

ECONOMIC AND SOCIO-CULTURAL RIGHTS IN THE DEMOCRATIC GOVERNANCE OF NIGERIA: ENFORCEMENT MECHANISMS BEYOND JUSTICIABILITY*

Abstract

This paper discusses the unusual perspective of the purpose of including Economic and Socio-Cultural Rights (ESC) in the Constitution of Nigeria. The focus of the paper is to analyse these fundamental objectives of the state as a constitutional guide for the making of political manifestoes and subsequent formulation of governmental agenda for implementation rather than a subject matter of justiciability in court. The methodology employed is doctrinal approach by examining the basic and detailed provisions of the 1999 Constitution (as amended), available literature for and against the concept of justiciability. The paper recommends that it is better for all political parties contesting elections to be guided by the provisions of Chapter II on Economic and Socio-cultural Rights(ESC) in the making of their manifestoes and agenda. It argues that the enforcement of Chapter II is dependent on the state of the nation's economy, the reality of the objectives and available resources. Thus, the question of absolute justiciability of the chapter clamoured for over the years may not be realistic after all.

Keywords: *Economic, Socio-cultural, Rights, Justiciability, Nigeria*

1. Introduction

In any democratic governance, there is need for a proper focus, vision and mission that will drive the art of governance towards achievements beneficial to its citizens. The Fundamental Objectives and Directive Principles of State Policy define the focus of Nigeria as a state.¹ Just like any organization will have its constitution providing for aims and objectives,² it is usually the most crucial aspect of any constitution as it deals with the reason of any such organization while other provisions deal with how such objectives can be achieved through structures, *modus operandi* and procedures. Nwabueze viewed this importance and commented that such objectives serve as a signpost that governs the activities and rules of a state.³ Thus, it must take a very important position in the constitution. In the words of Nwabueze:

A Constitution is the means by which a people organize itself into a political community and defines the aims and objectives of its association, the conditions of membership, the rights and obligation of membership, the organs and powers necessary for the conduct of affairs of the association and the duties and responsibilities of those organs to the individual members.⁴

Chinwo expressed his thought thus:“...it is argued and I humbly agree, that a Constitution including a national constitution is the ideal document in which the aims, objectives and

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¹Chapter Two of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

²A. Rhuks, N. Stewart, and E. O. Ekhaton., ‘Overcoming the (Non) justiciable Conundrum: The Doctrine of Harmonious Construction and the Interpretation of the Right to a Healthy Environment in Nigeria’, *Justiciability of Human Rights Law in Domestic Jurisdictions*, (Springer International Publishing, 2016) 123-141; B.O. Okere, ‘Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution’, *International and Comparative Law Quarterly* 32.01 (1983): 214-228.

³ B. Nwabueze, *Presidential Constitution of Nigeria*, (C. Hutst& Company in association with Nwanife Press, Enugu and Lagos, 1982).

⁴Nwabueze, (footnote 3), p. 18.

principles of a nation should be outlined.”⁵These opinions emphasize the rationale for the inclusion of Fundamental Objective and Directive Principles of State Policy in the Constitution. Nigeria followed the example of Spain, Ireland and India and some other emergent democracies who enshrined in its Constitution a set of aims and objectives described as ‘Fundamental Objectives and Directive Principles of State Policy which contain the economic and socio-cultural rights.’⁶The focus of this paper therefore is to examine the detailed provisions of the Constitution on economic and socio-cultural rights in Nigeria and provide other mechanisms for effective enforcement other than the overflogged issue of justiciability.

2. An Historical Perspectives and Development of Socio-Economic Rights

Human right is as old as man. To trace the historical perspective and development of socio-economic rights is synonymous to tracing the history and development of man. The antecedent of man’s rights found expression in the political philosophy and writings of early naturalists such as Thomas Paine, Hobbes, John Locke, Baron De Montesquieu, J.J. Rousseau and Kant, to mention a few. In the opinion of these philosophers, every human being is entitled to individual rights inherent within the society and owes no human authority on the enjoyment of such rights. Individual decides to form governmental authority primarily to protect these rights and enhance their development and enjoyment. Thus, the social contract theory is traceable to the origin of society which is based on the concept of natural law. The natural law states that certain principles of justice are natural, rational and unalterable and that the rights conferred by natural law are something to which every human being is entitled by the fact that he is human. It is upon the premise that men have over the years struggled for, and acquire human rights or their understanding of them. Hence, human rights became expressed in most constitutions of every society or inherently part of political traditions of their country. A very clear example of the resultant effect of the expressions of human rights which has substantially and most significantly formed major developments in the aspects of human rights includes the great Magna Carta of England (1215), the United States Declaration of Independence (1776), the French Declaration of the Rights of Man and the Citizen (1789) and the America Bill of Rights 1791. Subsequently, the international community became proactive in the issue of human rights giving it a *primus inter pares*.⁷It will be recalled that the first series of international instruments of the right of man was the Universal Declaration of Human Rights adopted by the United National General Assembly in 1948.⁸ The resolution declares basic inalienable and inviolable rights, though mainly civil and political in nature which men are entitled to. The adoption of this declaration, no doubt, marked the beginning of hope for socio-economic and cultural rights.⁹ In 1966, the International Covenant on Civil and Political Rights¹⁰ were made together with its Optional protocols one of which is International Covenant on Economic, Social and Cultural Rights.¹¹ The covenant added ESC rights to the list itemised in the 1948 Declaration.¹²

