

RECALIBRATING THE DIRECTIVE PRINCIPLES OF STATE POLICY AS AN ENFORCEABLE COMPONENT OF THE NIGERIAN CONSTITUTION

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Abstract

The constitution of every country is the grundnorm that binds its citizens, persons, institutions, government, authorities and the State. The supremacy of the Nigerian Constitution is so fundamental to the extent that where there is conflict with other laws, the provisions of the constitution prevails over such laws. The fundamental rights provisions are contained in chapter IV of the Nigerian constitution and are justiciable. The other category of rights which in loose terms are also regarded as fundamental rights, are contained in chapter II of the Nigerian constitution. The rights provided for in chapter II of the constitution are socio-cultural, political and economic rights which are not justiciable and therefore, not enforceable. It is on account of this dichotomy that this paper seeks to interrogate the rationale behind the non-enforceability of chapter II of the constitution which dwells on Directive Principles of State Policy. The need to recalibrate and amend the provisions of chapter II of the 1999 Constitution conform to similar provisions of other countries including India, South Africa and the United Kingdom for effective enforcement mechanism, becomes imperative.

Keywords: Recalibrate, Constitution, Fundamental Rights, Non-justiciability, Directive Principles, Socio-economic rights

1 Introduction

The Nigerian Constitution follows the trend of recognizing two sets of ‘rights’, namely, the fundamental human rights and fundamental objectives and Directive Principles of State Policy.² The inclusion of the fundamental objectives and Directive Principles of State Policy in the Nigerian constitution dates back to 1979 when the presidential system of government was first introduced in the country by the Constitution of the Federal Republic of Nigeria, 1979.³ The 1999 Nigerian Constitution shares the same features as that of the 1979 Constitution by retaining the directive principles and fundamental objectives. The idea was deliberately borrowed from the Indian Constitution which had similar provisions incorporated

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² Secs 13-24 deal with objective policy while secs 33-46 contain fundamental rights.

³ See chap II of the Constitution.

in it as far back as 1951.⁴ Tracing the origin of fundamental objectives and Directive Principles of State Policy in chapter II of the Nigerian Constitution to India, Ajomo submits:

There are other rights in the Constitution...which deserve recognition and comment; these are Fundamental Objectives and Directive Principles of State policy in Chapter II of the Constitution. They were introduced into the Constitution for the first time in 1979...These rights are rights to education, work and just remuneration, right to protection against unemployment, sickness, disability or old age. They have been copied from chapter IV of the Indian Constitution which has similar rights incorporated as far back as 1951. The Constitution of Ireland also contains similar provisions.⁵

In terms of Chapter II of the Nigerian Constitution, the fundamental objectives and directive principles include 'rights' to suitable and adequate shelter, suitable and adequate food, reasonable minimum living wage, old age, care and pension, unemployment and sick benefits and welfare of the disabled,⁶ promotion of science and technology, eradication of illiteracy by making provision for free, universal and compulsory primary education; free secondary education, free university education,⁷ and free adult literacy programme.⁸ These objectives and principles are essentially a set of guidelines designed to secure the national target of social well-being, social justice, political stability and economic growth in accordance with the espoused vision of the preamble to the Constitution.⁹

As is the case in other parts of the world, there is significant difference between the status of the two groups of rights in Nigeria. While fundamental rights are inviolable, fundamental objectives and directive principles are not. The concept of justiciability specifically distinguishes the level of recognition of fundamental rights from that accorded to directive principles.¹⁰ There is consensus among scholars on the non-justiciability of the fundamental

⁴ MA. Ajomo, 'The Development of Individual Rights in Nigeria's Constitutional History' in MA., Ajomo & B. Owasanoye (eds.) *Individual Rights under the 1989 Constitution* Nigerian Institute of Advanced Legal Studies, Lagos, 1993) 10; see also, I.O. Akande, 'Fundamental Objectives and Directive Principles of State Policy within the Framework of a Liberal Economy: A Note in Ayua, et al' (eds.) op. cit, 221-234 at 221.

⁵ Ajomo, op. cit at 10; see also, JO. Akande, *Introduction to the Constitution of the Federal Republic of Nigeria* 1999 Q.W Professional Publishers, Lagos, 2000) 52.

⁶ See secs 16 and 17

⁷ See sec 18

⁸ See O Aguda, *Understanding the Nigerian Constitution of 1999* (MU Professional Publishers, Lagos, 2000) 87-88

⁹ T A Aguda, *The Judiciary in the Government of Nigeria* (New Ion Press, Ibadan, 1983) 77-78.

¹⁰ See B de Villiers, 'Directive Principles of State Policy and Fundamental Rights: The Indian Experience' (1992) 8 *South African Journal on Human Rights* 29; see also, R. Miamingi, 'Inclusion by Exclusion? An Assessment of the Justiciability of Socio-Economic Rights under the 2005 Interim National Constitution of Sudan' (2009) 9Q) *African Human Rights Law Journal* 76-102 at 81.

objectives and Directive Principles of State Policy in Nigeria. Alluding to this, Agbede submits as follows: ‘

.....although Chapter II of the Constitution contains a number of the positive human rights provisions even if in vague form but as they are not justiciable they hold no comfort or promise for the ordinary citizens in need of such rights...’¹¹

Similarly, Aguda posited that for: completeness of treatment it is necessary to make a few points that on the face of it, the Constitution does not give any legal right to individuals in so far as the fundamental objectives and directive principles of the state policy are concerned.’¹²

