



UNIVERSITY OF IBADAN JOURNAL OF PUBLIC AND INTERNATIONAL LAW

Vol. 10

ISSN 1595-7047

June 2020

The Endemic Anomaly in the Application of <i>Res Ipsa Loquitur</i> in Civil Litigation Dennis Uyi Odigie Ph.D	1
An Appraisal of Asset Management Corporation of Nigeria as an Instrument of State Intervention in Strategic Businesses in Nigeria Aladeitan, Olanrewaju Ph.D, Osunyikanmi, Pius Olakunle Ph.D	22
The Challenge of Inclusion and Empowerment of People with Disability in Nigeria: Whither The Law? Onyekachi Eni Ph.D, Ngozi Chinwa Ole Ph.D	58
Awakening Judicial Consciousness Toward the Enforcement of Nigerian Economic, Social and Cultural Rights Fagbemi, Sunday Akinlolu Ph.D, AICMC	86
An Appraisal of the Criminalisation of Attempted Suicide under Nigerian Penal Laws: A Move from Legal Wrong to Secular Justification? Adekunbi Imosemi Ph.D, Benson Wosu	106
A Study in Support of the Call for Domestication of the United Nations Firearms Protocol in Nigeria as an Option for Combating Firearms Trafficking Oladimeji, I. Idowu	132
Bilateral Investment Treaties and the Erosion of Permanent Sovereignty Over Natural Resources in Developing Countries Hadiza Hamma Ph.D	157
How Much of Right to Strike Can Nigerian Workers Exercise? Kolawole Oyekan LL.M	175
Issues on NYSC Certificate as a Prerequisite for Holding Political Offices in Nigeria Adegbite N. Kehinde	194
Noise Pollution by Religious Worship Centres in Nigeria: An Infringement on Human Rights Hassan I. Adebawale, Akintola John Oluwasegun	220
The Dispute Settlement Understanding of the World Trade Organization: Continuity or Change Kenneth Uzor Eze Ph.D, Antom Vanen Ph.D & Iloh Friday Okechukwu	232
The Role of United Nations in Promoting International Humanitarian Law: A Overview Chukwuka Onyeaku, Ph.D	250
A Legal Approach Towards the Protection of Cohabiting Couples in Nigeria Taiwo Ajala Ph.D	273
A Critical Appraisal of Trade Union Activities and Freedom of Association in Nigeria Adeoye, O. J. Ph.D	298
Towards Effective Capital Gains Tax Operations in Nigeria Lawal, Sabit Abosede Ph.D	316
Enhancement of Renewable Energy Regulatory Compliance through Effective Public Participation Legal Regimes: A Study of Nigeria and South Africa Dominic Obilor Akabuiro Ph.D	338
An Appraisal of the Legal Framework for the Offence of Rape in Nigeria Moronkeji Foluke Dorcas	367
The Historical Development of the Human Right to Inclusive Education for Hearing-Impaired Learners: A Critical Evaluation of the Philosophical Underpinning behind Inclusiveness Ngozi Chuma Umeh Ph.D	413



UNIVERSITY OF IBADAN
JOURNAL OF PUBLIC AND INTERNATIONAL LAW
(UIJPIL)
PUBLISHED BY THE DEPARTMENT OF PUBLIC LAW

UIJPIL, Vol. 10, 2020

ISSN 1595-7047

© Department of Public Law
Faculty of Law, University of Ibadan, Ibadan, Nigeria

Except for quotation of brief passages in criticism and research, no part of this publication may be reproduced, stored in retrieval system or transmitted in any form or by any means, electronics, mechanical, photocopying, recording or otherwise without the prior permission of the copyright owner.

Views expressed in this Journal are those of the authors and do not necessarily represent the views of the Department of Public Law, University of Ibadan, Ibadan.

UNIVERSITY OF IBADAN
JOURNAL OF PUBLIC AND INTERNATIONAL LAW

Table of Contents

1. The Endemic Anomaly in the Application of *Res Ipsa Loquitur* in Civil Litigation
Dennis Uyi Odigie Ph.D1-21
2. An Appraisal of Asset Management Corporation of Nigeria as an Instrument of State Intervention in Strategic Businesses in Nigeria
Aladeitan, Olanrewaju Ph.D, Osunyikanmi, Pius Olakunle Ph.D22-57
3. The Challenge of Inclusion and Empowerment of People with Disability in Nigeria: Whither The Law?
Onyekachi Eni Ph.D, Ngozi Chinwa Ole Ph.D58-85
4. Awakening Judicial Consciousness Toward the Enforcement of Nigerian Economic, Social and Cultural Rights
Fagbemi, Sunday Akinlolu Ph.D, AICMC.....86-105
5. An Appraisal of the Criminalisation of Attempted Suicide under Nigerian Penal Laws: A Move from Legal Wrong to Secular Justification?
Adekunbi Imosemi Ph.D, Benson Wosu.....106-131
6. A Study in Support of the Call for Domestication of the United Nations Firearms Protocol in Nigeria as an Option for Combating Firearms Trafficking
Oladimeji. I. Idowu132-156
7. Bilateral Investment Treaties and the Erosion of Permanent Sovereignty Over Natural Resources in Developing Countries
Hadiza Hamma Ph.D157-174