⁵C.A.J., Chinwo, *Principles and Practice of Constitutional Law in Nigeria*, Vol. One, (Davis Printing and Packaging 2006) 296.

⁶M. J. Cantius, ‘The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation’, *African Journal of Legal Studies* 2.1 (2006): 1-19.

⁷Meaning- “primary among other things.”

⁸G.A. Res. 217(III), GACR, 3rd Sess. Part I, Resolutions, P. 74; White Digest, Vol. 5 p. 237.

⁹ It is not out of place to mention that the 1948 Declaration had served as the foundation for subsequent international conventions and domestic constitutions of many states in order to make them sustainable. In fact, the Constitution of Federal Republic of Nigeria to which this paper examines have similar provisions for human rights.

¹⁰61 A.J.I.L. 870 (1967); U.K.T.S. 6 (1977), Cmnd 6702.

¹¹ Adopted on Dec. 16, 1976, entered into force Jan. 3, 1976; G.A. Res. 2200 (XXI), UNGDR, 21ST Sess., Suppl. No. 16 at 49, UN Doc. A/6316 (1966); U.K.T.S. 6(1977), Cmnd 6702; 6 I.L.M. 360.

¹² Other conventions include: The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) UKTS 70 (1950); the Inter-American Convention on Human Rights (1970) 9 ILM 627 (1970)

The clamour for human rights in Nigeria dates back to the colonial days prior to independence in 1960. Then, the affairs of the present nation, Nigeria, were governed by the colonial masters through the instrument of constitutions that were imposed on the people.¹³ There was less participation and involvement of the people in the making of the constitution and this affected the recognition of rights.¹⁴ The Nigeria (Legislative Council) Order-in-Council of 1946 was principally aimed at bringing the whole of Nigeria under one legislative jurisdiction. This makes the Nigeria (Constitution) Order-in-Council of 1951 to be dedicated to representative democracy into Nigeria polity. By and large, members begin to embrace the principle of self-determination and the spirit of nationalism was promoted.

In the struggle for independence and constitutional development, one of the major issues which came to the fore was the need to introduce some elements of human rights into the country's constitution. This idea was stimulated by heterogeneous nature of the country dominated by three major ethnic groups: The Yoruba, Hausa and Igbo. The minorities urged the British colonial government to allay their fears by the creation of states for them before independence was gained. The British government's response was the minorities Commission set up under the Chairmanship of Sir Henry Willink with a mandate to ascertain the facts about the fears of minorities and suggest means of allaying those fears. Instead of the Commission recommending creation of states it rather recommended the entrenchment of fundamental human rights provisions in the Constitution even though the Commission observed that such provisions would be difficult to enforce and sometimes difficult to interpret.¹⁵ This shows that the Commission was initially confused about what it should do about human rights recognition and creation of states to allay fears. While issue of human rights is paramount in any society, it does not necessarily solve or allay the fears of demand for creation of states. In this bewildered state, the Commission went ahead to recommend the inclusion of fundamental human rights in the constitution stating that:

Their presence defines beliefs widespread among democratic countries and provides a standard to which appeal may be made by those whose rights are infringed...a government determined to abandon democratic courses will find ways of violating them but they are of great value in preventing a steady deterioration in standards of freedom and the unobtrusive encroachment of a Government on individual rights.¹⁶

This led the inclusion of fundamental rights in Nigeria's Constitution of 1960.¹⁷ The ignorance or mistaken belief of the Commission formed the foundation of a continuous struggle for the

in force 1978; and African Charter on Human and Peoples Rights (1981) Nigeria's Treatise in force 1970-1990, Vol. 4 p. 1023.

¹³ After Lagos Island was ceded to the British by King Docemo in 1861 and the acquisition of the Sokoto Emirate, several constitutions were made by the colonial masters stating with Clifford Constitution of 1922, Richard Constitution of 1946, Macpherson Constitution of 1951 and Lyttleton Constitution of 1954 among others.

¹⁴ The Clifford Constitution of 1922 just like its successors was entirely a colonial constitution designed to achieve specific objectives. None of the pre-independence constitutions was designed with any formal or conscious objective to safeguard human rights even though human rights protection had, at that time, become an international issue.