In the same vein, Akande submits thus:

The provisions of the fundamental objectives and Directive Principles of State Policy are not justiciable. Therefore, it would appear that the duty and responsibility on all organs of government “to conform, to observe and apply them” is limited to the extent that the judiciary cannot enforce any of the provisions. Accordingly, the executive does not necessarily have to comply with any of the provisions unless the legislature has enacted specific laws for their enforcement.¹³

Section 6(6)(c) of the Constitution of the Federal Republic of Nigeria 1999 provides 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... is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II’. Nigerian courts have often read this provision as rendering Chapter II non-justiciable. In *Uzoukwu v Ezeonu II* the Court of Appeal affirmed that rights under Chapter II are neither fundamental nor enforceable in court.¹⁴ Similarly, in *Archbishop Okogie v Attorney-General of Lagos State*¹⁵ the court held that Chapter II provisions cannot found a cause of action unless anchored in another enforceable right.

However, the phrase ‘except as otherwise provided’ has generated a more nuanced jurisprudence than a blanket exclusion suggests. The Supreme Court in *Attorney-General of*

¹¹ I O Agbede, *The Rule of Law and the Preservation of Individual Rights* in Ajomo & Owasanoye (eds.), op. nit, at 35.

¹² See T A Aguda, *Judicial Attitude to Individual Rights in Nigeria* in Ajomo & Owasanoye (eds.) op cit, at 68.

¹³ Akande, ‘Fundamental Objectives and Directive Principles of State Policy within the Framework of a Liberal Economy: A Note in Ayua, et, al (eds.), op. cit at 222.

¹⁴ [1991] 6 NWLR (Pt 200) 708 (CA)

¹⁵ [1981] 2 NCLR 337 (CA)

*Ondo State v Attorney-General of the Federation*¹⁶ recognised that the National Assembly may legislate to give effect to Chapter II objectives, thereby opening a pathway to indirect enforceability. This interpretive window complicates any absolute claim of non-justiciability. With respect to the African Charter argument, the domestication of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act renders Charter rights enforceable as statutory rights. In *Abacha v Fawehinmi*¹⁷ the Supreme Court confirmed that the Act has the force of law but remains subordinate to the Constitution.⁴ Accordingly, while Charter provisions on socio-economic rights may be invoked in Nigerian courts, they cannot override constitutional supremacy under s 1(3) of the 1999 Constitution.

Thus, rather than automatically transforming Chapter II into justiciable entitlements, domestication strengthens the normative and interpretive framework for socio-economic rights, subject to constitutional hierarchy.

2. Methodology

This seminar adopts a primarily doctrinal legal research methodology, complemented by limited comparative and normative analysis. The core approach consists of a systematic examination of the text, structure, and internal logic of the Constitution of the Federal Republic of Nigeria 1999, with particular focus on Chapter II and section 6(6)(c). The study will undertake close analysis of apex-court jurisprudence, especially decisions of the Supreme Court of Nigeria and Court of Appeal interpreting justiciability, constitutional supremacy, and the phrase "except as otherwise provided."

A structured comparative component evaluates selected common-law jurisdictions chosen based on shared constitutional heritage, textual design concerning directive principles, enforceability doctrines, and institutional capacity for judicial review.

Sources include constitutional provisions, reported judicial decisions, legislative materials, and peer-reviewed scholarship. All authorities cited were verified using official law reports, government publications, and reputable legal databases to ensure doctrinal accuracy and analytical reliability.

3. Meaning and Essence of Human Rights

Human rights, could be defined as those rights or claims that are inherent in man. They are associated with the nature of man. Various writers have given their definitions to the concept of human rights. Ezejiefor opines thus;

¹⁶ [2002] 9 NWLR (Pt 772) 222 (SC).

¹⁷ [2000] 6 NWLR (Pt 660) 228 (SC)

Human or fundamental rights is the modern name for what have been traditionally known as natural rights and these may be defined as moral rights which every human being, everywhere at all times, ought to have simply because of the fact that, in contradistinction with other beings, he is rational and moral.¹⁸

Worthy of note is the fact that human rights are not limited to civil and political rights that have found eloquent expression in our present constitution as fundamental rights. They also embrace the economic, social, cultural group and developmental rights whether encompassed by a positive law or not. In this wise, 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 *lex lata* while others remain aspiration to be attained in the future.¹⁹

The Nigerian Supreme Court, by way of definition, declared thus:

Human right is a right which stands above the ordinary laws of the land and which is in fact antecedent of the political society itself. It is a primary condition to a civilized existence, and what has been done by our constitution since independence is to have these rights enshrined in the constitution so that the right could be 'immutable' to the extent of the 'non-immutability' of the constitution itself.

4. Analysis/results

The relationship between the African Charter on Human and Peoples' Rights and Chapter II of the 1999 Nigerian Constitution

The relationship between the African Charter on Human and Peoples' Rights ("the Charter") and Chapter II of the 1999 Nigerian Constitution²⁰ is characterized by a conflict of justiciability, where the Charter acts as an enforceable, domesticated remedy for non-justiciable constitutional principles. While Chapter II of the Nigerian Constitution is generally non-justiciable²¹, the African Charter, ratified and domesticated in 1983, has been held by Nigerian courts to be part of domestic law and enforceable.