8. How Much of Right to Strike Can Nigerian Workers Exercise?
Kolawole Oyekan LL.M175-193
9. Issues on NYSC Certificate as a Prerequisite for Holding Political Offices in Nigeria
Adebite N. Kehinde194-219
10. Noise Pollution by Religious Worship Centres in Nigeria: An Infringement on Human Rights
Hassan I. Adebowale, Akintola
John Oluwasegun220 -230
11. The Dispute Settlement Understanding of the World Trade Organization: Continuity or Change
Kenneth Uzor Eze Ph.D, Antom Vanen Ph.D & Iloh
Friday Okechukwu232-249
12. The Role of United Nations in Promoting International Humanitarian Law: An Overview **Chukwuka Onyeaku, Ph.D**250-272
13. A Legal Approach Towards the Protection of Cohabiting Couples in Nigeria
Taiwo Ajala Ph.D273-297
14. A Critical Appraisal of Trade Union Activities and Freedom of Association in Nigeria
Adeoye, O. J. Ph.D298-315
15. Towards Effective Capital Gains Tax Operations in Nigeria
Lawal, Sabit Abosede Ph.D316-337
16. Enhancement of Renewable Energy Regulatory Compliance through Effective Public Participation Legal Regimes: A

Study of Nigeria and South Africa
Dominic Obilor Akabuiro Ph.D338-366

17. An Appraisal of the Legal Framework for the Offence of Rape in Nigeria

Moronkeji Foluke Dorcas367-412

18.. The Historical Development of the Human Right to Inclusive Education for Hearing-Impaired Learners: A Critical Evaluation of the Philosophical Underpinning behind Inclusiveness

Ngozi Chuma Umeh Ph.D413-439

IBADAN UNIVERSITY LIBRARY

Awakening Judicial Consciousness Toward the Enforcement of Nigerian Economic, Social and Cultural Rights

Fagbemi, Sunday Akinlolu Ph.D; AICMC*.

Abstract

The objective of this paper is to sensitize judicial consciousness toward the enforcement of economic, social and cultural rights in Nigeria. The pertinent questions which the paper interrogates among others include: What are the objectives of economic, social and cultural rights? What are the impediments against the enforcement of these rights in Nigeria? How can the judiciary be sensitized to meeting the objectives of Nigerian economic, social and cultural rights? Stemming from these questions, the paper highlights major impediments to the enforcement of economic, social and cultural rights in Nigeria to include constitutional provision, corruption, absence of judicial activism and lack of commitment on the part of government to uphold the tenet and the intendment of economic, social and cultural rights as provided for in Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The paper argues for the practice of the concept of judicial independence and recommends among others for complete judicial independence and activism as antidotes to the challenges confronting the enforcement of economic, social and cultural rights in Nigeria in the interest of economy and social justice sustainability.

Keywords: Awakening, Judicial, Enforcement, Economic, Social, Cultural and Rights.

1. Introduction

Social and economic rights have over the years been part of inalienable rights of human being. These rights are categorized as second-

generation human rights, but inherent rights of man.¹ These rights among other include right to work, right to just and favourable conditions of work, right to form and to join trade unions, right to social security, right to an adequate standard of living, right to physical and mental health and right to education.² These rights are recognised in many countries' Constitutions. For instance, economic, social and cultural rights are provided for in Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended) titled: The Fundamental Objectives and Directive Principles of State Policy. However, despite the incorporation of these rights in the Nigerian Constitution, there is a deliberate arrangement to oust courts' jurisdiction in the enforcement of the objectives, thus, leading to arguments in some quarters against the necessity to maintain them as part of constitutional provisions.³ The debates on the enforceability of economic, social and cultural rights the world over, would continue to attract attention not only on the account of its desirability in the constitution, but also its justiciability in terms of enforcement and palpable docility of the judiciary toward the enforcement of these second-generation rights.⁴

Expectedly, the objectives of economic, social and cultural rights are to protect the dignity, freedom and well-being of citizenry through a state-supported entitlements to education, public health care, housing, a living wage, decent working conditions, development of technological and

* LL.B (Hons) Ile-Ife, BL, LL.M Ile-Ife, Ph.D (Ibadan), AICMC, Senior Lecturer, Department of Public Law, Faculty of Law, University of Ibadan, Ibadan. Telephone: 08034709340; 08101800280 e-mail: sakinfagbemilaw@gmail.com.

¹ See the International Covenant on Economic, Social and Cultural Rights of 1976.

² Karin Kjelin, *Socio-Economic Rights: What Relevance in an Era of Globalization?* (Master Thesis, International Law, Department of Law, Stockholm University, 2007)

4.

³ Landau, D. 'The Reality of Social Right Enforcement' (2012) 53 (1) *Harvard International Law Journal*, 408-411; Shehu Ajepe Taiwo, 'The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience' (2013) 2 (1) *Afe Babalola University Journal of Sustainable Development, Law and Policy* 1; Cass R. Sunstein, 'Social and Economic Rights? Lessons from South Africa' (John M. Olin Program in Law and Economics Working Paper No. 124, 2001) 2 and Scott, 'Constitutional Ropes of Sand or Justiciable Guarantees?' (1992) 141 *U Pa L Rev* 1 8.

⁴ For instance, the degree of importance and dichotomy of enforceability of the rights provided by socio-economic rights vary among nations. Most countries pay mere lip service to its tenet. A good example of countries where these rights were constitutionalized but partially enforced are Nigeria, South Africa and Indian.

scientific studies toward enhancing cultural values and other social goods. The focus of these rights include the need to protect the most fundamental interests of individuals to have access to various resources for the exercise and enhancement of their well-being.⁵ However, these objectives will become a child play unless the judiciary, which is the third arm of government, is awoken to engage in judicial activism toward the enforcement of the objectives of economic, social and cultural rights in Nigeria. The main aim of this paper is to challenge judiciary to rise to the occasion through pronouncements for the enforcement of economic, social and economic rights in Nigeria.