¹⁵ Report of the Commission Appointed to Enquire into the Fears of Minorities and Means of Allaying them (Cond. 505) 1 HMSO, 1988.

¹⁶ Ibid. p. 97.

¹⁷ The fundamental rights provisions in the 1960 Independent Constitution were contained in Chapter III of the Constitution. S.17 provides for deprivation of Life, S.18 is on Inhuman Treatment, S.19-Slavery and Forced Labour, S. 20 provides for Deprivation of Personal Liberty, S.21 is on Determination of Rights, S. 22 protects

recognition of ESC rights in Nigeria till today. This is because while all citizens are entitled to the protection of rights recommended by the Commission, not all community desire creation of states. Also, the inclusion of fundamental human rights in the constitutions, though laudable, but does not, at the same time, solve the problem of creation of state. It will also be noted that at the inclusion of human rights in the Constitution for the first time, no mention was made about socio-economic and cultural rights perhaps because they were not yet adopted internationally.

The Fundamental Objectives and Directive Principles of State policy in Chapter II of the Constitution were first introduced into the Constitution in 1979. A similar provision was made in 1989 and the 1999 Constitution. The category of rights is very unique in that it is held to be non-justiciable in the court. Similar provision can be found in the Ghana Constitution. They compose of rights to education, to work, disability or old age, right to food, shelter, good water, old age care, unemployment and sick benefits and welfare for the disabled among others.¹⁸

There appears to be conflicting view as to government's performance over the year in the achievement and implementation of ESC Rights in African countries. Some believe that many African countries have not lagged behind in the design and implementation of socio-economic policies, plans and programmes aimed at effective mobilization, optimal allocation and purposeful management of national resources, for meeting the articulated needs and preferences of their citizenry.¹⁹ The potentials for achieving this noble goal vary among countries being greatly enhanced by the abundance of human and non-human resources, with which the nations are richly endowed and the importance attached to sustained efforts at promoting sound economic management and integrated approach to national development planning to achieve sustainable development.²⁰

However, barely twelve years into the implementation of the Millennium Development Goals (MDGs) in Africa, literature reviews indicate that many developing countries in Sub-Saharan Africa have made no appreciable progress in poverty reduction as they face technical capacity problems in formulating, implementing and monitoring the operational MDGs-based Poverty Reduction Strategy Papers (PRSPs).²¹ Coincidentally, issue of MDGs is key to ESC Rights.

Right to Private and family Life, S. 23 is on Freedom of Conscience, S. 24 is dedicated to Freedom of Expression, S. 25 provides for Peaceful Assembly and Association, S. 26 protect Right to Freedom of Movement, S. 27 provides for Freedom from Discrimination and S. 30 is n Compulsory Acquisition of Property. Only 12 out of 6 sections concerns human rights protection. These rights have substantially remained in substance with little arrangement, nomenclature. Modification and elaboration since 1960.

¹⁸ Governments of the nations, over the years have faced with the dilemma of implementing these objectives. Certainly, the rights are essential to human development; food and shelter are essential to human existence; the need for a non-threatening physical environment can no longer be taken for granted; health care and education are obvious needs e.t.c- M.A. Ajomo, 'The Development of Individual Rights in Nigeria's Constitutional History', in M.A. Ajomo. and B. Owasanoye, (eds.), *Individual Rights Under the 1989 Constitution*, (Nigerian Institute of Advanced Legal Studies, Lagos 1993) 10.

¹⁹A. Ariyo, 'Economic Reforms in Nigeria', Ch. 8, in A.Ariyo, A. Odusola, and F. Ayorinde, (eds.), *NEEDS Nigeria's Sustainable Development*, (Centre for Public-Private Cooperation, Ibadan, 2006)

²⁰Human Development Report 1991, (UNDP, New York, 1991); Odusola, A., *Economic Foundation of National Economic Empowerment and Development Strategy*, Ch.1 in Ariyo, A, Odusola and Ayorinde F., 2006, *NEEDS Nigeria's Sustainable Development*, Centre for Public Economy and Society 28(3); 467-493.

²¹ Professor J.B Falade, *Socio-Economic Policies and Millennium Development Goals (MDGs) in Africa: A Study of Theory and Practice*, 2008, Logos-Universal Publishers Inc., Proceedings 1st International Conference on Socio-economic Policies and MDGs in Africa, p.4.

