

Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development

Ogugua V.C. Ikpeze

Department of International Law / Jurisprudence, Faculty of Law, Nnamdi Azikwe University, Awka, Anambra State, Nigeria

Abstract

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

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

1. Introduction

It is a truism that provisions of Constitutions of most democratic countries remain the organic laws the supreme laws and the grundnorm from which every other law must originate or be rooted. More so the provisions of such constitutions have binding force on all authorities institutions and persons such is the position in the Nigerian Constitution (FGN 1999) as held in *FRN v Ifeagwu* (2003) Nigeria Weekly Law Report (NWL) pt. 798. To the extent that where any law or act that is inconsistent with the provisions of the constitution, it is to the extent of any inconsistency null and void as provided in section 1(1) (3) of the Constitution. Thus any Nigerian constitutional provision which is made non-justiciable ought not to be in the constitution so that the Courts can carry out their constitutional duties of interpretation of the law inclusive of the constitution.

Non-justiciability of chapter II means that the courts cannot adjudicate on any provisions of chapter II thus such provisions cannot be interpreted. This situation leads to limitation to development and accountability of the government.

Non-justiciability presupposes limitations on the organ of government entitled to interpret the constitution, which is the judiciary. It further amounts to denial of the rights (albeit; the economic rights) of Nigerian citizen who upon infringement of rights as provided in chapter II CFRN 1999 ought to seek redress in Courts of law.

Such is simply an aberration since the constitution is not just the supreme law or grundnorm but also the organic (living) law that must be progressive in order to achieve social justice, development as well as eschew corruption.

Moreso, the constitution as Supreme law of the nation ought to grow as the nation grows (Ikpeze 2015); as held in *Oyewunmi v Ogunesan* (1996) 3 NWLR (pt 137) 182. Therefore, in the present era of issues of rights and development, no economic and/or social rights provisions in any constitution ought to be made non-justiciable. Otherwise, the government cannot be held accountable to the people which in turn must propagate corruption and hinder development.

Moreover, any nation's constitution is the social contract between the government and the governed targetting good governance, social justice, guaranteed, peace, security and development of the people. Chris Taylor of University of Bradford opined that there are constitutional issues where the courts seek to restrict the powers of the state, that such conflicts highlight the importance of an independent judiciary as part of existence of separation of powers (Taylor 2010). Thus any Legislative or Executive legislation which ousts the power of the Court to interpret any constitutional provision is not desirable to be in the constitution.

1.2 Explanation of Key Terms

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

1.2.1 Non-justiciability

This cannot easily be defined but as rooted in justiciable, whereby the Black's Law Dictionary (Garner 1990) explained justiciable to mean

Any issue to be examined in court of justice, subject to action in a Court of justice as held in *International Harvest Hat Co. v. Caradine Hat. Co* tried in a Court of law for presentation of real interests instead of hypothetical or abstract ones.

Therefore non-justiciable simply means inability of any Court of Law to try any matter even where real interest and rights are being infringed. This definitely is against the spirit and objective of any good constitution in a democratic dispensation; where the rule of law and separation of powers of the arms the government should prevail.

1.2.2 Constitution

The Nigeria Supreme Court has in *FRN v Osahon* (2006)10 NWLR (pt 674) p. 264 posited that the constitution of any country is the embodiment of what a people desire to be their guiding light in governance, their supreme law, fountain of all their laws. As such, constitution is not at any given situation expected to or presumed to contain ambiguity. All its provisions must be given meaning and interpretation even with the imperfection of the legal drafts man. Common sense must be applied to give meaning to all its sections and articles. The power to give such meaning and interpretation rests with the courts of law in Nigeria. Therefore, non-justiciability of chapter II of the Nigerian Constitution 1999, to say the least, breeds ambiguity and ousts the constitutional powers of the judiciary to interpretation of the laws in protecting the rights (albeit the economic rights) of the citizens as well as allow the Courts to perform their constitutional duty to act as a check on the other arms of government to prevent arbitrariness as well as encourage accountability in governance.