To achieve this objective, the pertinent questions which the paper interrogates among others include: What are the objectives of economic, social and cultural rights? What are the impediments against the enforcement of these rights in Nigeria? How can the judiciary be sensitized toward meeting the objectives of Nigerian economic, social and cultural rights? Premised on these questions, this paper is divided into six parts, following this introduction, part two briefly analyses the origin of economic, social and cultural rights. Part three highlights Nigerian economic, social and cultural rights as contain in the 1999 Constitution (as amended). In part four, the paper examines various impediments to the enforcement of economic, social and cultural rights in Nigeria and the role of judiciary. Part five discusses the concept of judicial independence. The paper concludes with recommendations among others for a complete judicial independence and activism as antidotes to various impediments to the enforcement of economic, social and cultural rights in Nigeria in the interest of economy and social justice sustainability.

2. Origin of Economic, Social and Cultural Rights

Human rights are the rights a person has simply because he or she is a human being. Human rights are held by persons equally, universally and forever. Article 1 of the United Nations Universal Declaration of Human Rights (UDHR) provides *inter alia* that ‘all human beings are born free and equal in dignity and rights, they are endowed with reason

⁵ Ahmed, D and Bulmer, E. ‘Social and Economic Rights: International IDEA Constitution-Building Primer’ (2017) 9, *International Institute for Democracy and Electoral Assistance (International IDEA) second edition 3.*

and conscience and should act towards one another in a spirit of brotherhood. Economic, social and cultural rights are aspects of the international human rights law. These rights have a long but poorly understood history and hence entwine in controversy. While the origin of these class of rights was attributed to the sentiment expressed in 1941 by the President of the United States of American, Franklin D. Roosevelt⁶ in which he call for a world founded upon four essential human freedoms – freedom of speech and expression, freedom of every person to worship GOD in his own way, freedom from want and freedom from fear, there are other opinions that the origin of economic social and cultural rights date back beyond 1941 and could be traced to socialist revolutions against exploitation which took place in the 1900s.⁷ Eze,⁸ held the view that these rights originated from philosophical thoughts of early Philosophers such as found in Marx's critique of the 19th century capitalist and in the Roman Catholic Encyclicals like *Rerum Novarum* of Leo XII 1891. Palley,⁹ disagreed with this view and posited that the evolution of economic, social and cultural rights predates Engels, whose writing are believed to influences Karl Marx's thoughts. Although, Nweze¹⁰ substantially agreed with Palley's submission, he, however, noted that the historical role of the British Social Reformer, Robert Owen must be acknowledged in any substantial account of the origin and evolution of economic, social and cultural rights. According to Nweze, Robert Owen was the first to recognize the inseparable link between individual rights and social justice.

The outcome of the evolution of economic, social and cultural rights was the statutory adoption of these rights in the domestic legislations of

⁶ Paragraph 83-86 of the Speech, Voices of Democracy, the US Oratory Project <<http://voicesofdemocracy.umd.edu/fdr-the-four-freedoms-speech-text>> accessed on 12th September, 2019.

⁷ Sohn, S, 'The New International Law: Protection of the Rights of the Individual rather than States (1982) 32 *A. M. U. L Rev* 13-24

⁸ Eze, OC, *Human Rights in Africa: Some Selected Problems*, (Lagos: NIIA and Macmillan Nigeria Publishers Limited, 1984) 6

⁹ Palley Claire, *The United Kingdom and Human Rights* (London: Sweet and Maxwell, 1991) 25

¹⁰ Nweze, CC, 'Evolution of the Concept of Economic, Social and Cultural Rights in Human Rights Jurisprudence: International and National Perspectives' in Onyelpere Eze, *Manual on the Judicial Protection and Economic, Social and Cultural Rights* (Lagos: SRI, 2000) 6

England as well as other countries such as: the 1917 Constitution of Mexico, the 1918 Constitution of former Union of Soviet Socialist Republics, German Constitution of Weimar of 1919, the 1931 Constitution of the Spanish Republic, Constitution of Ireland of 1938 and the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Despite the controversy surrounding the evolution of economic, social and cultural rights, Buergenthal *et al*,¹¹ opined that the modern recognition of the rights by the Charter of United Nations 1945 popularized these rights. His position was supported by Mamman,¹² that 'the United Nations Charter marked the initial attempt to globally start the process of defining, protecting and promoting rights'. He argued that the Charter is a detailed wide ranging instruments which envelopes civil, political, social, economic and cultural rights, thereby blending differing ideologies and political attitudes to rights as well as recognition of duties.¹³

The United Nations Charter created awareness for these rights. The Charter provides that in order to create conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- i. higher standards of living, full employment, and conditions of economic and social progress and development;
- ii. solutions of international economic, social, health and related problems and international cultural and educational cooperation; and
- iii. universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

¹¹ Buergenthal, T, and Maier H. G, *International Law in a Nutshell*, (Minnesota: West Publishing Company, 1990) 116

¹² Tahir Mamman, 'Beyond Rhetoric Change for the International and Regional Human Rights Regime in the Millennium' (1999) 6 (1) *Abia State University Law Journal* 43-46.

