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ASSESSING THE CHALLENGES IN THE APPLICATION OF THE PROVISIONS OF HUMAN RIGHTS IN THE 1999 CONSTITUTION OF NIGERIA (AS AMENDED)

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ABSTRACT

The concept of human rights, has gained universal acceptance or recognition over the years and it has been a widely debated issue in the world today. Human rights provisions are enshrined in most international Instruments like the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political rights (ICCPR), the international Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples rights (ACHPR). This paper examines the Economic and Social rights which are part of Human rights and notes the difficulty faced by state parties in the actualization of these rights. Since independence Nigeria has had a number of Constitutions the present one being the 1999 Constitution (as amended). This paper notes that while the fundamental Human Rights provisions in chapter 4 of the 1999 Constitution (as amended) are enforceable the economic and social rights enshrined in chapter 2 of the 1999 constitution (as amended) are not enforceable. This paper notes the challenges which undermine the application of these Human Rights provisions in the 1999 Constitution (as amended) and suggests appropriate measures to address them.

Keyword: Human Rights, UDHR, ICCPR, Constitution, Nigeria.

1. INTRODUCTION

The issue of Human Rights, is a very topical one and it has aptly been described as “The most widely debated issue in the world today¹. Thus the concept of Human Rights has seen remarkable transformation in the emerging world order. The world is fast becoming one big global village where what happens in one country is understandably of interest to the international community.² As civilization interacted and learnt from one another, concepts of dignity, law, freedom, equality, liberty and rights developed over time.³ After the Second World War, Human Rights received its greatest boost as a result of international outrage against the atrocities of the Nazi regime in Germany. Thus the human community was compelled by the events of that period to formulate a coherent body of principles to regulate the relationship of man and states. This resulted in the emergence of the Universal Declaration

¹ Ajomo M. *Fundamental Human Rights under the Nigerian Constitution, Perspective on Human Rights*, (ed) Kalu and Osibanjo, (Lagos: Federal Ministry of Justice, 1992) p. 77

² Oputa, C. “The Judiciary the Military” The J.I.C. Taylor Memorial Lecture, 1995 p.66.

³ Ramcharam, B. C. *International Politics and Security* 1998 p. 423.

of Human Rights (UDHR) in 1948. The emergence of this Declaration of Human Rights led to the evolution of other domestic constitutions of several member countries of the United Nation including Nigeria. Since Independence, Nigeria has had about four constitutions⁴. Chapter four of the 1979 and 1999 constitutions entrenched a Bill of Rights under the subject Fundamental Human Rights. The Fundamental Human Rights is limited in scope and is confined within the realm of the domestic laws. But Human Rights are declared by United Nations and now part of International Law.

Indeed, the enforcement of some of the rights popularly called Economic, Social and Cultural Rights (ESC) under the 1999 constitution⁵ (as amended) appears to be a difficult task as the said constitution has made them non-justiciable. It is in the light of the above position that this paper will attempt to examine the challenges faced in the enforcement of these Human rights provisions in the 1999 constitution (as amended).

2. CONCEPTUAL FRAMEWORK

The term “Rights” as defined in Osborn’s law dictionary simply means “recognizes and protected by Law, respect for which a duty and disregard of which is wrong.”⁶ Blacks Law Dictionary defines “Rights” as a noun either taken in an abstract sense or concrete sense. Furthermore, it states that “Rights” generally are defined as “powers of free action and a capacity residing in one man of controlling with the assent and assistance of the state, the action of others.”⁷ However, in jurisprudential circle, the word “Rights” has been a subject of debate. The concept of rights which Hohfeld also referred to as claim, privilege (liberty), power and immunity. Thus the terms claim, privilege, power and immunity are to be explained in terms of correlatives and opposite and each of them has both a jural opposite and correlatives⁸. Therefore x has rights (claim) to R means according to Hohfeld, that everyone is under a duty to allow X to do R. It also means that X would have a claim against everyone to enforce that rights.⁹ A legal rights stricto stricto imposes an obligation to do or abstain from doing something to the possessor of the rights. Such rights may exist in tort, contract, land law, criminal law and a host of other areas of law.¹⁰ There appears to be no comprehensive and widely accepted definition of the concept. Some of the legal instruments like the African Charter on Human and People’s Rights and the international Instruments on Human Rights did not define the concept of Human Rights. The merely prescribed conditions that constitute human rights. However, attempt shall be made herein to highlight some of the definitions.