¹⁸ G. Ezejirofor, *Protection of Human Rights Under the Law*, (London: Butterworths, 1964) 3

¹⁹ O C Eze, *Human Rights in Africa*, (Macmillan, 1984) 1

²⁰ Fundamental Objectives and Directive Principles of State Policy

²¹ Section 6(6)(c)

The following are key aspect of the relationship between the African Charter on Human and Peoples' Rights ("the Charter") and Chapter II of the 1999 Nigerian Constitution²²

- **Complementary Application:** Nigerian courts often look to the African Charter to give effect to the social and economic rights that are listed as non-justiciable in Chapter II of the Constitution. For example, environmental rights²³ have been enforced despite the non-justiciability of environmental protection under Section 20 of Chapter II.
- **Superiority Over Domestic Laws (but not the Constitution):** The Supreme Court of Nigeria in *Abacha v Fawehinmi*²⁴ established that the African Charter Act is superior to other municipal laws, including military decrees. However, the Charter cannot prevail over the 1999 Constitution itself.
- **Justiciability of Socio-Economic Rights:** While Chapter II focuses on "policy" for governance, the African Charter treats socio-economic rights as binding and enforceable. Courts have used the Charter to enforce rights to health²⁵, work²⁶, and education²⁷.
- **Enforcement Mechanism:** Rights in the African Charter are enforceable through the Fundamental Rights Enforcement Procedure (FREP) Rules, which allow citizens to bring claims for violations of rights contained in both Chapter IV of the Constitution and the African Charter Act.
- **"Claw-Back" Clauses:** A major difference is that while the Charter has a broad scope, it contains "claw-back" clauses that allow for restrictions based on national laws, whereas Chapter IV of the Constitution has more stringent standards for limitation.

In summary, the African Charter serves as a powerful tool to circumvent the non-justiciability of Chapter II of the 1999 Constitution, allowing Nigerian courts to enforce economic, social, and cultural rights that the constitution itself does not make directly actionable.

Nigerian courts have consistently held that **Section 6(6)(c) of the 1999 Constitution** bars them from enforcing the Fundamental Objectives and Directive Principles of State Policy in **Chapter II**, rendering those socio-economic rights **non-justiciable**. In *Archbishop Anthony*

²² Fundamental Objectives and Directive Principles of State Policy

²³ Article 24 of the Charter

²⁴ [2000] 6 NWLR (Pt. 660) 228 (SC)

²⁵ Article 16

²⁶ Article 15

²⁷ Article 17

*Okogie v AG Lagos State*²⁸, the court affirmed that courts lack jurisdiction to determine whether government action conforms with Chapter II objectives due to Section 6(6)(c). Likewise, subsequent decisions describe Chapter II provisions as “mere declarations” rather than enforceable rights. However, courts have also acknowledged a **doctrinal opening** within Section 6(6)(c)’s proviso “except as otherwise provided by this Constitution”. This has been interpreted to permit enforcement where another constitutional provision or statute has conferred justiciability on a Chapter II right (e.g. through legislative enactments) or where rights overlap with enforceable Chapter IV rights.

Although Chapter II directives are generally non-justiciable, certain guarantees lend themselves to judicially manageable standards. These include the directive on education, because the African Charter and domestic legislation²⁹ provide clear measures and obligations that courts can evaluate. Similarly, environmental protection under Section 20 while a directive has been interpreted through environmental jurisprudence to establish identifiable standards, particularly where overlap exists with enforceable rights like the right to life and health. Health-related obligations, though not explicit, are frequently tied to enforceable rights in Chapter IV³⁰, enabling indirect adjudication. Rights that feature clear state duties and measurable outcomes allow courts to craft justiciable standards, even if rooted in Chapter II policy objectives.

To move beyond symbolic recognition and ensure meaningful enforcement of Chapter II directives, Nigeria needs robust institutional mechanisms. First, specialised oversight bodies such as independent commissions for social rights, health, and the environment — should be established with powers to monitor, investigate, and report compliance. Second, mandatory reporting duties should require government agencies to publish periodic compliance reports on socio-economic indicators, subject to parliamentary review and civil society scrutiny. Third, budget transparency and participatory budgeting processes would tie state expenditure to constitutional obligations, empowering courts and oversight bodies to assess whether adequate resources are allocated toward fulfilling Chapter II objectives. Combined, these designs create accountability frameworks that press government actors to translate policy goals into enforceable programs rather than leaving directives as aspirational ideals.

5. Nature of Rights contained in Chapter II

²⁸ [1981] 2 NCLR 337

²⁹ e.g., Universal Basic Education Act

³⁰ e.g., right to life

The rights as found in Chapter II of the 1999 Constitution of the Federal Republic of Nigeria are second and third generation rights. These rights do not find expression under the constitution as justifiable rights, instead they form the basis of chapter II titled Fundamental Objective and Directive Principles of State Policy. These include political, economic, social, cultural, educational and foreign policy objectives and directive principles.

The very first section of that Chapter II³¹ is to the effect that:

It shall be the duty and responsibility of all organs of the Government: and of all authorities and persons exercising Legislative, Executive or Judicial Powers to conform to, observe and apply the provision of the chapter of the Constitution.

On the other hand, section 6 (6) (c) provides that the Judicial Powers vested in the courts enumerated in the constitution:

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 the State Policy set out in chapter II of this Constitution.

The rights under chapter II which are political, economic, social, cultural, educational and environmental rights embrace the right to work, right to just condition of work, right to an adequate standard of living, right to organize, form and join trade unions, right to collective bargaining, right to equal pay for equal work, right to security, right to property, right to education and right to participate in cultural life and enjoy the benefit of scientific progress.