1.2.3 Impediment

It refers to something that obstructs or delay the progress of a thing (Hornby 2010) Further relates to an obstacle to achieving an objectives (Brookes 2006).

1.2.4 Economic Rights

These are rights provided for in chapter II of the CFRN 1999 in sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 under the Fundamental Objectives and Directive Principles of the State Policy of the economic, social and cultural rights otherwise referred to as Policy Directives Rights generally and mostly non-justiciable as government claim it is difficult to implement due to lack of funds (Ikpeze 2008).

Rights means those things of which no one may be deprived of without a great affront to justice and God (Ikpeze 2009) Schuler (1997) posited that rights represented demands and claims which individuals and groups make on society, some of which are protected by law and have become part of the nations' laws (*Lex lata*) or municipal law while others remain aspirations to be attained in future. Furthermore, it has been posited that human rights in its widest connotations, embraces those civil, political, economic, social, cultural group, solidarity and development rights which are considered indispensable to meaningful human existence (Eze 1984).

1.2.5 Development

It is the gradual growth aimed at advancement and strength.

Rodney presents the many-sided processes of development: at the level of individual - as implying increased skilled capacity, greater freedom... and material well-being. Further he stated that... a society develops economically as its members increase their capacity for dealing with their environment which entails ... exploiting the resources of nature (Rodney 1976).

Rodney (1976) opined further the question of development that:

In contrast with the surging growth of the countries in the socialist camp and the development taking place, albeit much more slowly in contrast to majority of the Capitalist countries is the unquestionable fact that a large proportion of the so-called under developed countries are in total stagnation and due to exploitation, that the rate of economic growth is lower than that of population... (Ikpeze 2009)

His postulation is apt with the intentions to make justiciable the economic rights provisions in the Nigerian constitution. This Rodney captures by stating that development was universal when conditions leading to economic expansion were universal Rodney 2006).

2. Methodology

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

3. Non-Justiciability Constitutional Provision.

This is elaborately provided in section 6 of the CFRN 1999

Section 6(1) provides thus:

The judicial powers of the Federation shall be vested in the Courts to which this section relates, being courts established for the Federation.

Sections 6(6) provides that:

- 6 (6) The judicial powers vested in accordance with the foregoing provisions of this section;
- (a) Shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law;
 - (b) Shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that persons;
 - (c) Shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental Objectives and Directive Principles of State Policy set out in chapter II of this Constitution.

This section 6(6)(c) is therefore an aberration which, in a constitutional provision, rocks the root of its constitutionality and runs contrary to the preceding provisions of section 6 (a) (b) and indeed against public policy whereby a fundamental policy that cuts across economic rights purports to be created.

It limits the extent to which the courts of law in Nigeria use their inherent powers to adjudicate on any matter and give sanctions where necessary to all matters between persons or between government, or authority and persons in Nigeria for the determination of any question as to civil rights and obligation of that person.

Moreover the Court of Appeal of Nigeria had in Attorney General of the Federation (AG Fed) v Abubakar (2007) 8 NWLR (pt 1035) 117 expounded the term; “Notwithstanding” to mean without being affected by and in *Messin v Nwachukwu* (1999) 6 NWLR (pt 605) 154 the Court held that it means in spite of : the Supreme Court held in *NDIC v Okem Enterprises Ltd* (2004)10 NWLR (pt 80) 107 that the word Notwithstanding is meant to exclude imaginary or impending effect of any other provision of the statute. Therefore the “Notwithstanding” use in Section 6(6)(a) of the Nigeria Constitution excludes any impending ouster of the inherent powers and sanctions of a Court of law. Matter between persons or between government or authority and any persons in Nigeria thus Section 6 (6)(c) purporting to oust the inherent powers and sanctions of a court in Nigeria on Chapter II is unconstitutional as well as an aberration.

Furthermore, in *A.G. Ondo State v A.G. Fed* (2002) 9 NWLR (pt 772) - it is well established as per S. 6 (6)(c) of the Constitution that rights under the Fundamental objective and Directive Principles of State Police are not justiciable except as otherwise provided in the Constitution.. See also *Okogie v A.G. Lagos State* (1981) NCLR 2187.