The Blacks Law Dictionary defines Human Rights as “the freedom, immunities and benefits that according to modern values all human being should be able to claim as a matter of rights.”¹¹ Prof. Eze defines Human Rights as “Demands or claims which individuals or groups make on society, some of which are protected by law and have become part of *exlata* while others remain aspirations to be attained in the future. Furthermore, Human Rights are rights which every civilized society must accept as belonging to every person as human being. Human Rights is something of which no one may be deprived without a great affront to justice.

⁴ Theses included the 1963, 1979, 1989 (not in force) and 1999 Constitutions (as amended)

⁵ Also called the Fundamental objectives and directive principles of State Policy in chapter 2 of the 1999 constitution (as amended).

⁶ Roger Bird, 7th edn, PP. 293 - 294

⁷ Ibid

⁸ Udombana, M. The Age of Rights and the Diminishing Doctrine of Domestic Jurisdiction P. 2

⁹ The full details of Hohfeld analysis is not the focus of this paper

¹⁰ Udombana, N. *op.cit.* P. 2

¹¹ Eze, O. *Human Rights in Africa*, (Lagos; Macmillan, 1984) P. 5

Human Rights basically differ from other rights in two respects. Firstly, they are characterized by:

- being inherent in all human beings by virtue of their humanity along (they do not have to be purchased or be granted).
- being within qualified legal boundaries, invaluable.
- be equally applicable to all.

Secondly, the main duties deriving from them fall on states and their public authorities not on other individuals. Human rights must themselves be protected by law, where there are disputes about these rights, such disputes are to be submitted for adjudication to a competent, impartial and independent tribunal, applying procedures which ensure full equality and fairness to all parties. The competent court or tribunal will be able to determine the question in accordance with clear specific and pre-existing Law known to the public and openly proclaimed. The starting point in understanding of Human Rights is the appreciation of the term “rights” which is covered by the concept of claims. Thus Rights have been classified into various ways. It may be described as perfect, imperfect, positive or negative, subjective or objective. Subjective rights are legitimate and inviolable power or capacity by virtue of which a person ought to do something or owes something while objective rights on the other hand are rights exclusive to the individual e.g. man’s rights to life.¹² Furthermore, a rights *in persona* is one which imposes an obligation on a definite person. While a rights *in rem* imposes an obligation on persons generally. There is also equitable rights which are rights enforceable in equity and legal rights which are rights enforceable in law.

2.1 Fundamental Human Rights and other Human Rights

In *Uzoukwu v Ezeoun*,¹³ a distinction was made between Fundamental Human Rights and Human Rights. Nasir P. J said: “Human rights were derived from out of the concept of natural rights. They are rights which every civilized society must accept as belonging to each person as human being. They were termed Human Rights. When United Nations made its declarations, it was in respect of Human Rights as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race, and religion and so on. This has now formed part of the international law. Fundamental Rights on the other hand remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country.”

There has been argument as to whether there should be a hierarchy of human rights. Can certain human rights be ranked higher than others so that the former one are said to be fundamental while the latter are not. It is submitted that a human rights may be ranked higher today but in future it may not due to circumstances of the time and vice versa. For instance the principle of non – discrimination particularly on racial grounds which was hitherto not ranked high but has been since the end of the World War II been upgraded by the international community¹⁴.