Section 16 of that chapter reveals an interesting formulation. The provision is as follows:

1. The State shall, within the context of the ideals and objective for which provisions are made in this constitution:
 - (a) Harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy.
 - (b) 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 and equality of status and opportunity
2. The state shall direct its policy towards ensuring:

³¹ Section 13 in the 1999 Constitution

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

The subject of this economic policy affects the generality of the Nigerian public. A closer look at these provisions in comparison with practical experience, undoubtedly indicates that this policy is observed more in breach than in compliance.

Section 15 talks on non-discrimination on the ground of place of origin, sex, religion, status, ethnic ties. The duty of the state to secure full residence rights for every citizen in all parts of the Federation. In contrast to the above, people have been deported from one state to another in the name of national security. Yet, those affected cannot question this act of some state government in court because this section is non-justiciable.

Section 17 talks of freedom of equality and justice, employment, health, equal pay for equal work and securing adequate means of livelihood. However, in reality, more than 80 million Nigerian youths are unemployed, placing the youth unemployment rate at about 53 % of the youth population.³² Also, it has been estimated that approximately 253,000 Nigerians die annually due to inadequate access to healthcare, which includes barriers such as inability to afford care, travel to facilities, or secure necessary services.³³ The essence of relief that these provisions are thought to have provided is obliterated by the Constitution itself, which unequivocally provided in Section 6(6) (c) that the Judicial Powers vested in the courts:

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 as whether any law or any judicial decision is in conformity with the Fundamental Objectives and directive principle of state policy set out in chapter II of this constitution.

³² The *State of the Nigerian Youth Report 2025* (by Plan International Nigeria in collaboration with ActionAid Nigeria)

³³ <https://archive.businessday.ng/health/article/insufficient-access-healthcare-kills-nigerians-poor-quality-care>

The provisions of chapter II are said to be non-justiciable as they constitute mere ideas towards which the states are expected to aim.³⁴ The regrettable import of these provisions can be discerned from the lucid lamentation of a renowned Nigerian judge, Akinola Aguda when he stated thus:

I feel much concerned to think that the directive principle are to be regarded as mere ideas, the arrival of which the citizens can only pray and hope for, but in respect of which he cannot ask for assistance whatsoever from the courts. If this were so then, wherein lies the expectation and the hope of a bright future for the teeming millions of our people who manage merely to survive at near starvation levels.³⁵

It is observed that a democratic government ought to function within the confines of the law. To ensure compliance, therefore, the citizens should have the power and be in position to question any acts which are not in compliance with the goals set out by the constitution for their benefits.

6. Dichotomy Between Fundamental Rights and Directive Principles of State Policy

It is generally understood that the concept of 'human rights' is founded on the ancient doctrine of natural rights based on natural law.³⁶ Mubangizi submits that while the term 'human rights' is relatively, a contemporary one, but the concept is not. He posits that the 'idea of human rights' is as old as civilization since theologians, philosophers and political theorists alike have been discussing these ideals for centuries.³⁷ Human rights are 'the rights which all human beings have or should have equally by virtue of being human irrespective of race, gender, age, noble or ignoble descent, social class, national origin or ethnic or tribal affiliation; and regardless of wealth or poverty, occupation, talent, merit, religion, ideology or other personal idiosyncrasy'.³⁸ Human rights are inalienable and cannot be transferred, forfeited or lost by having been usurped or by failure to exercise or assert them, for whatever

³⁴ Chapter II of the 1999 Constitution of the Federal Republic of Nigeria. See *Okojie and Ors v A.G Lagos State* [1981] NCLR 218.

³⁵ D. M. Jemibewon, *The Military Law and Society: Reflection of a General* (Ibadan: Spectrum Books Ltd., 1998) 109

³⁶ See D D Basu, *Human Rights in Constitutional Law* (Prentice-Hall of India, New Delhi, 1994) 5-6

³⁷ Mubangizi, op. cit at 4

³⁸ Dlamini, op. cit, at 3

length of time.³⁹ They attract the appellation 'fundamental' because they are important and life, dignity and other high human values all depend on them.⁴⁰

Mubangizi asserts further that human rights are those rights which must not be taken away by any legislation or act of the State and which are often set out in the fundamental law of the country, for example in the bill of rights in a constitution.⁴¹ Raj describes human rights as those minimal rights that individuals need to have against the state or other public authority by virtue of their being members of the human family."⁴² Human rights are a necessary component of any democratic society and the protection of human rights is equally necessary for sound democracy.⁴³ The entrenchment of natural rights in modern constitutions transforms these rights from 'moral rights' into legal rights capable of being enforced by the individual concerned who is different from other beings.⁴⁴ Fundamental rights, therefore, recognise the importance of the individual in the affairs of the State and seek to assure every citizen full freedom to enjoy life, liberty and happiness. Its principles recognise that the development of a citizen's personality, the pursuit of his/her profession or vocation, and the manner in which he/she seeks to enjoy the pleasure and comforts of life are basically of individual concern. The state may not interfere with these basic rights except when the considerations of public good justify such interruption.⁴⁵ The inclusion of directive principles in modern constitutions is, on the other hand, intended to serve only as a guideline for social justice that future governments must respect by developing policies and setting priorities along the lines suggested by the directive principles. Owing to their non justiciability, the real value of the directive principles is that they place moral and political, rather than legal obligations on the state."⁴⁶ The directive principles 'puts the State under certain duties, but they are duties of imperfect obligation since they cannot be enforced or regarded by any court of law, and are only directions for the guidance of Parliament.⁴⁷ Writing on the directive principles under the Indian Constitution, De Villiers posits:

They [directive principles] constitute the moral and political soul of the Constitution and are in essence 'letters of instruction' to all future

³⁹ Ibid at 3-4

⁴⁰ Ibid

⁴¹ Mubangizi, op. cit, at 2-3

⁴² M S. Raj, 'Awakening of Human Rights' in C.J. Nirmal (ed), Human Rights in India(Oxford University Press, 2000)1.

