and in particular in determining whether the State has met its obligations in terms of them. The South African court has buttressed the point emphasized by the African Charter that civil and political rights can only be realizable and enjoyable when economic and social rights are made equally important as such justiciable *per se*.

9. Findings

It is noteworthy that Chapter II of the CFRN contains the economic and social rights as provided in the International Covenant on Economic, Social and Cultural rights otherwise called the ECOSOC rights which forms part of the international Bill of rights. The ECOSOC rights are part of human rights. Even when such rights are not made fundamental as provided in chapter IV of the CFRN 1999, making such rights constitutional provisions make the rights worthy of being challenged in the courts of law to encourage good governance and accountability to the citizens as legal obligations. It is proper for Chapter II of the CFRN 1999 to be guaranteed as fundamental as demonstrated in the South African (SA 1995) and Uganda (Uganda 1995) Constitutions. It presupposes that questions must be asked on the provisions of chapter II and the Courts must interpret it to meet the justice of any situation. The inaugural address position of the former Chief Judge of India (Blagnati 1988) at all judges colloquium held in Bangalore becomes very instructive as he opines thus: *human rights depend fundamentally on right to life and personal liberty which is a core human right*. The right to life is now confined merely to physical existence but it includes also the right to live with basic human dignity, with the basic necessities of life such as food, health, education shelter etc. These human rights fall within the category of social and economic rights and they can be realized only by affirmative action on the part of the state and if the states fails to carry out its constitutional or legal obligations in enforcement of these human rights, it may have to be compelled to do so by an activist judiciary as demonstrated in *Education of Unnikrish J.P. v State of Andhra Pradesh*²², as also held in *Tellis v Boyibay*²³

Constitutional Comparison

India is a typical example of a country that has judicially made non-justiciable State Policy Directives justiciable as held in *Bharati v state of Kerala*²⁴ (where Hegede and Mukherjea JJ opine that. it aims at making the India masses free in the positive sense without faithfully implementing the Directive Principles, it is contemplated by the Constitution of India²⁵ It must be noted that the India Constitution has had 97th Amendment. The growth of human rights with particular reference to African has made some African countries remove categorization of human rights especially making State policy issues justiciable. The last South African case put to the fore the fact that the country has moved positive policies (affirmative action) to constitutional justiciable provisions. The Constitution of Uganda as amended (Uganda2005) has also made policy issue justiciable by declassification of fundamentality or particularization of some rights and de-emphasizing others²⁶. For example, Article 29 provides for protection of freedom of conscience, expression, movement, religion, assembly and association and article 30 provides for right to education. In Article 33 on rights of women; section 34 on rights of children. These are in consonance with provisions of Articles 14-18 of the ACHPR which has been incorporated as Municipal laws of Nigeria. Even affirmative action policies were made constitutional and justiciable and no rights were made non-justiciable. The writer opines that it is time Nigeria borrows constitutional amendment as demonstrated by South Africa and Uganda.

10. Discussion

There is no doubt that rights and human rights ensure to human beings simply for the reason of their humanity and efforts should be made to breach or bridge these right that at the out of agitations for rights issues the West the civil and political rights were made primus enterprise Societies which encouraged individual efforts for the benefit of the larger society otherwise called capitalism with legs emphasis on the community²⁷. Whereas the Eastern Europe (the erstwhile Soviet Union propagated socialism which asserts a collectivity with greater emphasis on economic, social and cultural rights. Currently other paradigms of rights have emerged and are still emerging²⁸. To resolve some of the contending issues, Kasel Vasak developed the generational theory of rights

²² (1992) SC AIR

²³ (1992) SC AIR 1858

²⁴ (1973) 4 SCC 225

²⁵ India (1950).

²⁶ S.A (1995).

²⁷ I.A Ayua et al (2000).

²⁸ N O, Obiaraeri (2001).

into three (3) generations²⁹. The first generation (liberation) in nature is known as the civil and political rights. The second generation is egalitarian in nature and deals mainly with the economic, social and cultural rights and often affects the standard of living of the citizens requiring most times government intervention. The third generations of rights related to solidarity among nations encouraging quests for independence of states. This is the often expressed slogan of liberty, equality and solidarity. This slogan noted the French revolution and encompasses synergy for the different approaches to rights issues resulting to the different approaches to rights issues resulting to the universality, interrelatedness, interconnectness indivisibility and fundamentality of all rights issues. All these three categorizations of rights are contained in the Universal Declaration of Human Rights 1948. However, it is worrisome that the Nigeria state in embracing human rights issue maintained a dichotomy between the Civil and political rights which has been domesticated since 1960 in the constitution of Nigeria under the fundamental human rights provision in the 1960, and 1963 Constitution but now provided in Chapter IV of the 1979 and 1999 justiciable per se in Chapter III. The economic rights appeared for the first time in the Nigeria constitution in the 1979 under Chapter II as Fundamental Objectives and Directive Principles of State Policy. Same provisions are repeated in the 1999 constitution of the Federal Republic but are non-justiciable up till date by the provision of section 6(6) (c) of the CFRN 1999 which is rather unfortunate. Interestingly, the observation and preservation of these non-justiciable rights from part of the oath of office of person exercising legislative and executive powers thus: that I shall strive to preserve the fundamental Objectives and Directives Principles of state policy contained in the constitution of the Federal Republic of Nigeria. Instructively, both the Oath of Allegiance and the Judicial oath for judges do not contain the preservation clause. The question, is could it be due to the concept of non-justiciability? The answer is answered in the positive and clearly demonstrates deliberate acts by the legislative and the executive arms of government to ensure the ouster of the court's jurisdiction with regard to chapter II of the CFRN 1999. The writer hereby posits that it is time Chapter II of the Nigeria constitution was made justiciable.