¹³ The norms have acquired legal tooth through two keys instruments: International Covenant for Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

This was followed by the adoption and recognition of economic, social and cultural rights in the 1948 Universal Declaration of Human Rights (UDHR) as a common standard of achievement for all peoples and all nations.¹⁴ The UDHR gave birth to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16th December, 1966. The Covenant entered into force on 3rd January, 1976 in accordance with Article 27. The Covenant is made of 31 Articles with its core provisions on the rights in Articles 3-15. The ICESCR provides for the right of self-determination for all people, the right to determine their political status and their economic, social and cultural development among others. The states parties to the covenant are required to implement the provisions by legislation and other methods.

ICESCR has contributed immensely to the development of human rights both at the international and national level. The rights entrenched in the ICESCR are classified into three categories of rights namely: Human Rights, Economic, Social and Cultural Rights and Right to Development. The provisions of the ICESCR Articles have been duplicated and incorporated into domestic and national laws of various state parties. Nigeria, for example, and many states have incorporated the provisions in varying degree into their constitutions. In Nigeria, Human Rights have been incorporated into Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Economic, Social and Cultural Rights and Right to Development are enacted into Chapter II of the 1999 Constitution with the caption: Fundamental Objectives and Directive Principles of State Policy for easy of identification.¹⁵

3. Highlights of Nigerian Economic, Social and Cultural Rights

¹⁴ It should be noted that UDHR is not a binding instrument but a standard that has evolved into Customary International Law. See Louis Sohn, 'A Short History of United National Document on Human Rights' in A. H. Robertson ed., *Human Rights in the World* (Manchester: Manchester University Press, 1987) 27.

¹⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 16, 17 and 21 respectively.

Nigeria, with an estimated population of about 200,963,599 people as at December 2019¹⁶ and a land area of 923,768 km², is the largest economy in West Africa and the second largest in Sub-Saharan Africa. The economic, social and cultural objectives of Nigeria are contained in sections 16, 17 and 21 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 16 (1) and (2) of the constitution provide thus:

“The state shall, within the context of the ideals and objectives for which provisions are made in this constitution.

- i. harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
- ii. 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;
- iii. without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;
- iv. 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 activities outside the major sectors of the economy

(2) The state shall direct its policy towards ensuring:

- i. the promotion of a planned and balanced economic development;
- ii. that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
- iii. 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
- iv. that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care

¹⁶ United Nations, Department of Economic and Social Affairs, Population Division. *World Population Prospects: The 2019 Revision*, available at www.worldometers.info .

and pensions, and unemployment, sick benefits and welfare of the disable are provided for all citizens.

In similar vein, section 17 of the 1999 Constitution provides for the social objectives of Nigeria. The section provides that the Nigerian social order is founded on ideals of freedom, equality and justice.¹⁷ In furtherance of this social order, it is provided that:

- i. every citizen shall have equality of rights, obligation and opportunities before the law;
- ii. the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced;
- iii. governmental action shall be humane;
- iv. exploitation of human or natural resources in any form whatsoever for the reasons, other than the good of the community, shall be prevented; and
- v. the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.¹⁸

Furthermore, section 21 of the 1999 Constitution which deals with cultural rights in Nigeria provides that the state shall:

- i. protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this chapter; and
- ii. encourage development of technological and scientific studies which enhance cultural values.

The Nigerian economic, social and cultural rights as could be seen above are anchored on the principles of sustainable development, social equilibrium, justice and human dignity. The policy behind these laudable objectives as they were, among others include, the quest to harness the resources of the nation to promote dynamism and self-reliant economy, the promotion of a planned and balanced economic development, the need to prevent concentration of national wealth in the hands of few individuals, eradication of poverty through the provisions of reasonable national minimum living wages and employment, eradication of exploitation of both human and natural resource other

¹⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 17

¹⁸ *Ibid* s 17 (2)

than the good of the community, the promotion of independence, impartial and integrity of courts of law and easy accessibility thereto and preservation and promotion of Nigerian cultures. However, in spite of these sound economic, social and cultural objectives, it is very sad to observe that there are constitutional impediments and other socio-cultural and economic challenges confronting the enforcement of the objective thus incapacitating judiciary to positively play significant role toward the enforcement of these objectives. The next section is devoted to the examination of various impediments to the enforcement of economic, social and cultural rights in Nigeria.

4. Examination of Impediments to the Enforcement of Economic, Social and Cultural Rights in Nigeria and the Role of Judiciary

Nigeria is one of the most populous countries in Africa. She is indeed a beauty, endowed with natural and mineral resources, different culture, tribes and different religion. For instance, it is believed that Nigeria has about 250 ethnic groups with different cultural values.¹⁹ However, there are socio-cultural and economic problems plaguing the country and mitigating her development.²⁰ Thus, Nigeria is still struggling with having a national identity due to these differences. For instance, there have been conflicts between the different ethnic groups over superiority. The result is that the society is not homogenous; therefore, there is no common language for communication, apart from English, which is the foreign and official language. Diversity of cultures should ordinarily be a source of strength due to variety of skills, abilities, knowledge and large human capacity it brings with it. However, as is the case with Nigeria, it is now part of the sources for tribal and social conflict due to miss-management by the government. For instance, Nigerians find it hard to totally accept each other because of different ethnic groups and cultural values. Hence, it is not surprising to witness various socio-cultural challenges, such as political crisis, corruption and lack of commitment to national goals and objectives confronting Nigeria.