Now same Court held “ that the extent of the application of FODPSP are meant for authorities that exercise legislative, executive and judicial powers only. Therefore, any enactment to enforce their observation can apply only to such persons in authority and should not be extended to private persons, companies and private organizations. This may well be so, if narrow interpretation is to be given to the provisions but it must be remembered that we are here concerned not with the interpretation of a statute but a constitution which is our organic law or grundnorm. Any narrow interpretation of its provisions will do violence to it and will fail to achieve the goal set by the constitution” See *Ishola v Ajiboye* (1994) 6 NWLR (pt 352) 506.

Still in *A.G. Ondo* per Hon Justice Uwais JSC, the CJN as he then was stated on the issue of legislative competence of the National Assembly (NA) that the NA is competent to make laws to curb corruption by section 15(5) of CFRN 1999. He further stated that the Constitution of India has similar provisions to ours on Directive Principles of State Policy in part IV thereof. That on the India case of *Mangru v Commissioners of Budge Bunde Municipality* (1951) 87 CLJ 369 where it was held that directive principles require to be implemented by legislation.... Therefore, it is incidental or supplementary for the National Assembly to enact the law that will enable the ICPC to enforce the observance of the provisions of section 15(5) of the Constitution. To hold otherwise is to render the provisions of item 60(a) – idle and leave the ICPC with no authority whatsoever. This cannot be the intendment of the Constitution. The writer stated that this is judicial activism by the apex Court. It has pronounced section 15(5) under the FODPSP and gave example of the attitude of India Court since 1951.

-With reference to Section 15 under the FODPSP particularly S. 15(3) (a) provides that “the ...State is to

- (a) provide adequate facilities for goods and services throughout the Federation.
- (b) Secure full residence rights for every citizens in all parts of the Federation.
- (5) The shall abolish all corrupt practices and abuse of power.

The vital questions now are:

1. Whether chapter II of the CFRN 1999 is an ouster clause?
2. Is it proper in a democratic constitution?
3. Where the answer is No why are its provisions still non-justiciable?

To answer the above questions, the writer posits that:

Chapter II of the CFRN 1999 is clearly is an ouster clause which is improper in a democratic regime. Although the Supreme Court of Nigeria in *AG. Fed v Sode Belgore JSC* on what the reaction and position of the Court should be on any purport of ouster clauses, stated thus:

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

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

4. The Importance of Chapter II

The opening provisions of this chapter of discourse leave no one in doubt as to the intendment of all of its provisions which basically relate to duties of the three arms of government to ensure conformity, observation and application of this chapter which is aptly referred to as the socio-economic or living provisions of the CFRN 1999. Analysis of its provisions definitely buttresses the points

4.1 Section 13 provides that:

It 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 constitution.

4.2 Section 14(1)

The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice.

4.2.1 Section 14(2)(b) provides that:

... security and welfare of the people shall be the primary purpose of government...

4.2.2 Section 14 (4) provides thus:

The composition of government of a state, a local government council or any of the agencies... and the conduct of the affairs of the affairs of the government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people....

4.3 15 (2)

... national integration shall be actively encouraged whilst discrimination on grounds of place of origin, sex, religion, status ethnic or linguistic associations or ties shall be prohibited.

4.3.1 Section 15 (3) provides that:

For the purpose of promoting national integration, it shall be the duty of the state to:

- (a) Provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation;
- (b) Secure full residence rights for every citizen in all parts of the federation
- (c) Encourage inter-marriage among persons from different places of origin, or of different religious, ethnic, or linguistic association...

4.3.2 (5) The state shall abolish all corrupt practices and abuse of power. All these relate to the political objectives of governance.

4.4 Section 16(1) (a) provides as follows:

- ...harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
- (b) Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity...

4.4.1 Section 16 (2) provides that:

- The State shall direct its policy towards ensuring;
- The promotion of a planned and balanced economic development.
 - That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
 - 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
 - That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and prisons and unemployment sick benefits and welfare of the disabled are provided for all citizens...