¹² Onianuwa, U. *Nature of Human Rights*. Seamier paper presented by LL.M 1999/2000 Class University of Lagos, P. 2

¹³ (1991) 6 NWLR (PT 200) 708 AT P. 760

¹⁴ Ezejiofor, G. “The development of the concept of Human Rights; Definition and Philosophical foundation” *Text for Human Rights Teaching in school* (Lagos: constitutional Rights Project. 1997) at p. 8

3. EVOLUTION OF HUMAN RIGHTS

It is pertinent to briefly examine the evolution of Human Rights. The concept of Human Rights is said to be the modern name for what have been traditionally known as natural rights¹⁵. Prof. Ajomo stated thus: “Human Rights are inherent in man; they arise from the very nature of man as a social animal. Human rights constitute a body of unique virtues which are highly cherished and valued from inception of time”¹⁶. The concept of human Rights is as old as man and are rooted in world’s great religion like Christianity and Islam but the classical exposition of the concept belongs to Greek philosophy. Philosophers like Plato, Aristotle, Hobbes, Voltaire and Rousseau had in their tradition expounded various theories that are under the vista of the concept of Human Rights. Other notable Philosophers like John Locke, Jean Jacques and Montesquieu also expounded various theories. Mention must be made of Spanish Theologian and Jurist Francisco de Victoria (1486 – 1546) and Bartome de las Casas (1474 – 1566) as well as Roman Philosopher Cicero. Also ideas of Hugo Grotius (1583 - 1645) father of modern international law attracted interest. Thus the natural law theories as expounded by these philosophers generally influenced the philosophical foundation of Human Rights¹⁷.

Apart from the laws of God, as found in the Bible, the earliest and oldest law of Human Rights and its protection embodied on a legal document emanated from the Great Charter known as *Magna Carter* of 1215. There was also the Petition of Rights of 1628 and the Bill of Rights of 1689. Mention must be made of the famous Habeas Corpus Law of England. There was also the Virginia (American) Declaration of Rights of 1776 as well as the American Declaration of Independence of 1776. The American Bill of Rights was made in 1791. Human Rights development and assertions were galore in the constitution of developed states¹⁸. There was the League of Nations founded in 1919 which guaranteed basic freedom of constitution and religion after the First World War. The ILO founded in 1919 drew up several labour conventions.

In 1946, the Universal Declaration of human rights (UDHR) was introduced. This was followed by several international conventions¹⁹. There were also regional legislations on Human Rights²⁰. In Africa, the organization of African Unity (now African Union) was formed in 1960. This led to the enactment of the African Charter on Human and People Rights in 1981 which Nigeria has since rectified.

3.1 Classification Of Human Rights

In an attempt to study and/or pursue the enforcement of human rights or restrict their enforcement, modern writers, jurist and legislators have continued in classifying the subject under different categories. However, the following classifications will suffice:

¹⁵ Ibid at P. 9

¹⁶ Paper on Fundamental Human Rights under the Nigerian constitution, 1992

¹⁷ Ojukwu, E. “Domestic Application of International ESC Rights standard in Nigeria” paper presented at a two day workshop on ESC Rights on 24th & 26th November, 2000 at Ikeja.

¹⁸ There were Sweden 1809, Spain 1912 and Germany 1919. Also Soviet Union and Mexican Constitution of 1918 and 1917 respectively.

¹⁹ The more significant of these conventions are International convention on Economic, Social and Cultural Rights of 1966, International convention on Civil and Political Rights of 1966 other conventions included Convention Against Torture and inhuman and degrading treatment of 1980, Convention on Prevention of Crime against Genocide 1948 and convention on Refugees of 1951.

²⁰ Inter-American Convention on Human Rights of 1959, European Convention on Protection of Human Rights of 1950, the Arab Commission on Human Rights and Cairo declaration of Human Rights of 1990

- (i) Civil Rights – physical integrity rights
 - (a) Life
 - (b) Liberty and security; arrest and detention
 - (c) Torture and other ill-treatment
 - (d) Freedom of movement
 - (e) Asylum
 - (f) Ownership; thought, conscience, belief and religion.

- (ii) Political Rights
 - (a) Expression
 - (b) Association
 - (c) Assembly
 - (d) Vote and be voted for
 - (e) Participation in Election

- (iii) Economic and Social Rights;
 - (a) Rights to work
 - (b) Rights to a fair wage and reasonable limitation of working hours
 - (c) Trade union rights
 - (d) Rights to adequate standard of living including social services and education.