¹⁹ Nigeria: History, Geography, Government and Culture <<http://www.infoplease.com/ipa/A0107847.html>> accessed on August 4, 2019.

²⁰ Olawale, S. 'List of Social Problems in Nigeria and Solutions' <<http://naijaquest.com>> accessed 22 February, 2019.

In terms of economy, Nigeria has been recognised as a third world country for over many years. It is a fact that despite its huge economic potential and few advancement in the different economic sectors such as manufacturing, service, financial, technology, communications and entertainment, Nigeria is one of the ten poorest countries in the world.²¹ Also, to measure the size of its economy, Nigeria is re-basing its GDP data from 1990 till date. For instance, the preliminary forecast of the rebasing is about a 40% increase in the total GDP i.e. from a 2012 IMF estimate of USD 270 billion to USD 375 billion. The success of this would bring Nigeria's GDP just behind South Africa's GDP of USD 390 billion, making Nigeria the 30th largest economy in the world from the current 40th position. Although, Nigeria is considered a fast growing economy which has almost every types of resources for its success. However, for some reasons, Nigeria still face some huge economic problems working against her development and economic growth.

Premised on the foregoing, Nigeria's socio-cultural and economic challenges are an intricate mixture of social, political and economic elements. The interplay of social and political forces has had a great bearing on the economic fortunes of the country and continues to determine its ability to ensure sustainable development that is inclusive. These challenges have heightened various socio-cultural and economic challenges currently being witnessed in the country which include but not limited to unemployment, poverty, Boko haram insurgency and banditry. The problem has also impacted negatively on the judicial system of the country. Hence, there is general feeling of injustice by the people.

It is a fact that the judiciary in most developed societies is the last hope of the populace for justice and adjudication. Over the years, the judiciary in Nigeria seemed to have lived up to its billing in interpreting and adjudicating the law in accordance with the provisions of the constitution.²² They have also resolved numerous political disputes, however, the sector is facing challenges occasioned by corruption and

²¹ Ibanga, I. '15 Problems Facing Nigeria Economy and Possible Solution' <<https://infoguidenigeria.com>> accessed on 22 February, 2019.

²² Chimezie Ihekweazu, 'Reinforcing the Nigerian Judiciary for Optimal Performance' *Tribune Law Journal*, <<http://www.tribune.com.ng/index.php/tribune-law/33587-reinforcing-the-nigerian-judiciary-for-optimal-performance>> accessed September 18, 2019.

manipulation by the rich who fragrantly break laws with impunity. The legal framework for the economic, social and cultural rights in Nigeria are provided for in sections 16, 17 and 21 of the 1999 Constitution. Section 16 in concrete terms enjoins the state to control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice, equality of status and opportunity. Similarly, section 17 of the constitution also prescribes that the social order of Nigeria is founded on ideals of freedom, equality and justice, while section 21 enjoins the state to protect, preserve and promote the cultural values of Nigeria.

The implication of the above provisions is to trigger government's consciousness and commitment toward the maintenance of social justice and equal opportunity to all her citizenry without fear or favour, ill will or affection. Again, the provisions should have been used maximally to unite the nation and promote development and economic growth. However, the provisions of sections 16, 17 and 21 of the Constitution are not self-executory as it requires total commitment and compliance by state to achieve the objectives of these rights for sustainable development of the country and realization of democratic dividends. Not only these, the objectives should have engendered the judiciary to making progressive pronouncements toward the enforcement of the objectives whenever government exhibits lack of commitment to its tenet as done in other countries such as South Africa and in particular India where courts engage in judicial activism to compel compliance with the enforcement of economic, social and cultural rights. However, this was not the case in Nigeria due to corruption, and in particular, constitutional impediment deliberately introduced to scuttle judicial intervention in the enforcement of economic, social and cultural rights. Eulogizing the roles of judicial system elsewhere, Scully,²³ stated that the role of judicial systems in determining economic development has gained increasing attention in recent years. He submitted further that countries with good judicial institutions are twice as efficient and grow three times as fast, in per capita terms, as countries with poor

²³ Scully Gerald W. 'The Institutional Framework and Economic Development' (1988) 96 (3) *Journal of Political Economy* 44

institutional endowments. Yahaya,²⁴ observed that among the institutions that most influence economic performance, the legal and judicial systems play prominent role. Speaking in the same direction, Stigler,²⁵ was of the view that the number of law and economic associations throughout the world attests to this recognition, as does the growing number of professors of economics teaching in law schools. Stigler further explained that there are various ways through which law and economics may interact. These he explained to include that economists may assist courts and lawyers in general in antitrust cases and other types of foreign trade litigation, and policy-oriented cases in general. Secondly, economics helps in understanding incentives to litigate. The process of litigation itself and the costs involved.

A third area is analyzing the role of legal and judicial institutions in determining the pace and form of economic development. This includes learning what the legal rules say, structuring their economic transactions using these rules, seeking to punish or obtain compensation from those who break the rules, and turning to the public officials, such as the courts and the police, to enforce these rules.²⁶

Indeed, due to various advantages inherent in the economic, social and cultural objectives, they ought to have been used as unifying factor in the development of Nigeria due to multi-cultural, multi-social and multi-economic structures and diversity in Nigeria. The judicial arm of government should have provided the platform for the enforcement of these right for economic and total transformation of the country having been constitutional vested with judicial power to administer justice in all civil and criminal matters in which the rights or liability of Nigerians are involved.²⁷ Linked directly to this is the kind of judicial review that courts exercise in other advanced clime for economic growth.²⁸ The

²⁴ Yahaya Abdulkarim, 'Socio-Economic of Judicial Corruption in Nigeria' (December 2012) 1 (1) *International Journal of Humanities and Social Science Invention* 31-36, 32

²⁵ Stigler George. J, 'Law or Economics?' (1992) 35 (2) *The Journal of Law and Economics*. 455-468.