4.5 While section 17 on social order provides thus:

4.5.1 Section 17 (1) the state social order is founded on ideals of freedom, Equality and Justice.

4.5.2 Section 17(2) In furtherance of the social order:-

- Every citizen shall have equality of rights, obligations and opportunities before the law.

4.6 Further Analysis of Chapter II

What is more, subsequent provisions within the said chapter II maintain that:

The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice.

While section 14(2) (a) provides that

...sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority

14(2)(b) provides that the security and welfare of the people shall be the primary purpose of government. It must be noted that Sections 16, 17, 18 were very elaborate on the rights of the citizens to economic and social justice predicated on economic empowerment, equality before the law, governance, peace and security.

The ready questions are;

- How will the rights of the citizens be ensured if no court of law will inquire into the provisions of chapter II?
- What is the import of equality before the law?
- Where there is seeming unequal treatment or action, is it not the court that should pronounce on it?
- What will guarantee good governance but demand for accountability even before the courts of law of any nation?
- Do subsequent provisions not over-ride the preceding ones?

The writer opines that a community reading of sections 6(6)(a)(b)(c) and chapter II suggest that the Courts must be accessed by the citizens and when accessed ought to demonstrate proactivism on issues on provisions of chapter II of the CFRN 1999.

5. The Position of the Courts in Nigeria

The Courts in Nigeria are reluctant to venture and interpret liberally the provisions of Chapter II of the CFRN 1999. This was best demonstrated in *Okogie v The Lagos State* where the Court of Appeal in interpreting Chapter II of the 1979 Constitution which is similar to Chapter II of the CFRN 1999 held as follows:

The Fundamental Objectives identify the ultimate objectives of the nation and the Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. While section 13 of the constitution makes it a duty and responsibility of the judiciary among other organs of government, to conform to and apply the provisions of chapter II, Section 6 (6) (c) of the same constitution ensures no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the fundamental objectives and Directive principles of State Policy. It is clear therefore, that section 13 has not made chapter II of the constitution justiciable.

5.1 The Import of the African Charter on human and people Rights (ACHPR) 1981

No doubt, the ACHPR contains rights which reference economic, social, cultural and development rights and

have been incorporated as part of the laws of Nigeria⁷.

This has somewhat emboldened the Nigeria Courts and other Courts to make decisions based on the African Charter. In *Odofo & Ors v AG Federation* the Court decided on the socio-economic rights of prison inmates to medicare based on the provisions of the ACHPR.

In *Ubani v Director SS*, the court held that the state has a responsibility to the entire inmate in the prison regardless of the offence. In *socio-Economic Right and Accountability Project (SERPA) v FGN* Plaintiff sued in the ECOWAS Community Court to compel government to enforce the right to education of Nigerians. The Defendant submitted that the right to education is non-justiciable by section 18 of the CFRN 1999. However, the Court held that the Directive Principles of State Policy of the FRN are not justiciable per se before the court and if they were, it should be heard at the Federal High Court of Nigeria but that the plaintiff came under Article 17 of the African Charter which is justiciable in the Court as it is independent of the provisions of chapter II of the CFRN 1999. These are activism in action and the courts must be commended for her boldness.

The status of human rights presently calls for specific legislation for justiciability of economic and social human rights in the Nigeria constitution. That will make it easier for the judiciary to carry out with ease its duty of interpretation of the Constitution. This is what South African has done as demonstrated in *Government of the Republic of South African v Grootboom* where the court held:

Their interconnectedness needs to be taken into account in interpreting the socio-economic rights and in particular in determining whether the State has met its obligations in terms of them.

The South African court has buttressed the point emphasized by the African Charter that civil and political rights can only be realizable and enjoyable when economic and social rights are made equally important as such justiciable per se.

6. Findings

It is noteworthy that chapter II of the CFRN contains the economic and social rights as provided in the International Covenant on economic, social and cultural rights otherwise called the ECOSOC rights which forms part of the international Bill of rights. Thus the ECOSOC rights are part of human rights. Even when such rights are not made fundamental as provided in chapter IV of the CFRN 1999. Making such rights constitutional provisions make the rights worthy of being challenged in the Courts of Law to encourage good governance and accountability to the citizens as legal obligations.