A comparative analysis proved that in other jurisdictions, the position of economic rights have transcended to the status of indivisibility and universality of all human rights. More so, it is seen the best way to curb corruption especially in Nigeria as in the *AG Ondo State and AG Federation*³⁰. The equity of justiciability of Chapter II of the CFRN 1999 can never be over emphasized. A scholarly jurist posited that equity is the ability to adopt the law of change in order to harmonies it with conscience so as to ensure justice. Justice is what Chapter II is all about particularly by section 14 therefore, the courts must use the African Charter on Human and People's Rights already domesticated to pronounce on chapter II of CFRN 1999. The Court ought to use expansive and integrative interpretation of justiciable rights as demonstrated by Lord Denning MR in *Parker v Parker*³¹, where he opined thus: 'If we do not do something just because it has never been alone before, the law will not develop while the rest of the world moves ahead. This would be bad for both'. The Courts must further adopt the concept of the Realist school of thought that 'what the courts say and nothings more pretentious are what is meant by the law' The Nigeria Courts must be boldly as assume their ousted jurisdiction with regards to provisions in Chapter II of the CFRN 1999. The time is now of only to curb or stem the looting of the Treasury of Nigeria and transfer of finances out of Nigeria which will yield to accountability. Great strength is founded in the writing by hongqing (2013) that Rights have played important role in empowering the China citizenry and judicial enforcement of human rights has been quite successful but given the fact that so many other strategies for corruption prevention have largely been unsuccessful and that there is little political will to tackled the problem as part of good governance, Constitutionally empowering the China citizenry with certain rights against government for corrupt activities may be against government for corrupt activities may be helpful there are systemic checks and balances that result in the intervention of the Courts. This is the time to make chapter II CFRN 1999 justiciable now.

11. Conclusion and Recommendations

Suffice it to say that the Nigeria Constitution is the supreme and organic law as well as the *grundnorm* from which all other laws most originate. Therefore any provision of the constitution especially as relating to economic and social rights, good governance that is not justiciable is undesirerous in the present human right implementation. It is suggested that Chapter II of the CFRN 1999 should be amended and made justiciable and section 6(6)(c) repealed. Such will guarantee all categories of rights as well as accord Nigerian citizens ideal constitutional rights and make government of Nigeria accountable to the people in accordance with the CFRN 1999. This will ensure good governance and sustainable development which is the goal of any democratic government. In the end justiciability of chapter II of the CFRN 1999 will remove the ouster clause in the CFRN which strictly speaking is an aberration. Suffice it to state that study has shown the indivisibility interwovenness of economic at the rights;

²⁹ Vasak (1977).

³⁰ Supra

³¹ (1970) AC 777

Thus, the full realization of the civil and political rights without the concomitant intended to fully enjoy the economic rights is impossible.

The following recommendations are made. The executive must as of urgent necessity embark on processes of making chapter II of the CFRN 1999 justiciable by presenting Executive Bill to that effect. It should demonstrate the political and conscious will to observe and the provisions of Chapter II of the said CFRN 1999 as if it were justiciable. The immunity clause in the CFRN 1999 should be removed for purposes of taking seriously the issue of accountability and to stem the overt (endemic) corruption in Nigeria. This will accord with the spirit of leadership by example. It should institute mechanism for annual subjection of the executive arm to assessment or corruption. This will encourage easy legislation of provisions of Chapter II into justiciable constitutional provisions. The legislature must wake up from its inertia and passivism. As a matter of immediate importance and urgency, it should commence repeal of section 6(6)(c) of the CFRN 1999. It should make chapter II fundamental by domestication of the International Covenant on Economic, Social and Cultural Rights (ICESCR or ECOSOC rights) 1966. There should also be amendment of other provisions of the CFRN 1999 to give sharp teeth on its chapter II. Establishment of a Constitutional Court is necessary so as to develop human rights (rights) jurisprudence. On the part of the judiciary, judicial activism is a desirable approach to remove any form of ouster clause in a democratic setting and guard its jurisdiction jealously. The Rule *in AG Ondo v AG Fed*³² must be external to other provisions of chapter II of the CFRN. There is need to borrow examples of Recovery of Courts' like India, South Africa and Botswana and inconsonance with the 1998 judicial colloquium in Bangalore India. The judiciary should carry out its duty of checking the Legislative and the Executive and refuse to be the lame duck among the three arms of government. The citizens be should be bold to challenge infringement of the rights provided in chapter II of the CFRN 1999 even by Public Interest Litigation (PIL). They should systematically lay claim to their socio-economic rights as provided in Chapter II CFRN 1999. Lawyers should aggressively engage in Public Interest Litigation (PIL) as one of the mechanisms to encourage legislation on justiciability of Chapter II CFRN 1999.

³² (2002) 7 NWLR (pt 772)