⁴³ Mubangizi, op. cit, at 7

⁴⁴ Ibid

⁴⁵ Mubangizi, op. cit, at 2-3

⁴⁶ MS. Raj, 'Awakening of Human Rights Inc.). Nirmal (ad), Human Rights in India (Oxford University Press, 2000) 2.

⁴⁷ Mubangizi, op. cit, at 7

governments. The principles cannot, however be regarded as having no practical significance by the state. They place a constitutional, albeit not a justiciable, duty upon all levels of government to undertake social and economic reform by determining that the principles shall be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.⁴⁸

Justiciability and enforceability are the key distinguishing characteristics separating fundamental rights from directive principles. While fundamental rights are justiciable and enforceable,⁴⁹ directive principles are neither justiciable nor enforceable.⁵⁰ Although, there is now a universal emphasis on the indivisible and interdependent nature of all human rights, the reality is that socio-economic and cultural rights still remain largely ignored in most countries. In this regard, the Committee on Economic, Social and Cultural Rights (CESCR) observed as follows.

The international community as a whole continues to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights.⁵¹

In most States, economic, social and cultural rights are almost entirely absent from the common discourse on human rights. Even in those states where economic and social rights are constitutionally guaranteed or where the ICESCR has been domesticated, national courts have relied on the constraints of resources and other limiting clauses in their constitutions to treat socio-economic rights as a mere aspiration, that which demands progressive rather than immediate implementation.⁵² Giving priority to civil and political rights over and above socio-economic and cultural rights has received attack from some African scholars. In this regard, Claude Ake observed that freedom of speech and freedom of press do not mean much

⁴⁸ B K Saharay, *The Constitution of India: An Analytical Approach* 3 ed. (Eastern Law House, Kolkata and New Delhi, 2002) 32

⁴⁹ Van Wyk, et al)(eds. op cit, at 619.

⁵⁰ See Sec 46 of the 1999 Constitution

⁵¹ sec 6 (6)(c) of the 1999 Nigerian Constitution

⁵² sec 6 (6)(c) of the 1999 Nigerian Constitution which makes fundamental objectives and directive principles setout in chapter II non-justiciable.

for a largely illiterate rural community completely absorbed in the daily rigours of the struggle for survival.⁵³

7. Socio-Economic Rights Protection in Other Jurisdictions

Chapter Two of the Constitution of South Africa contains the Bill of Rights, a human rights charter that protects the civil, political and socio-economic rights of all people in South Africa. The rights in the Bill apply to all laws, including the common law, and bind all branches of the government, including the national executive, Parliament, the judiciary, provincial governments and municipal councils. Some provisions, such as those prohibiting unfair discrimination, also apply to the actions of private persons. The rights tagged fundamental objectives and Directive Principles of State Policy are among the most essential rights for any society. They are essential in giving meaning to other rights guaranteed in the constitution and their absence or non-recognition actually undermines the vigour of other fundamental rights. The importance of these rights should be acknowledged, given their purpose of protecting the vulnerable in society from serious social and economic threats, hence the inclusion of socio-economic rights in the constitutions of other countries including South Africa, India and the United Kingdom. It is therefore imperative to examine the Directive Principles of State Policy in other jurisdictions to enhance this research.

8. The South African Experience

South Africa's first bill of rights was contained in Chapter 3 of the transitional Constitution of 1993, which was drawn up as part of the negotiations to end apartheid. This "interim Bill of Rights", which came into force on 27 April 1994 (the date of the first non-racial election), was largely limited to civil and political rights (negative rights). The current Bill of Rights, which replaced it on 4 February 1997 (the commencement date of the first Constitution), retained all of these rights and added a number of new positive economic, social and cultural rights.⁵⁴ South Africa is seen as a benchmark in terms of the constitutional protection and judicial enforcement of socio-economic rights in Africa.⁵⁵ The constitutional protection of socio-economic rights in South Africa was not uncontroversial. Although the debate has now effectively come to an end, it is important to mention that the inclusion of socio-economic rights in the South African Bill of Rights was not uncontested.⁵⁶ According to Liebenberg,

⁵³ C Ake, *The African Context of Human Rights* A paper presented at the International Conference on Human Rights in the African context held at Port Harcourt, Nigeria, (9-11 June 1987),

⁵⁴ Cockrell, Alfred. "The South African Bill of Rights and the 'Duck/Rabbit'". *Modern Law Review*. 1997

⁵⁵ See Kende, op cit, note 17 at 244

⁵⁶ See in this regard, M. Wesson, 'Grootboom and Beyond: Reassessing the Socio-economic Jurisprudence of the South African Constitutional Court' (2004)20(2) *SAJHR* 284-308.