3. The Justification of Socio-Economic Rights in the Constitutions

The justification for inclusion of ESC Rights in the constitutions is intrinsically connected to the concept of justice. There is no doubt that justice cannot exist without respect for human rights. This truth is reflected in the preamble of the Universal Declaration of Human Rights to the effect that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”²² In other words, human rights are those rights which all human beings enjoy by virtue of their humanity and constitute a grave affront to one’s natural sense of justice.²³

Reasoning for inclusion of the chapter II in the Constitution is that the ESC objectives were meant to guide political manifestoes, programmes and plans. According to Adediran, ‘the importance of the provision of Chapter II which the party in government should strive to accomplish, is now underscored by the provision under section 24 of the 1999 Constitution which provides that “the programme as well as the aims and objects of a political party shall conform with the provisions of Chapter II of this Constitution.”²⁴ There is an obligation of all political parties to conform with the provisions of Chapter II any time they prepare to field in candidate in contesting elective post in the country. The provision is a constitutional guide on the need and aspirations of the people. As earlier argued, they are fundamental not only to the organs of the state in implementation; they are also fundamental to the citizenry in that their hope and desire of a good government should align with the provisions. In this light, Chapter II is justifiable for a centrally focused nation on what should be the standard for any party that intends to rule the country. Yet, the challenge still remains the lack of legal capacity to challenge the government when in power as to their manifestoes tailored towards the ESC Rights. In countries where such provisions are made, there have been conscious efforts to subtly enforce the provisions negatively.²⁵ This is done by attacking governmental actions that run contrary to those provisions.²⁶

4. Socio-Economic Rights Under Chapter II of 1999 Constitution of Nigeria

It is informative to note that not all the provision of chapter II of the 1999 Constitution named Fundamental Objectives and Directive Principles of State Policy are directly relating to economic and socio-cultural rights. Section 16-18, 20 and 24 can be said to be the specific provisions on economic and socio-cultural rights. These are the relevant provisions that will form the major focus of this paper. Nevertheless, other provisions appear to be collaborative and collateral to the above mentioned sections. For example, section 13 deals with the fundamental obligation and duty of the government to comply with all the provisions of the chapter II of the Constitution²⁷.

²² Human Rights Watch Report 2004, quoted by Ramatu Umar-Bako, *The Language of Terror, The Capital Territory Law Review*, Issue Vol. 1(2012) p. 29.

²³M. A. Ajomo, ‘The Development of Individual Rights in Nigeria’s Constitutional History’, in *Individual Rights Under the 1989 Constitution*, M.A. Ajomo and B. Owasanoye, (eds.), (Nigerian Institute of Advanced Legal Studies, 1993) 1.

²⁴M.O. Adediran, ‘Issue of Non-Justiciability Under the Nigerian Constitution’, in *Legal Issues for Contemporary Justice in Nigeria*, Essays in Honour of Hon. Justice M.O. Onalaja (RTD) (OFR), FNIALS, OFR, edited by Adeyi Olatubosun I., 2007, Department of Jurisprudence and private Law and Equity Chambers, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria, p.15.

²⁵ Ibid. at p. 15

²⁶ Ibid.

²⁷Section 14 deals with the position and relationship between the government and the people; section is on political objectives part of which already being represented as rights under chapter four of the Constitution; section 19 relates to Foreign policy; section 22 is on the obligation of the mass media; section 23 provides for National Ethics and section 24 deals with duties of citizens.

4.1 Economic Objective

Though, it is synonymous to economic rights, the constitution refers to it as economic objective of the state.²⁸ Even where economic right is so important to the survival of the individual citizens of the nation, it is never a right so far is it referred to as objective of the state rather than right. We shall consider the section carefully:

- 16.** (1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution,
- (a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
 - (b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
 - (c) without prejudice to its right to operate or participate in areas of the economy²⁹, other than the major sectors of the economy, manage and operate the major sectors of the economy³⁰;
 - (d) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities³¹ outside the major sectors of the economy.

One can understand that this provision places so much responsibility on the state with respect to economic decision of the nation. At the same time, there are implied rights of the citizens emanating from the express provision. Apparently, exploitation of natural resources, national prosperity, self-reliant economy, social welfare, participation in economic sectors of the nation seem to be the main gist of the above provision on economic objectives. One may agree with the opinion that some of the economic and socio-cultural rights are very ambitious in that it is practically not achievable as individual rights. However, some of these rights are basic, fundamental and integral to truly democratic and smooth governance, for example, right to social welfare and right to participate in the economic sector of nation. Regardless of the fact that they are not regarded as fundamental rights under chapter four, they assume the status of a fundamental right nevertheless, because of their importance to survival of every citizen.

It could be argued that since it is fundamental objective of the state, it is equally fundamental to the people who surrendered their power to the state to use for their benefit. Section 14 of the Constitution states that sovereignty belongs the people. Hence, the state is expected to direct its policy towards ensuring.³²

²⁸Section 16, Chapter II on Fundamental objectives and Directive Principles of State Policy of Nigeria's 1999 Constitution.

²⁹ The right to participate includes the rendering of services and supplying of goods.

³⁰The reference to the "major sectors of the economy" shall be construed as a reference to such economic activities as may, from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation, and until a resolution to the contrary is made by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy. Sub-section 4(a).