²⁶ *Ibid*

²⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) s.6.

²⁸ Fabbrini, F. 'The Role of the Judiciaries in Times of Emergency: Judicial Review of Counter-terrorism Measures in the US Supreme Court and the European Court of Justice' [2010] 28 (1) *Yearbook of European Law*, 664-697; Martin Shapiro, 'The European Court of Justice: of Institutions and Democracy' [1998] (32)(1) *Israel Law*

pertinent question then is: what are those values which should be protected by the judiciary toward the enforcement of economic, social and cultural objectives of the country? To borrow from Coase,²⁹ a well-functioning judicial system may improve economic performance by correcting various market failures. For example, judicial imposition of legal liability for certain types of harm may induce private parties to internalize what would otherwise be negative externalities associated with their conduct. Secondly, a well-functioning judicial system may allocate liability in such a way that total social costs (including the transaction costs associated with bargaining around the initial allocation of legal rights) are minimized.

Another aspect of judicial dispute resolution thought to be particularly important to economic development is the role that the judiciary plays in making commitments – particularly commitments by the government – more credible. The basic credible commitment, or time consistency, problem, which is no doubt familiar to most readers has particular salience for the governments of developing economies, which need to convince both their citizens and international investors to invest in the long term without fear that the government will appropriate the value of these investments.³⁰

Despite the seeming coercive wording of sections 16, 17 and 21 of the 1999 Constitution vide the use of the word ‘shall’, which has been interpreted judicially to imply obligation,³¹ a major drawback to the

Review 3, 5; Grainne de Burca and Joseph Weiler (eds.), *The European Court of Justice* (Oxford University Press, 2001); Charles Fried, *Saying What the Law Is: The Constitution in the Supreme Court* (Harvard University Press, 2004); Wojciech Sadurski, “Reasonableness” and Value Pluralism in Law and Politics’ in [2008] 13 EUI Working Paper 3; Francis Jacobs, *The Sovereignty of Law* (Cambridge University Press, 2007).

²⁹ Coase Ronald. ‘The Problem of Social Cost’ (1960) 3 *Journal of Law and Economics* 1-44.

³⁰ Kydland, Finn and Edward Prescott. ‘Rules Rather than Discretion: The Inconsistency of Optimal Plans’ (1977) 85 *Journal of Political Economy* 473-90 and Henisz, Witold ‘The Institutional Environment for Economic Growth’ (2000) 12 (1) *Economics and Politics* 1-31.

³¹ In *Independent School Dist. v. Independent School Dist.*, 170 N.W 2d 433, 440 (Minn. 1969), it was held that when ‘shall’ is used in statutes, contracts or the like, the word “shall” is generally imperative or mandatory. See further the case of *People v O’Rourke*, 124 Cal. App 752, 759 (Cal. App. 1932) and *BPS v. FCDA* (2017) 3 SCM 18 at 41.

enforcement of economic, social and cultural objectives in Nigeria apart from other socio-cultural and economic challenges mentioned in this paper is that sections 16, 17 and 21 are entrenched within the Fundamental Objectives and Directive Principles of State Policy, which are non-justiciable. However, the right approach which has been severally suggested is to rely on other constitutional provisions interfacing with the particular objective concerned and in this instant economic, social and cultural rights of Nigerian.

The role of the courts, according to Shehu,³² under the municipal, regional or international legal instruments is one and the same and this is to ensure rule of law and constitutionalism in socio-economic rights matters. To meet this demand, Shehu explained that there are three contenders. On the one hand are the legal instruments, the beneficiaries and the benefactor-state, while on the other hand is the fourth contender: the courts whose role is to enforce the legal instruments. Thus constructing a pyramid of hierarchy places the law first followed by the beneficiaries or the vulnerable, and then followed by the state whose duty it is to obey the law and execute for the enjoyment of the beneficiaries. It is when the state fails to act within the demands of the law that the court is called upon to intervene to ensure compliances.

In view of the constitutional assigned role of the judiciary and in order to promote compliance with the provisions of Chapter II of the 1999 Constitution, section 13 which is the opening section of the chapter, provides that '[I]t shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this Constitution'. There is no dispute that the provisions of section 13 of the Constitution is worded in lucid language and demands total compliance with the provisions of Chapter II. Hence, when the state or her agencies fail to comply with this clear provisions, the courts which is the creation of the Constitution and hope of common man should declare such non-compliance as unconstitutional, null and void and of no effect whatsoever irrespective of the provision of section 6 (6) (c) of the Constitution which render non-compliance with the provision of Chapter II non-justiciable. The courts must always remember and conscious of the fact that courts are

³² Ajepe Taiwo Shehu (n. 3).

established to do substantial justice to all manner of people without fear or favour.