the inclusion of socio-economic rights as justiciable rights in the South African Constitution represented the culmination of a process of struggle to recognise the socio-economic dimensions of human dignity, freedom and equality.⁵⁷ The express recognition of socio-economic rights as justiciable rights in the South African Constitution, coupled with the decisions and the pronouncements of the constitutional Court, have resulted in the socio-economic rights debate in South Africa settling fairly rapidly, Socio-economic rights which are contained in the South African Bill of Rights include the following: the rights dealing with labour relations;⁵⁸ environmental rights;⁵⁹ property right;⁶⁰ the right of access to adequate housing;⁶¹ the rights of access to health care, sufficient food and water;⁶² the right to social security;⁶³ and the right to basic and further education.⁶⁴ These rights have important social and economic ramifications as most of them reflect specific areas of basic needs or delivery of particular goods and services,⁶⁵ furthermore, socio-economic rights tend to create entitlements to material conditions of human welfare.⁶⁶ They are entitlements 'that are concerned with dimensions of social welfare.'⁶⁷

9. The Indian experience

The Indian Constitution⁶⁸ provides for two sets of rights- rights which are fundamental and justiciable, and rights that are not fundamental and non-justiciable. The fundamental rights enshrined in Part III of the Indian Constitution create political rights while economic rights are provided for in Part IV in the nature of non-justiciable rights which are called the directive principles of the state policy.⁶⁹ However, through judicial activism and expansive interpretation, the Indian judiciary has been able to put life into non-justiciable rights in that Constitution. The expansive interpretation of civil and political rights in India is to

⁵⁷ S. Liebenberg, *Socio-Economic Rights: Adjudication under a Transformative Constitution* (Juta & Co., Ltd. Claremont, 2010)21,

⁵⁸ See sec 21 CFRN

⁵⁹ See sec 24 CFRN

⁶⁰ See sec 25 CFRN

⁶¹ See sec 26 CFRN

⁶² See sec 27 CFRN

⁶³ See sec 27 CFRN

⁶⁴ See secs 28,29 and 35(2)(e) of the CFRN

⁶⁵ See Mubangizi, *op. cit.*, at 118

⁶⁶ See D Brand, 'Introduction to Socio-economic Rights in the South African Constitution' in D. Brand & C. Heyns (ads.), *Socio-economic Rights in South Africa*(Pretoria university Law press, Pretoria, 2005) 3

⁶⁷See D Horsten, L J van Rensburg, MI'. Olivier & L.G. Mpedi, 'Socio-economic Rights' in A Govindjee & P. Vrancken (ads.), *Introduction to Human Rights Law* (LexisNexis, Dorban Johannesburg/Cape Town, 2009) 159-179 159.

⁶⁸ The Indian Constitution has been described as one of the lengthiest and the most detailed of all the Constitutions in the world. For the proposition and assertion on Indian Constitution as the lengthiest in the world, see N. Kumar, *Constitutional Law of India* 2 ad. (Pioneer Publications, Faridabad, 2000) 14.

⁶⁹ See *Kesavananda v State of Kerala* AIR 1973 SC 1461; *5.5. Bola v BD. Sardana* (1997)8 5CC 522

incorporate socio-economic rights otherwise referred to as the integrationist approach. In *Samatha v State of A.P.*⁷⁰ it was observed that the Fundamental Rights and the Directive Principles of State Policy in the Indian Constitution are the 'two wheels of the chariot' to achieve the establishment of the egalitarian social order through the rule of law, which is the core of the basic structure of the Indian Constitution. Similarly, in *Kesavananda v State of Kerala*,⁷¹ the Indian Supreme Court observed that parts III and IV of the Indian Constitution touch and modify each other. They do not run parallel to each other. Further, in *S.S. Bola v B.D. Sardana*,⁷² it was stated that fundamental rights are the means and the directive principles are the essential ends in a welfare State. In *Minerva Mills Ltd v Union of India*,⁷³ the majority view expressed by: Chandrachud CJ emphasised that the Indian Constitution is founded on the bedrock of the balance between Parts III and IV and to give absolute primacy to one over the other is to disturb the harmony of the Constitution. It is submitted that the harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Indian Constitution. In that case, the question arose as to whether the directive principles could assert supremacy over fundamental Rights. The Supreme Court by majority view held that the goals set out in Part IV have to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the core of the Indian Constitution and combine to form its conscience.⁷⁴ The key to understanding the Indian Constitution therefore lies in the relationship between the 'Directive Principles of State Policy' and the 'fundamental rights' contained therein.⁷⁵ It is observed that the innovative provisions in the Indian Constitution are attributed to the eminent personalities from different walks of life that constituted the Drafting Committee as well as to the developments of other nations going on at that time.⁷⁶ The Indian judiciary has taken the lead in the common law jurisdictions in its approach of giving expansive interpretation to civil and political rights to accommodate economic, social and cultural rights. For example, in *Coralie v Union of India*,⁷⁷ an Indian court held that the right to life includes the live with human dignity and all that goes along with it, namely the

⁷⁰ [1997] 88CC 191, para 79; AIR 1997 8C3297, para 42

⁷¹ AIR 1973 SC 1461 (pars 12, 13, 1059); see also *Mumbai Kanigar Sabha v Abdulbhai* AIR 1976 SC 1455(129); *State of Kerala v N.M. Thomas* AIR 1976 SC490, para 42.

⁷² [1997] 8 SCC 522 (Indian Court)

⁷³ AIR 1980 SC 1789, paras 61, 62 & 118.