³¹"economic activities" includes activities directly concerned with the production, distribution and exchange of weather or of goods and services. Subsection 4(b).

³²Section 16(2) of 1999 Constitution of Nigeria (as amended).

- (a) the promotion of a planned and balanced economic development;
- (b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
- (c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
- (d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

A body shall be set up by an Act of the National Assembly which shall have power to review, from time to time, the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same; and to administer any law for the regulation of the ownership and control of such enterprises.³³

4.2 Social Objectives

Section 17 provides for social objectives of the state. It states that the State's social order is founded on ideals of Freedom, Equality and Justice and in furtherance of the social order every citizen shall have equality of rights, obligations and opportunities before the law.³⁴ It further guarantees that the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced and governmental actions shall be humane. Similarly, it forbids exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community and ensures the maintenance and security of the independence, impartiality and integrity of courts of law, and easy accessibility thereto³⁵. This provision sounds more like a right rather than obligation of the state. It has been argued by some scholars that due to the nature of Fundamental Objectives and Directive Principles of State Policy, certain provisions can be harvested out and placed under Chapter IV while others can remain non-justiciable. It is therefore the opinion of this paper that the above provision on social objectives ought to be taken as rights that can be justiciable while subsequent provisions therein viewed as the obligation of the state. Subsection (3) mentions expressly what should be the duty of the state towards achieving the above supposed rights of its citizens. The state is expected to direct its policy towards ensuring that all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. The state should ensure that conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life.

In formulating policies, the state must equally cater for the following social welfare to wit:

- a. the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;
- b. there are adequate medical and health facilities for all persons;
- c. there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;
- d. children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect;

³³Ibid. Sub-section (3).

³⁴Section 17 of the Chapter II of 1999 Constitution (as amended).

³⁵ Subsection 2 thereof.

- e. provision is made for public assistance in deserving cases or other conditions of need; and
- f. the evolution and promotion of family life is encouraged.

One would understand clearly from this later provision on social objectives of the state that it could only be a gradual achievement rather than instant. The performance of state can also not be challenged in court because its achievement will largely depend on the available resources, peaceful environment and the primary focus of each government at a particular time or what is perceived urgent and important for every administration. The responsibility is enormous and should be assumed by every successive government that comes to power.

4.3. Educational Objective

The educational policy of the state provides thus:³⁶

Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. Government shall promote science and technology. Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide: free, compulsory and universal primary education; free secondary education; free university education; and free adult literacy programme.

The words used for the achievement of this objective do not make the objective achievable in that it gives room for excuse for not performing in that direction. For example, the use of “as and when practicable” may make some irresponsible governments at every level to give excuse why they are not directing their policy towards achieving education opportunities for the categories of persons mention in the section.

4.4. Environmental Objective

Section 20 provides for environmental directive of the state. Accordingly, ‘the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.’ This is one of the shortest provisions in the chapter. However, it is unfortunate to have the environmental issue not well represented especially in the light of effect of environmental degradation on some fundamental human rights contained in Chapter IV as well as economic and socio-cultural rights. In other words, the provision is not comprehensive, short and has left some aspects and issues of environment which today form a major subject of discussion at the international plane.³⁷

4.5. Directive on Nigerian Culture

Nigeria is rich with culture. There are multifarious ethnic groups in Nigeria with different cultural backgrounds, cultural affiliations and cultural orientations. The formation of Nigeria was much challenged particularly on the ground of ethnic/cultural diversity, ethnic domination and fear of minority.³⁸ Thus, in response to this inherent and unique character of Nigeria society, section 21 states that:

³⁶Section 18 of the 1999 Constitution (as amended).

³⁷For example, the issue of Climate Change, Green House Gas Effect, Bio-diversity, Sustainable Development e.t.c.

³⁸ It will be recalled that it is view of this the Henry Willink Commission was set up toward the independence to recommend ways by which the fear can be allayed.

The State shall:

- (a) Protect, preserve and promote the Nigerian Cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter; and
- (b) Encourage development of technological and scientific studies which enhance cultural values.

Ironically, most cultures of communities in Nigeria can best be preserved, promoted and protected by the citizens themselves. This is the reason for agitation for the inclusion of this directive as a fundamental right which will be justiciable. Nigeria is a unique country considering the number of communities making up the country. Thus, while cultural right may not constitute a fundamental right issue to Ghana, for example, or other European nations, it is to Nigeria. Culture is part of the people, has grown with the people and determines their ways of life prior to and after the colonization. It is also doubtful that governments will or are not actually encouraging the development of technological and scientific studies which rather than enhance cultural values destroy it. The directive on culture should be a standard for every technological innovation, adoption, importation and development. At best, technology must be tested to fit in with the culture of Nigerians. Technology, should dignify and be consistent with the fundamental objectives of the state before it is encouraged into Nigeria. This, however, may be challenging in some ways, but it appears the provision is aimed at discouraging domination of foreign technology at the detriment of Nigerian cultural values.