The term 'justiciability' refers to the ability to claim a remedy before an independent and impartial body when a violation of a 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.³³ The existence of a legal remedy – understood both in the sense of providing a procedural remedy (effective access to an appropriate court or tribunal) when a violation has occurred or is imminent, and the process of awarding adequate reparation to the victim – are a defining features of a fully-fledged right.³⁴

The principle of justiciability is imperative in view of the provision of section 17 (1) (e), which provides *inter alia* that 'the Nigerian social order is founded on ideals of freedom, equality and justice in furtherance of this social order'. The section further provides for the independence, impartiality and integrity of courts of law, and easy accessibility thereto. Granted this provision, the judicial arm of government is enjoined to wake up from its slumber and claim its constitutional assign role. It must rise in the defence of its authority as a third arm of government. After all, the judiciary is universally recognised as the watch-dog of the constitution and should not shy away from defending its independence at all times without interference by the other arms of government particularly through legislative impediment. In the case of *Liyanage v. The Queen*,³⁵ the Judicial Committee of the Privy Council pointed out that there existed under the Ceylonese Constitution a tripartite division of powers in the legislature, executive and judiciary and that it would be unconstitutional for judicial functions to be interfered with by the

³³ International Commission of Jurists, 'Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of justiciability, 2008, Geneva <www.icj.org> accessed on September 23, 2019

³⁴ *Mixed Claims German-American Commission, Decision in the Lusitania Cases*, November 1, 1923, *Recueil des sentences arbitrales*, Volume VII, p. 32, at 35. See further International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations. Practitioners Guide N° 2* (Geneva: International Commission of Jurists, 2006: available in English, French and Spanish.)

³⁵ (1967) AC 259

legislature by an Act of Parliament. Also in the case of *Lakanmi & Another v. A.G Western State and others*, the Supreme Court of Nigeria upon reiterating the constitutional basis of the doctrine of separation of powers in Nigeria held that Act No 45 of 1968 was *ultra vires* since it was nothing short of legislature judgment, an exercise of judicial power.³⁶ Nigerian courts must be ready to stand its ground on the enforcement of Nigerian economic, social and cultural rights to maintain its total independence from the executive and legislative arms of government. The concept of judicial independence is analyzed in the next section.

5. Analysis of the Concept of Judicial Independence

The term judicial independence embodies the concept that a judge decides cases fairly, impartially, and according to the facts and law, not according to whim, prejudice, or fear, the dictates of the legislature, or executive, or the latest opinion poll.³⁷ According to Canadian Judicial Council,³⁸ judicial independence is shield that secures and protects those fundamental, constitutional enshrined values. An independent, effective judiciary is thought to enhance the credibility of government commitments for at least three related reasons. First, because courts are supposed to resolve disputes according to pre-existing legal commitments – whether contained in contracts, statutes, or constitutions – judicial dispute resolution is thought to promote the ability of parties, including the government, to bind themselves to take (or forgo) certain actions under specified circumstances. Second, because of the publicity and transparency of judicial decisions, courts that are perceived as independent may be a useful signal for other parties to monitor the government's adherence to its promises and to coordinate their responses to perceived transgressions.³⁹ Third, even when the government has not bound itself absolutely, the need for judicial

³⁶ Fagbemi, S. A and Akpanke A. R, 'An Appraisal of the Doctrine of Separation of Powers and Its Applicability in Modern Governance for National Development in Nigeria' (2018) 9 (2) *Ebonyi State University Law Journal* 262

³⁷ Duhaime's Law Dictionary <www.duhaime.org> accessed on September 22, 2019

³⁸ Canadian Judicial Council, 'Why is Judicial Independence is Important to you?' May 2016 www.courts.gov.bc.ca/documents> accessed September 24, 2019

³⁹ Sutter Daniel 'Enforcing Constitutional Constraints' (1979) 8 *Constitutional Political Economy* 139-150.

approval and the threat of litigation can make certain actions more costly at the margins, thus reducing their attractiveness.

According to Widner,⁴⁰ the Independence of the Judiciary is at the very heart of the judicial function, it is a cornerstone of any worthwhile legal structure and an essential element of any democratic system of governance that respects the Rule of Law and a balanced socio-economic development and stability of a nation. Independence of the Judiciary is not to serve the Judges but the society. It is the right of the people to have an Independent Judiciary.

The judiciary, being a branch of Government is vested with judicial powers.⁴¹ The primary role of judiciary, the world over, is to interpret laws enacted by the legislatures and applies the existing laws to individual cases in the determination of any question as to the civil rights and obligations between persons, or between government or authority and to any person in Nigeria.⁴² As noted earlier, sections 16, 17 and 21 dealing with economic, social and cultural rights are provided for in Chapter II of the 1999 Constitution. However, it is observed that the Courts in Nigeria are reluctant to venture and interpret liberally the provisions of Chapter II of the CFRN 1999.⁴³ This, according to Ikpeze, was best demonstrated in the case of *Okogie v. The Lagos State*,⁴⁴ 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, as noted before, makes it a duty

⁴⁰ Widner, J. ‘Courts and Democracy in Post-Conflict Transition: A Social Scientist's Perspective on the African Case. [2001] (95) (1) *The American Journal of International Law*, 64- 75.

⁴¹Alli Yusuf. ‘The Evolution of Ideal Nigerian Judiciary in the New Millennium’ (2001) 1 (1) *Bar Journal*, 39-56: 40; Essein, E and others. ‘The Nigerian Judiciary since Amalgamation: Strengths and Weaknesses.’ Being paper presented at 47th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 2nd – 6th June, 2014 at Ebonyi State University, Abakaliki, Nigeria, 215-233: 215.