- (iv) Cultural Rights;
 - (a) Rights to freely participate in the cultural rights of the community
 - (b) Rights to share in the scientific advancement and the rights to the protection of scientific literary or artistic production.

- (v) Generation Rights;
 - (a) First Generation Rights
 - (i) Political rights
 - (ii) Civil rights
 - (b) Second Generation Rights
 - (i) Economic rights
 - (ii) Social rights
 - (iii) Cultural rights

These include: rights to health, education, work, social security, adequate standard of living, food. Clothing and shelter, etc.

- (c) Third Generation Rights:
 - (i) Rights to social development
 - (ii) Rights to self determination
 - (iii) Minority rights
 - (iv) Women and children rights
 - (v) Rights to democracy
 - (vi) Rights to good and safe environment.

All the generation rights are recognized in the African charter on Human and Peoples Rights. The 1999 constitution (as amended) recognizes the first generation rights in chapter 4. However, most of the second generation rights are stipulated in chapter 2. It is to be noted that the classification of these rights should not be taken as rigid since a close examination will reveal their inter-relation and inter-dependence. Today, it can be seen that human rights are

more than ever intimately inter-dependent and this inter-dependence becomes especially evident in the face of systematic, large scale, flagrant violation of “human rights” and freedom”²¹.

5. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, Social and cultural rights also called Socio-economic rights, are derived from the concept of social justice and emphasize the material well being of the people especially the poor and disable. The recognition of these sentiments, ideals and concepts as rights within the International Institutions of inhuman came after a battle of words²². Socio-economic rights such as self-determination²³ equality for men and women; work and favourable conditions of work²⁴; the rights to form and join trade union²⁵; Social security²⁶, protection of the family, mothers and children²⁷; rights to adequate standard of living including adequate food, clothing and housing²⁸; the highest attainable level of health and health care²⁹; the rights to education³⁰; free and compulsory primary education³¹; the rights to take part in cultural life; benefit from scientific progress; and benefit from the protection of scientific, literary or artistic production of which one is the author exist essentially to profit African and alleviate poverty and eradicate hunger, lack and want³². Essentially, socio-economic rights can be interpreted to cover the basic needs of man; even though they have widely been held to be secondary rights that are non-justiciable³³.

5.1 Sources of the ESC Rights

The most vital document containing the ESC rights apart from the international instruments is the African charter on Human and Peoples Rights. International law enjoins every state to fulfill its treaty obligation. Once a state ratifies a treaty, it cannot simply shrug off its covenants. If it goes ahead to enact the treaty as a local law as Nigeria has done in respect of the domestication of the African Charter, it’s domestic court can bind the state to fulfill its obligations therein³⁴. The African charter states as follows: The member states of the organization of African unity parties to the present charter shall recognize the rights, duties and freedoms enshrined in this charter and shall undertake to adopt legislative or other measures to give effect to them.

The African charter urges African states and indeed scholars to have an inward look within the continent by adopting more pragmatic measures toward the implementation of

²¹ Ojukwu, E. op.cit. P.5

²² Agbakoba, O. “Enforcement of Economic, Social and Cultural Rights of judicial approach” in laser contact, New letter for Lawyers for Economic Rights Network of SRI Vol. 3 No. 2, July – December, 1999

²³ Article 1 International covenant on Economic, s=Social and Cultural Rights (ICESCR)

²⁴ *Ibid* Article 3, 6, 7

²⁵ *Ibid*. Article 8

²⁶ *Ibid*. Article 9

²⁷ *Ibid*. Article 10

²⁸ *Ibid*. Article 11

²⁹ *Ibid*. Article 12

³⁰ *Ibid*. Article 13

³¹ *Ibid*. Article 14

³² Article 15 see, for instance *Schaeter v Canada* (1990) Federal Court of Appeal of Canada, 2. F. C. 129. See also Paul Hunt, *Reclaiming Social Rights: International and Comparative perspectives* (Alder shot, Dartmouth Publishing company, 1996). PP. 95- 100

³³ “Obligations of states in the actualization of Socio-economic Rights” LL.M Dissertation, 2014 by Umoh, Patrick at P. 17

³⁴ *Fawehinmi v Abacha* (1996) NWLR (Pt 44) at P. 170

socio-economic rights models that are peculiar to Africa. Indeed, Odinkalu argues that social and cultural Rights are placed on the same footing with all other rights in the African charter³⁵.