⁷⁴ It is, however, important to mention that the initial decisions dealing with the issue, namely *State of Madras v Chanipakam Dorairajan* AIR 1951 SC 226; 1951 SCJ 33, and *In re Kerala Education Bill*, 1957 AIR 1958 SC956; 1959 SCR99S supported the primacy of fundamental rights over the directive principles in the event of a direct conflict between the two.

⁷⁵ Saharay, op. cit. at 35; see also, Govindje (LU), op. cit. at 22.

⁷⁶ Saharay, op. cit. at 35; see also, Govindje (LD), op. cit. at 17-18

⁷⁷ [1981] AIR SC 746

bare necessities of life such as adequate nutrition, clothing and shelter. Also, through legal reasoning, directive principles in the Indian Constitution have been elevated to the status of inalienable fundamental human rights in certain cases. In *Air India Statutory Corporation v United Labour Union*,⁷⁸ it was held by a full court that the directive principles in the constitution were actually fore-runners' Convention on the right to Development as an inalienable human right and that all people are entitled to participate, contribute to economic, social, cultural and political development in which all human rights and fundamental freedoms would be fully realised. The court held further that these principles had become embedded as an integral part of the Constitution in the directive principles and, as such, now stood elevated to the status of inalienable fundamental human rights. The court also commented that social and economic democracy is the foundation for stable political democracy and confirmed that the directive principles could be justiciable by themselves without having to be read into fundamental rights.⁷⁹

In constitutional jurisprudence, the Indian approach on expansive interpretation presents an enviable position for many countries. It has influenced many drafters of national constitutions and has specifically informed the inclusion of many fundamental provisions in the Nigerian Constitution.⁸⁰

9. The United Kingdom experience

In the United Kingdom, socio-economic rights are provided for in the Human Rights Act and Equality Act 2020. These include rights:

- a. To a name and a nationality from birth;⁸¹
- b. To family care or parental care, or to appropriate alternative care when removed from the family environment;⁸²
- c. To basic nutrition, shelter, basic health care services and social services;⁸³
- d. To be protected from maltreatment, neglect, abuse or degradation;⁸⁴

⁷⁸ Similarly, in *Feldbrugge v the Netherlands*, Judgment of 29 May 1986, Publications of the European Court of Human Rights, Series A, No.99, the European Human Rights Court extended the right to a fair and public hearing to social security benefits. The instant approach applies the substantive civil and political rights treaties protections to find violations of socio-economic rights.

⁷⁹ AIR 1997 SC 645

⁸⁰ See Ajomo, 'The Development of Individual Rights in Nigeria's Constitutional History' in Ajomo & Owasanoye (eds.), op. cit, 10; Akande, op. cit, at 52.

⁸¹ ss. 1–2; **British Nationality Act 1981**

⁸² ss. 17, 20, 22

⁸³ s. 17, **Children Act 1989**

⁸⁴ s. 11, **Children Act 2004**

- e. To be protected from exploitative labour practices;”⁸⁵
- f. Not to be required or permitted to perform work or provide services that are inappropriate for a person of that child’s age; or place at risk the child’s well-being, education, physical or mental health or spiritual, moral or social development;”⁸⁶
- g. Not to be used directly in armed conflict, and to be protected in times of armed conflict.”⁸⁷

It is pertinent to state that although socio-economic rights are recognized by statute in the United Kingdom, some of such rights including right to housing, health, education and social security are not directly enforceable in domestic courts for the fact that they have not been incorporated into the laws of the United Kingdom. Since the establishment of Human Rights Act by the United Kingdom in 1998, the issue of enforceability of socio-economic rights has ignited robust debate. The inclusion of European Convention on Human Rights into the laws of the United Kingdom, will undoubtedly influence the outcome of such debate in favour of enforceability of socio-economic rights. The courts in the United Kingdom are yet to make a final pronouncement on the justiciability or otherwise of socio-economic rights. At the moment, the discretion to protect socio-economic rights are selectively applied. States in the United Kingdom apply discretionary depending on the nature of right sought to be protected. In *R v Cambridge Health Authority ex parte B*⁸⁸ the claimant’s challenge to his denial of access to medical treatment, was refused by court on the ground that it could not force the Health Authority to provide its limited services. Similarly in *R v Swindon NHS Primary Care Trust*⁸⁹, the claimant challenged the authority for refusing to fund access to breast cancer drug. Although the court held that the decision of the Health Authority, was irrational. It however, did not grant the claimant’s relief. In recent times, the courts in the United Kingdom have adopted a pragmatic approach. In the enforceability of socio-economic rights. In *Aolain v Mackeever*⁹⁰, the court took cognizance of the policy on socio-economic disadvantaged groups and took steps to ensure that the right complained of under the Directive Principle of state policy, was protected since socio-economic rights are species of human rights, they need not to be incorporated into the Human Rights Act to enhance enforceability as such approach will ultimately defeat the core essence and value of socio-economic rights which have gained universal recognition and applicability.