⁴² Constitution of Federal Republic of Nigeria 1999 (CFRN) (as amended) s 36 (1)

⁴³Ogugua V.C Ikpeze ‘ Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development’ (2015) 5 (18) *Developing Country Studies* < www.iiste.org > 32

⁴⁴ (1981) 1 NCLR 218

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 limits court jurisdiction to pronounces 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”.

Premised on the position of this paper in the preceding section, it is submitted that the above pronouncement should be discountenanced while interpreting section 6 (6) (c) of the 1999 Constitution. The fundamental objectives are the ideological foundation of governance in civilized jurisdictions.⁴⁵ The Nigerian fundamental objectives was first adopted in the 1979 Constitution of Nigeria and sustained in the 1999 Constitution. The objectives were predicated on the standard proposed under the Universal Declaration of Human Rights 1948 by the United Nations for all peoples and all nations. Except for the negative constitutional provision, Chapter II of the 1999 Constitution is an important ideological innovation in Nigerian constitutional democracy. Lack of ideological commitment by political leadership is therefore dangerous to policy formulation. The result is that the essence of governance is lost since there is no clear policy direction to provide the necessary ingredient for effective, efficient and meaningful governance. The desirability of the directive principles, therefore, was a positive step towards achieving the goals of promoting good governance and welfare of the people based on the principles of freedom, equality and justice.⁴⁶ The provisions dealing with economic, social and cultural objectives in the directive principles are not couched in the form of either negative or positive rights. As directive principles, they are in the form of the minimum standard aspiration, which the government must strive to attain. Hence, to ensure compliance with its tenet and for effective administration of justice in a democratic setting, the judicial arm of government has a definite and decisive role to play. It has constitutional right to settle legal disputes and administer justice impartially. The judiciary also has duty to works toward the enforcement of citizens' rights as part of democracy dividend. Above all, economic, social and cultural rights are *sine qua non* to sustainable development and

⁴⁵ Ajepe Taiwo Sheuh (n 3)

⁴⁶ *Ibid*

economic growth. Hence, it requires an effective legal and judicial system for their achievement. It is therefore strongly submitted that rather than being pessimist in the matter, judiciary should be ready to take proactive approach to the comprehensive interpretation of the provisions and not to attempt a reconstruction of the directive principles giving contents to the rights, and behaving true to their positivists' conservatism of not seeing beyond the plain words of the provisions as a way to maintain its independence from the claw of either the executive or legislative arms of government. In order words, the judiciary must see itself as equal partner in democratic governance without succumbing to unnecessary blackmail on the account of legislative impediment. Nigerian judiciary should also stop reliance on the provisions of the African Charter on Human and Peoples Rights, as recommended in the decision of the Supreme Court in *Abacha v Fawehinmi*⁴⁷ and popular rhetoric in the past by writers.

6. Conclusion

According to Kutigi,⁴⁸ it is a general principle of law that an effective remedy must accompany every right so that in case of its violation, the victimized person has a measure of redress. For this reason, the right to an effective remedy must be guaranteed and should be available in cases of the violation. In view of this necessity, there is a growing global acceptance of the justiciability of ESC rights.⁴⁹ It is noted that the Nigerian economic, social and cultural rights as presently provided in the Constitution of the Federal Republic of Nigeria 1999 (as amended) are products of the ICESCR. The rights have been adopted and accepted in Nigeria as basic responsibility, which government is enjoined to promote, protect, and help realize irrespective of contrary provisions in section 6 (6) (c) of the Constitution working against their realization despite the clear provision of section 13 of the Constitution, which obliges total compliance with the provisions. It is sad to observe that

⁴⁷ (2000) 4 S.C. (pt. II), 1; (2000) 6 NWLR (pt. 660) 228. See also *A.G. (Ondo State) v A.G. (Federation) and Others* (2002) 9 NWLR (pt. 772) 222

⁴⁸ Kutigi, Halima Doma. 'Towards Justiciability of Economic, Social, and Cultural Rights in Nigeria: A Role for Canadian-Nigerian Cooperation?' (2017) 4 *The Transnational Human Rights Review* 144

⁴⁹ *Ibid*

judiciary and even lawyers are reluctant in ensuring the enforcement of these rights in line with positive provisions in section 13. Hence, there is the urgent need to challenge the popular belief among judges, lawyers, and even human rights activists that economic, social and cultural rights are not justiciable in Nigeria. There is no doubt that the Nigerian state is in crisis situation in terms of economic, social and cultural rights depravity and its survival greatly depends on litigation to change the current trend

In the light of the foregoing, there is a strong need to strengthen the independence, impartiality and integrity of courts of law and easy accessibility thereto as contained in section 17 (1) (e) of the 1999 Constitution. Both the executive and legislative arms of government must also work together and stop paying lip-services to the Independence of Judiciary. They must realize that the full Independence of the Judiciary is the bedrock of the administration of justice and thus, *sine qua non* for the realization of economic, social and cultural rights as antidotes to sustainable development of the nation economic growth and socio-cultural harmony in the country.

Finally, to maintain its independence, the judicial arm of government too must engage in judicial activism in the interpretation of law to checkmate the executive and legislative excesses in the enforcement of economic, social and cultural objectives of the country. The above, it is recommended, can be achieved with adequate advocacy and capacity building among all the stakeholders involved namely, the three arms of government, legal practitioners, populace, economic and social analyst as well as social media practitioners.