The ESC rights can also be found in the international covenant on Economic, Social and Cultural Rights (ICESCR). Some jurists think that because of Article 1 (1) of the ICESCR the only method of supervision is by submission of periodic reports to the Economic and social council. By resolution 75(5) of 1947, re-affirmed by resolution 728 of 1959, the council cannot receive individual petition on violations. It has been established by the court that though the ICESCR is not enacted into local law its provisions can be judicially utilized to interpret or complement provision of local laws³⁶. It is pertinent to list some of these rights:

- (1) The promotion of a planned and balance economic development
- (2) The harnessing and distribution of the material resources of the community as best as possible to serve the common good.
- (3) Prevention of the concentration of wealth and ownership of the means of production from being in the hands of a few individuals or a group.
- (4) Provision of:
 - (i) Suitable and adequate shelter
 - (ii) Suitable and adequate food
 - (iii) Reasonable national minimum wage
 - (iv) Old age and pensions
 - (v) Unemployment benefits.
 - (vi) Sick benefits.
- (5) All citizens are to be given the opportunity of securing adequate means of livelihood as well as opportunities to secure suitable employment
- (6) Humane and just condition of work
- (7) Adequate facilities for leisure and social, religion and cultural life
- (8) Adequate medical and health facilities for all persons.
- (9) Equal pay for equal work for all persons
- (10) Provision of equal and adequate educational opportunities for all
- (11) Provision of science and technology
- (12) Eradication of illiteracy
- (13) Free and compulsory and universal primary education
- (14) Free secondary Education
- (15) Free adult literacy programme
- (16) Provision of culture

The International Covenant on Economic Social and Cultural Rights is in essence an elaboration of the social welfare provision of the UDHR. The covenant covers the rights to work, to form and join trade unions, fair wages and condition of work, social security, rights of the family, protection of children, the rights to adequate living standard, food, education, health and cultural life.

5.2 The Implementation of the ESC Rights

Article 2(1) enjoins parties to take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its

³⁵ C. Odinkalu, "individual complaints procedure of the African commission on Human and Peoples Rights: A preliminary Assessment" (1988) *Transnational Law and contemporary problems*, P. 349

³⁶ Segay, I., "Implementation and enforcement of Economic, Social and Cultural Rights" paper presented at the workshop on ESC Rights protection Strategies organized by SRI at Excellence Hotel and Conference Center, Ogba, Lagos on 24th and 25th November, 2000. P.5

available resources with a view to achieving progressively the full realization of the rights, recognizes under the present covenant by all appropriate means. The drafters of the covenant may have envisaged the difficulties that would be encountered by state parties in implementing the provisions of the covenant. Thus the reference to International assistance and cooperation envisage a possible assistance and co-operation in the implementation of these social welfare programmes by other well developed state parties or international agencies. But how can a state obtain international assistance and co-operation, when no organization or state is compelled by law to assist and co-operate with a state seeking assistance and co-operation³⁷.

Again, parties are enjoined to act to the maximum of their available resources. This shows that individual state efforts will depend on their individual resources, and there can therefore be no uniform international standard. Indeed the developed states stand a better chance to implement the social welfare programmes than the undeveloped states. There is therefore the urgent need for the developed states to assist the underdeveloped states in the implementation of some of the social welfare programmes. Most undeveloped states cannot even afford to implement some of the programmes. The implementation process requires state parties to submit reports on measures which they have adopted and the progress made in achieving the observance of the rights³⁸.