5. Applicable International Instruments on Socio-Economic and Cultural Rights

Earlier, we mentioned that the first international Convention on Economic, Social and Cultural Rights was the Optional Protocols on International Covenant on Economic, Social and Cultural Rights.³⁹ The Covenant provides for ESC Rights in the list itemised in the 1948 Universal Declaration adopted by United Nations. Most Fundamental Objectives and Directive Principles of State Policy were fashioned after the International Covenant on Economic and Social Cultural Rights. It will be recalled that after its adoption in 1976, Nigeria incorporated it into the 1979 Constitution for the first time as well as in the subsequent constitutions. As a form of development over the international covenant, the African Charter on Human and People's Rights⁴⁰ was adopted by African nations which has been described as a proactive step by African continent.⁴¹ Some of the provisions of the African Charter are very relevant for purposes of our discussion here. With respect to ESC Rights, one can say that the Charter is proactive and progressive in its conception and formulation. For example, Article 20(1) provides that:

All people shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

³⁹ Adopted on Dec. 16, 1976, entered into force Jan. 3, 1976; G.A. Res. 2200 (XXI), UNGDR, 21ST Sess., Suppl. No. 16 at 49, UN Doc. A/6316 (1966); U.K.T.S. 6(1977), Cmnd 6702; 6 I.L.M. 360.

⁴⁰ African Charter on Human and People's Rights (ratification and Enforcement) Act Laws of Federation of Nigeria 2004.

⁴¹ In its paragraph 8 of its preamble, it states that African countries is convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

A more specific provision is contained in Article 22 which recognizes the economic and socio-cultural rights of every citizen. The adoption of the Charter is pointer to the fact that Nigeria recognizes the ESC Rights. In the paragraph 8 of its preamble, it states that ‘African countries are convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of ESC Rights is a guarantee for the enjoyment of civil and political rights’. In view of this, the challenge of implementation or justiciability would not have arisen except for the provision of section 1(3) of the 1999 Constitution (as amended) which makes any law inconsistent with the provision of the Constitution to be null and void.

Thus, the argument on the doctrine of equal state sovereignty and the failure of international human rights laws and treatise is that it sounds more rhetorical and political than real. The high hope of the ESC Rights often becomes deflated when it is realised that we are living in an international community still largely dominated by the doctrine of sovereign equality of States⁴². This is because we are living in word of *real politik* where the most powerful states choose when to submit or when not to submit to the jurisdiction of international law⁴³. The hope that could be expressed is that given the level of achievement of Human Rights by the European nations, the same may permeate other continents until it becomes internationally achieved.

It is being x-rayed⁴⁴ that existing jurisprudence at the regional and international level demonstrates how States are held, under international law, accountable for human rights violations that directly result from actions by corporations but entail also action (licensing or privatisation) or inaction (breach of positive obligations) by public authorities⁴⁵. A significant case is that of *Costello-Roberts v. United Kingdom*⁴⁶, where the European Court of Human Rights held that the State was under the Convention responsible for securing that disciplinary punishments used in private schools did not result in violations of human rights. Although the Court came to the conclusion that there was no violation of the European Convention in the concrete case, the judgement was very clear in the issues of State responsibility and the interdependence between various human rights (right to education, prohibition against inhuman treatment, right to respect for private life) as the legal basis for such responsibility⁴⁷.

The Court has consistently held that the responsibility of a State is engaged if a violation of one of the rights and freedoms defined in the Convention is the result of non-observance by that State of its obligations under Article 1 to secure those rights and freedoms in its domestic law to everyone within its jurisdiction.⁴⁸ The Court notes that, as was pointed out by the

⁴²K. M. Waller, ‘Intra-State Ethnic Conflicts and International Law: How the Rise of Intra-State Ethnic Conflicts has Rendered International Human Rights Laws Ineffective Especially Regarding Sex-Based Crimes’, *Journal of Gender Social Policy and Law* (Vol.9 No. 3 2001) pp. 624-626.

⁴³J.D. Gamaliel, ‘The Concept of Human Rights’, in OkohAlubo et al, (eds.), *Contemporary Frontier in Nigerian Law*, Essays in Honour of the Honourable Justice SalihuModdibo Alfa Belgore, GCON, (Orable Business Ltd, Makurdi, 2006) 259

⁴⁴S.Verma, ‘Justiciability of Economic Social and Cultural Rights Relevant Case Law’, *International Council on Human Rights Policy*, (Review Meeting, Geneva, 15 March 2005) p. 68.