⁸⁵ Part II, Children and Young Persons Act 1933

⁸⁶ ss. 18–23, Children and Young Persons Act 1933

⁸⁷ Art. 38, **UNCRC**

⁸⁸ [1995] 2 ALL ER, 129

⁸⁹ [2006] EWCA CIV 392

⁹⁰ [2004] EHRLR 158

10. Need to Incorporate Social Economic Rights into Chapter IV

The constitution of the Federal Republic of Nigeria, 1999 is one of the modern constitutions that classified rights into fundamental rights on the one hand and fundamental objectives and Directive Principles of State Policy on the other hand.⁹¹ Unlike the position adopted in the Nigerian constitution, some progressive constitutions have taken the step of guaranteeing a number of rights contained in both the ICCPR and ICESR in a single, justiciable bill of rights. An example in this category is the constitution of the Republic of South Africa 1996.⁹² In recognizing the justiciability of socio-economic rights, the South African constitutional court in the case of *Government of the Republic of South Africa v Grootboom*⁹³ stated thus:

Our constitution entrenches both civil and political rights and social and economic rights. All the rights in our bill of rights are inter-related and mutually supportive.

In Nigeria, although a socio-economic rights are largely non-justiciable, the pragmatic approach adopted by the Supreme Court has ignited hope that in due course, fundamental directives and principles of state policy will attain the desired objective. In the case of *Attorney-General of Ondo State v Attorney-General of the Federation*,⁹⁴ the Supreme Court while acknowledging the non-justiciability of the fundamental objectives and Directive Principles of State Policy, stated that it would amount to a failure of duty and responsibility on the part of the state organs if they acted in clear disregard to the fundamental objectives and Directive Principles of State Policy in the constitution. Per Uwaifo JSC in *Attorney-General, Ondo State*⁹⁵ pronounced thus:

We do not need to seek uncertain ways of giving effect to the directive principles in chapter II of our constitution. The constitution itself has placed the chapter II under the exclusive legislative list. By this, it simply means that all the directive principles need not remain mere or pious declarations. It is for the executive and the National Assembly working together to give expression to any one of them through appropriate enactment as occasion may demand.

⁹¹ Chapters IV and II of the 1999 constitution

⁹² Sections 7-39 of the constitution of South Africa

⁹³ [2000] 11 BCLR 1169 (CC)

⁹⁴ [2002] 9 NWLR (Part 172, page 222)

⁹⁵ *Supra*

It is therefore suggested that since it is the primary duty of the Nigerian courts to interpret laws, coupled with the liberal interpretation of the directive principles of state policy contained in chapter II of the Nigerian constitution, the era of strict interpretation of chapter II to defeat the justiciability of socio-economic rights, would be consigned to the dustbin of history.

11. Conclusion

The dichotomy between the civil and political rights and the economic, social and cultural rights must be dismantled because it encourages egregious violations of the economic, social and cultural rights which have been described as a "neglected category of human rights in Nigeria".⁹⁶ A strong case is therefore made for the justiciability of the fundamental objectives and directive principles in Nigeria under two heads namely, the integrationist approach and expansive interpretation taking after the Indian example discussed above. Secondly, it will advocate direct legislation by the Nigerian National Assembly invigorating the provisions of Chapter II of the Constitution or in the alternative, it will advocate the amendment of the Nigerian Constitution by removing the non-justiciability clause on the fundamental objectives and directive principles of state policy. This alternative approach will accord with the position under South Africa's Constitutional arrangement.

It is submitted that the 'rights' tagged fundamental objectives and directive principles of State policy: (FODPSP) in Nigeria, are amongst the most essential rights for any society. They are essential in giving meaning to other rights guaranteed in the Constitution and their absence or non-recognition actually undermines the core values of the remaining fundamental rights. The importance of these rights should be acknowledged, given their purpose of protecting the vulnerable in society from serious social and economic threats. Without proper recognition of these essentials, fundamental rights would effectively be hamstrung in the country. An example in this regard is the right to education, which is 'categorised merely as a fundamental objective and directive principle under the Nigerian Constitution. This right has been recognised globally as an empowerment right, and a fundamental right which has been given wide recognition in a number of important international, regional and national human rights instruments.⁹⁷

⁹⁶ J A Dada & M E Ibanga, Human Rights Protection in Nigeria, *African Journal of law and Criminology* (2011) (1) (2) 70-81.

⁹⁷ Article 10 of the convention on the Elimination Against Women (CEDAW) 1979, parts 22, 24 and 29 of the convention of the Child Rights Act 1989

It is, therefore, posited that translating the fundamental objectives in the Nigerian Constitution from dormant non justiciable rights to justiciable and enforceable rights through judicial activism, as replicated in India, would be a good mechanism for achieving an end which could have a significant impact upon the most marginalised in Nigerian society.

7. Recommendations

In order to realize the enforceability of the directive principles of State Policy in chapter II of the constitution, the following recommendations are imperative:

1. Nigeria needs to learn from the Indian experience, especially in terms of its judicial activism and liberal disposition, especially in context of public interest litigation as it relates to enforcement of social economic rights.
2. The current human rights instruments and laws in Nigeria must be subjected to review. Necessary amendments should be carried out by the Nigerian Parliament to reflect the present social, economic and political developments in Nigeria to enhance the justiciability of socio-economic, political and cultural rights as enshrined in part II of the 1999 Constitution.
3. Fundamentally, the National Assembly should establish regulatory authorities mandated to promote economic, social and cultural rights and exercise oversight functions over such bodies.
4. There is the need to involve policy makers and advocacy groups to take proactive measures in ensuring that economic, social and cultural rights are made justiciable.
5. To incorporate the fundamental directive principles of state policy into chapter IV of the 1999 constitution to enhance its justiciability.
6. To recognize and equate socio-economic rights with fundamental rights to facilitate enforcement in the event of any breach.