6. THE PROVISIONS OF THE 1999 CONSTITUTION (AS AMENDED)

The ESC International rights standards are definitely applicable to Nigeria the principle have over the years been accorded recognition in our constitutions, legislations, judicial decisions and executive actions³⁹. Under the 1999 constitution (as amended) just as in other previous constitutions⁴⁰, it did not provide for ESC rights in the justiceable chapter four on fundamental human rights. It however, listed them as Fundamental Objectives and Directive Principles of States Policy. Chapter four of the 1999 constitutions (as amended) provides for the following rights:

- Rights to life: S. 33
- Rights to dignity of the human person: S. 34
- Rights to personal liberty: S. 35
- Rights to fair hearing: S. 36
- Rights to private and family life: S. 37
- Rights to freedom of thought, conscience and religion: S. 38
- Rights to freedom of expression and the press: S. 39
- Rights to peaceful assembly and association: S. 40
- Rights to freedom of movement: S. 42
- Rights to acquire and own property: S. 43
- Rights against compulsory acquisition of property: S. 44

Chapter two on the other hand contains such provisions on political, economic, social, educational and environmental objectives. Indeed, the ESC rights are encapsulated in chapter 2 of the 1999 constitution (as amended). However, they are not couched strictly as rights, rather they are duties or obligations of state to the citizens under the 1999 constitution (as amended). They are called the Fundamental Objectives and Directive Principles of State

³⁷ Ibid.

³⁸ *Ibid.* p. 9

³⁹ Ojukwu, E. *op.cit.* P. 8

⁴⁰ 1960, 1963, 1979 and 1999 constitutions (as amended)

Policy. Thus it shall be the duty and responsibility of all organs of government and at all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter⁴¹. The researcher sets out the major headings of the Fundamental Objectives and Directives Principles of State Policy as follows:

- The Government and the people: S. 14
- Political objectives: S. 15
- Economic objectives: S. 16
- Social objectives: S. 17
- Educational objectives: S. 18
- Foreign policy objectives: S. 19
- Environmental objectives: S. 20
- Directive on Nigeria cultures: S. 21
- Obligation of the Mass media: S. 22
- National ethics: S. 23
- Duties of the citizen: S. 24

It is pertinent to point out that rights to shelter, rights to health, rights to work rights to food and the rights to a clean environment are all enshrined in chapter 2 of the constitution. It therefore means that government has a duty and responsibility to ensure that these social welfare programmes as set out under chapter 2 therein are implemented. To an average Nigerian, the rights to food may mean that it is government responsibility to provide food to the citizens. The rights to health means that government provides free health care services to all. The rights to shelter means that government provides adequate housing to all. Rights to education means that government provides free education at all levels to the people. The attainment of the obligations may not be possible after all. This is so because even under the ICESR which apparently is the most comprehensive ESC rights standards states in article 2 (1) as follows: “Each state party to the present covenant undertakes to take steps individually and through international assistance and cooperation especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognition in the present covenants by all appropriate means,....”

In reality, the framers of these covenants may have envisaged the difficulty state parties would encounter in implementing the provisions thus it became imperative to include in the statute that its implementation shall be subject to the maximum of the available resource or through international assistance and co-operation. It therefore means that where the state lack resources to implement them or is unable to secure international assistance or co-operation, it cannot therefore be compelled to do so. But it has however been argued that state must show that effort has been made to use all the resources at its disposal to satisfy the minimum ESC rights and obligations⁴². It is further argued that state can prioritize its expenditure in order to satisfy the low cost measures⁴³. However, for a country like Nigeria with large foreign reserves and substantial revenue from oil and gas, it would be unfortunate to rely on lack of resources as a reason for non-implementation of the ESC rights. Indeed, some wealthy Nigerians some of whom have accounts in foreign countries can take this challenge to assist government in this direction.