⁴⁵M. Scheinin, ‘State Responsibility, Good Governance and Indivisible Human Rights’, in H. Sano and G.Alfredsson (eds.), *Human Rights and Good Governance, Building Bridges*, (The Raoul Wallenberg Institute Human Rights Library, with the collaboration of Robin Clapp, MartinusNijhoff Publishers, 2002).

⁴⁶*Costello-Roberts v. United Kingdom*, Judgement on 25 March 1993, Series A 247 C.

⁴⁷S. Verma, (footnote 44), p.68

⁴⁸Paragraph 26 UN Convention on the Rights of the Child 1992.

applicant, the State has an obligation to secure to children their right to education under Article 2 of Protocol 1... That a school's disciplinary system falls within the ambit of the right to education has also been recognised more recently in Article 28 of the UN Convention on the Rights of the Child.... Secondly, in the United Kingdom, independent schools co-exist with a system of public education. The fundamental right to education is a right guaranteed equally to pupils in State and independent schools, no distinction being made between the two.... Thirdly, the Court agrees with the applicant that the State cannot absolve itself from responsibility by delegating its obligations to private bodies or individuals."⁴⁹ Accordingly, in the present case, which relates to the particular domain of school discipline, the treatment complained of although it was the act of a headmaster of an independent school, is none the less such as may engage the responsibility of the United Kingdom under the Convention if it proves to be incompatible with Article 3 or Article 8 or both⁵⁰. A small number of cases of a socio economic character have been brought before the UN Human Rights Committee, the body that oversees the ICCPR.⁵¹ For example, discrimination in social security legislation of cultural rights has been held to violate the treaty. A series of cases in the European Court of Human Rights and the UN Committee Against Torture has pushed the scope of torture provisions to show how a loss of social rights can breach characteristically civil rights. However, despite this integrated approach, the protection of ESC rights is still much weaker than the protection of CPRs. As a result, it is apposite that formulation of national policies must be premised on legal obligations and international standards on human rights.⁵²

6. Enforcement Mechanisms beyond Justiciability

Enforcement of any policies and legal framework requires a good sense of leadership. No economy in the world can be right unless the polity is right and no polity will be right if the economy of such nation is in shambles.⁵³ This paper holds that scholars have over flogged the concept of justiciability to a level that we must begin to look away from it as the only solution since it has not yielded the much desired result especially in developing countries like Nigeria. Hence, accountability and transparency as principle of governance need to be developed as first mechanism to facilitate implementation of policies arising out of ESC Rights. This will enhance the effectiveness and efficacy of constitutional governance.⁵⁴ A careful perusal of the provision of section 13 of the 1999 Constitution (as amended) will reveal as Oliver opined that accountability is associated with "being liable to be required to give an account or explanation of actions and where appropriate, to suffer the consequences, take the blame or undertake to put matters right if it should appear that errors have been made."⁵⁵ There are identified strategies by which democratic government can be called to account such as through legislative law-making procedures and oversight functions, judicial review, financial auditing and responses to the media.⁵⁶ Other means may include legislative procedure to guide the day-to-day business of government, executive and administrative orders, and leadership by example

⁴⁹ Ibid. Paragraph 27 thereof

⁵⁰ Paragraph 28 thereof

⁵¹ Shivani Verma, (n 44), p. 69

⁵² O.W. Igwe and I. C. Ovat, 'Extreme Poverty and Human Rights Law', *Unizik Law Journal* Vol.7 No.1(2010) p.86

⁵³ A. Agom, A. Madaki and S. Apinega, 'Economic Reform and Democratisation in Nigeria', in O. Oyewo and E. Ojomo (eds.), *Law, Democratisation and Social Change* (2012 NALT Conference Paper Proceedings) 34.

⁵⁴ M. Bovens., 'Analysing and Assessing Accountability: A Conceptual Framework', *European L.J.* Vol. 13(2007) 447, 449.

⁵⁵ D. Oliver, *Government in the United Kingdom: The Search for Accountability, Effectiveness and Citizenship*, (Milton Keynes Open University Press, 1991) 12; Bamforth N. and Leyland P., *Accountability in the Contemporary Constitution*, (Oxford University Press, 2013) Chapter 1.