⁴¹ Section 13 of the 1999 constitution (as amended)

⁴² Onyekwu, E, “1999 Constitution & ESC Rights Economic, Social and Cultural Rights and the Constitution of the FRN 1999. A case for Review” in *News letter of the Lawyers for Socio Economic Rights Network of SRT*, Vol. 4, No. 2 July - September 2000, P. 23

⁴³ *Ibid.*

It could be said that, to some extent, corruption has hampered the full implementation of the ESC rights in Nigeria⁴⁴. Apart from the issue of corruption, other factors militating against the actualization of ESC rights include the devastating historical antecedents of African countries including Nigeria which factors like colonialism, party systems and political mandates had negative effects on the actualization of the ESC rights⁴⁵. For instance colonial rule destroyed the traditional institution and relationship that protected people; imposed authoritarian government and reduced the rights exercised by individuals, conditioning Africans to these repressive ways; left behind, disastrously ill-structured economies and societies riddled with ethnic, social, economics and political divisions; and imposed boundaries that were arbitrary and incompatible with traditional social structures⁴⁶. However, it has been argued that colonialism should not be seen as an alibi to human rights violations by post independent African states including Nigeria because some of these African countries still practice one party system⁴⁷. The issue of trade liberalization which has worked adversely to dampen the comparative advantages that Africa might have had aggravating their development problems and leading to the abuse of labour standards and human rights⁴⁸. Furthermore the heavy debt burden and debt-servicing obligation have debilitated the socio-economic structure of many African states including Nigeria⁴⁹.

The large budget allocated for quelling conflicts such as civil unrest, militancy and insurgency in Nigeria has militated against actualization of ESC rights. Such heavy budgetary provisions could have been channeled to the actualization of the ESC rights in the county. Aside from the above legal obstacles also militate against the implementation of the ESC rights. At this juncture, let it be known that, the enforcement of the fundamental human rights is not a problem as they are justiciable. The problem is that of the Fundamental objectives and Directive Principles contained in chapter 2 of the 1999 constitution (as amended).

7. LEGAL OBSTACLES TO THE JUDICIAL ENFORCEMENT OF ESC RIGHTS

(a) *Justiciability*

The usual reason for not enforcing the ESC Rights is that they are not justiciable. If an obligation is unjusticiable, it is unenforceable. Section 6 (6) C of the 1999 constitution (as amended) makes them non-justiciable. It states that “judicial powers 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 11 of this constitution”. Thus the above provision makes it difficult to enforce the ESC Rights. This is wrong and is based on a wrong interpretation of the decision in *Archbishop Okogie v The A. G. Lagos State*⁵⁰, where the Court of Appeal held that obligations created under chapter two of the 1979 constitution were not justiciable. It has been argued that the

⁴⁴ Other reasons are not that it is expensive to implement. The court do not have adequate information to make reasoned decisions on them. These rights are vague and unclear and to enforce them will open a flood gate of litigation. Others are that they are not rights but mere aspirations to be attained.

⁴⁵ J. Sikk, Traditional culture and the prospect of Human Rights in Africa, in A. An-Na’ IM & F. Deng (eds) *Human Rights in Africa: Cross cultural perspectives* (Brookings institution press, 1992) 290. Cited in Umoh P. op.cit at P. 150

⁴⁶ *Ibid*

⁴⁷ *Ibid*

⁴⁸ J. Stiglitz, *Globalization and its Discontent* (W. W Norton, 2001) P. 245

⁴⁹ F. Njenga “The African Debt Problem: Legal and Institutional Dimensions” (1994) *African Year book of International Law*, P. 95

⁵⁰ (1981) 2 NCCR 337 B

decision related only to obligation under chapter 2. Therefore, applicant can rely on the African charter to enforce his ESC rights⁵¹. Furthermore section 6 (6) C states with the word “..... except as otherwise provided by this constitution” thus where there are other sections of the constitution authorizing justiciability of any content of chapter 2 or whom statutory provisions can create legal rights such laws will not be affected by the non-justiciability⁵².