⁵⁶ O. Oyewo, 'Law, Democratisation and Social Change in Nigeria', (NALT Conference Proceedings) 17-18.

and so on.⁵⁷ In order to sustain this character of accountability and transparency in governance, educational institutions such as Nigerian Universities Commission (NUC) and Council of Legal Education (CLE) should be made to amend their Curriculum to accommodate the subject in the appropriate courses currently offered to the students.⁵⁸

Again, ESC Rights do not necessarily warrant belabouring the concept of justiciability if there are efficient and effective institutional framework set up for the enforcement of the rights. Government requires a collaborative effort of all persons and authorities that are expected to carry out their various constitutional and administrative roles. It is the belief of the researcher that if right institutions are in place to perform their bit of the various projects designed to accomplish the goal encapsulated in chapter II of the Constitution, that is, ESC Rights, less will be heard of justiciability in the nearest future. To accomplish this task, the existing institutions must be orientated to understand the core of their duty to governance in general. Every concerned agencies and parastatals with social, economic and cultural or environmental mandate must be held and accorded importance in the polity. As earlier mentioned, these institutions must equally be made to account for their functions from time to time both to appropriate supervisory authority and members of the public alike. Since ESC Rights are gigantic in nature, there should be a realistic design to accomplish a particular set of objective per each administration while expecting another to continue. In a progressive manner, in a medium term, a reasonable achievement will be made that will make the public harvest the provision of ESC Rights.

More importantly, less litigation in this aspect, it is believed by this writer, will create a better leeway for concerned authorities to do their biddings. For example, the cost of litigation in defending actions in court is an integral part of public fund that should have been spent on achieving economic, social and cultural projects. Besides, taking government to court on the enforcement of ESC Rights does not necessarily compel the doing of the project that will satisfy the complainant or litigant most especially when it is glaring to all members of the public including the judiciary that resources are limited to satisfy public wants.⁵⁹ It must be noted that the courts are not by the provision of the constitution empowered to interfere with the internal proceeding or affairs of the executive or legislature so far as they conduct themselves within the purview of the constitution.⁶⁰ Thus, all courts have to do is to ensure that any organ of government or person carries out its functions in accordance with the provisions of the constitution⁶¹ and ensure compliance with policies laid down by the constitution.⁶²

7. Conclusion

This paper has examined the Economic and Socio-Cultural Rights in the democratic governance of Nigeria beyond the limitation of justiciability. It explored the letters and spirit of each and every provision constituting ESC Rights in the Constitution and argued that the enforcement is not just a question of what justiciability alone can solve but a proactive executive agenda coupled with political will and efficient and effective institutions. In view of

⁵⁷ See Sorace D and Torricelli, 'Monitoring and Guidance in the Administration of Public Contracts', in Noguellou and U. Stelkens (eds), *Comparative Law on Public Contracts*, (Establishments Emile Bruyant, S.A. 2010) 212-213.

⁵⁸Oyewo (n 56) p.18

⁵⁹R.E. Robertson., 'Measuring State Compliance with the Obligation to Devote the" Maximum Available Resources to Realizing Economic, Social, and Cultural Rights', *Human Rights Quarterly* 16.4 (1994): 693-714.

⁶⁰ K. C. Nwogu, 'Constitution and Constitutionalism in Nigeria: Imperatives for A Sustained Democracy, *Unizik Law Journal* Vol. 7 No.1 (2010) p.31

⁶¹ See *Attorney General, Abia State & 35 Ors v. Attorney General Federation* [2002] 4 NWLR (Pt.809) p.149.

⁶²Nwogu, (n 60) p.31

the express provisions of both the Constitution in Nigeria and International Conventions on Economic and Socio-cultural Rights, one is tempted to agree with the opinion of scholars who believe that they should be included among category of rights contained in chapter IV of the Constitution. Though the constitutional provisions fall short of the protection of rights on economic, socio-cultural, other international instruments particularly African Charter on Human and People's Rights has given the guide.

As it were, the significance of these provisions is that they serve as a guide for every political party that desire to come to power to shape its policies, agenda and manifestoes in their direction. There is no doubting the fact that good governance will be deemed to have been achieved if practical steps can be taken to achieve these objectives through governance. Consequently, there will be less agitation on the justification of economic and socio-cultural rights if governance at all levels is genuinely geared towards the achievement of the economic and socio-cultural rights. This paper therefore recommends that it is better for all political parties contesting elections to be guided by the provisions of Chapter II on economic and socio-cultural rights in the making of their manifestoes and agenda. As enforcement of Chapter II is dependent on the state of the nation's economy, the reality of the objectives and available resources,⁶³ the question of absolute justiciability of the ESC Rights clamoured for over the years may not be realistic after all. This paper suggests accountability and transparency on the part of executive leaders in the performance of their duties to which ESC projects as core. It also suggests that effective and efficient institutions be put in place to implement some of the policies bordering on ESC Rights. Litigants who have been caught in the legal web of *locus standi*⁶⁴ and justiciability should look beyond justiciability to practical mechanisms that will spur governments to fulfill their mandate. While the objectives and directives contained in Chapter II of the 1999 Constitution of Nigeria may seem unachievable by a particular government, each and subsequent government is expected to contribute tangibly to its realisation and continue where the incumbent stops.

⁶³R. E. Robertson (n 59).

⁶⁴ See E. Onyeabor, 'Expanding The Scope of *Locus Standi* in Environmental Litigation', *Unizik Law Journal* Vol.7 No.1 (2010) p.67