(b) *Locus Standi*

This relates to access to justice. The legal standing to sue. Flowing from the decision in *Adesanya v President* is a misunderstanding that only the person whose personal rights are violated or who suffered personal injuries can apply for judicial relief⁵³. Thus this places a barrier to judicial enforcement of ESC rights. However, it has been argued that the test of *locus standi* is not personal injury or rights but where a person has sufficient interest to bring an action. But the courts have struck out cases seeking enforcement of ESC rights because of the narrow and faulty conception of *locus standi* in public law.⁵⁴

8. CONCLUSION AND RECOMMENDATIONS

It appears that the problem is not with the enforcement of the provision of Charter four of the constitution which contains the fundamental human rights provision but the problem seems to be with the enforcement of the chapter two of the constitution which contains objectives and the fundamental directive principles, aims and aspirations. The constitution specifically makes these objectives/policies non-justiciable. There is nothing in the body of its municipal law that makes the ESC rights at least as provided under the African Charter not justiciable in the court. The courts should therefore take the bull by the horn by giving effect to the enforcement of the provisions as is the case in India. Having examined the challenges to the enforcements of the ESC Rights, it is pertinent to make the following recommendations:

The need to fall back on the provisions of the African Charter on Human and Peoples Rights which charter has been domesticated in Nigeria as the municipal law and consequently is enforceable here⁵⁵. The charter has made provision for the rights to work, rights to education, rights for protection of the family, women and children, and rights to attainment of physical and mental health. Indeed, in *Abacha v Fawehinmi*⁵⁶. It was held that the individual rights contained in the African Charter on Human and People’s Rights are justiciable in Nigerian courts. Thus the articles of the Charter show that individuals are assured rights which they can seek to protect from being violated and if violated seek appropriate remedies; and it is in the national courts such protection and remedies can be sought and if the case is established, enforced.

There is urgent need for the judicial restatement of the doctrine of *locus standi* in public law in the light of recent development. The success story of social action litigation in ensuring social justice can be used. This has been used effectively in India to get a lot of prisoners out of detention. Thus the case of *Hussaninaira Khaton v Home Secretary, State of Bihar*⁵⁷ was based on Article 21. The court used Article 39 (directive principle of state policy)

⁵¹ Agbakoba, O *op.cit* at P. 15

⁵² *Ibid*. P. 16

⁵³ *Ibid*

⁵⁴ *Ibid*

⁵⁵ African Charter on Human and People’s Rights (Ratification and enforcement) Act Cap 10 LFN 2010

⁵⁶ (2006) 6 NWLR P. 228

⁵⁷ (1980) ISCC 81

which requires the Indian Government to ensure that the legal system works to promote justice on the basis of equal opportunity to interpret Article 21 and held that a procedure that did not make legal representation available to an accused person who could not afford it was not reasonable. In environmental rights the Supreme Court of India has pronounced on the peoples rights to healthy and safe environment. Thus the Nigeria Court should make considerations and take steps to emulate the Indian Supreme Court in enforcing the provisions of ESC rights.

An applicant can come under the non-discrimination provision under section 42 of the constitution to enforce his ESC Rights. This is so if the ESC rights sought to be enforced has been the subject of discriminatory implementation by the relevant authority⁵⁸. There is the need to tackle corruption in the country since a substantial amount of our resources have been taken away and kept in foreign banks by some people thus denying government the needed resources in implementing some of these social welfare programmes.

The African charter on Human and Peoples Rights contains no explicit provisions on the rights to shelter. It is suggested that the said regional instrument should be reviewed to incorporate this rights. Fundamental Human Rights provisions are restricted only to political and civil rights and do not include the economic, social and culture rights. Therefore, the economic, social and culture rights should be made justiciable by incorporating them into the fundamental rights provisions. The Fundamental Rights (Enforcement procedure) Rules should be amended to cover the enforcement of ECOSOC rights in Nigeria in line with international human rights to which Nigeria is a signatory and which are binding on her.

Efforts should be made to dialogue with the militants and the insurgent groups to find a lasting solution to the persistent crisis in the country. The government should reduce the rate of borrowing so as not to pile up more debt for the country. This will help to reduce the debt burden in the country so that funds may be channeled towards the actualization of the ESC rights. The economic system needs to be overhauled completely to make it less dependent on importation of foreign goods. Nigeria should look inward and explore its avenues for revenue generation instead of over-reliance on revenue from oil and gas.

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⁵⁸ Okwu-Okafor, O. "The non-discrimination as a basis for the legal protection Economic, Social and Culture rights, LASER, SR1, VOL. 4, No 1 January – June 2008," p. 170