It is now proper for Chapter II of the CFRN 1999 to be guaranteed as fundamental as demonstrated in the South African (SA 1995) and Uganda (Uganda 1995) Constitutions. It presupposes that questions must be asked on the provisions of chapter II and the Courts must interpret it to meet the justice of any situation.

The inaugural address position of the former Chief Judge of India (Blagnati 1988) at all judges colloquium held in Bangalore becomes very instructive as he opined thus:

...human rights depend fundamentally on right to life and personal liberty which is a core human right.

The right to life is now confined merely to physical existence but it includes also the right to live with basic human dignity, with the basic necessities of life such as food, health, education shelter etc...

These human rights fall within the category of social and economic rights and they can be realized only by affirmative action on the part of the state and if the state fails to carry out its constitutional or legal obligations in enforcement of these human rights, it may have to be compelled to do so by an activist judiciary as demonstrated in *Education of Uunikrish J.P. v State of Andhra Pradesh* (1992) SC AIR. Also in *Tellis v Boyibay* (1992) SC AIR 1858 (Ikpeze 2008) municipal corporation.

6.1 Constitutional Comparison

India is a typical example of a country that has judicially made unjusticiable State Policy Directives justiciable seen in *Bharati v state of Kerala* (1973) 4 SCC 225 where Hegede and Mukherjea JJ opined that... it aims at making the India masses free in the positive sense without faithfully implementing the Directive Principles, it is contemplated by the Constitution (India 1950). It must be noted that the India Constitution has had 97th Amendment.

The growth of human rights with particular reference to African has made some African countries remove categorization of human rights especially making State policy issues justiciable. The last South African case put to the fore the fact that the country has moved positive policies (affirmative action) to constitutional justiciable provisions (SA 1995). The Constitution of Uganda as amended (Uganda 2005) has also made policy issue justiciable by declassification of fundamentality or particularization of some rights and de-emphasizing others. For example Article 29 provides for protection of freedom of conscience, expression, movement, religion, assembly and association and Article 30 provides for right to education. In Article 33 on rights of women; Section 34 on rights of children. This Article provided in 34 (3) as follows:

No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.

While Article 39 provides for rights to healthy environment, and Article 40 is on economic rights to employment. These are in consonance with provisions of Articles 14-18 of the ACHPR which has been incorporated as Municipal laws of Nigeria.

Even affirmative action policies were made constitutional and justiciable and no rights were made non-justiciable Articles 32 (1)(2)(3)(4)(5)

The writer opines that it is high time Nigeria borrowed constitutional amendment as demonstrated by South Africa and Uganda.

7. Discussion

There is no doubt that rights and human rights ensure to human beings simply for the reason of their humanity and efforts should be made to breach or bridge these right that at the out of agitations for rights issues the West the civil and political rights were made primus enterprise Societies which encouraged individual efforts for the benefit of the larger society otherwise called capitalism with legs emphasis on the community Ayua et al (2000). Whereas the Eastern Europe (the erstwhile soviet Union propagated socialism which asserts a collectivity with greater emphasis on economic, social and cultural rights. Currently other paradigms of rights have emerged and are still emerging (Obiaraeri 2001). To resolve some of the contending issues, Kasel Vasak developed the generational theory of rights into three (3) generations (Vasak 1977). The first generation (liberation) in nature known as the civil and political rights. The second generation is egalitarian in nature and deals mainly with the economic, social and cultural rights and often affects the standard of living of the citizens requiring most times government intervention.

The third generations of rights related to solidarity among nations encouraging quests for independence of states. Thus the often expressed slogan of liberty, Equality and solidarity. This slogan noted the French revolution and encompasses synergy for the different approaches to rights issues resulting to the different approaches to rights issues resulting to the university, interrelatedness, interconnectness indivisibility and fundamentality of all rights issues. All these three categorizations of rights are contained in the Universal Declaration of Human Rights 1948.

However, it is worrisome that the Nigeria state in embracing human rights issue maintained a dichotomy between the Civil and political rights which has been domesticated since 1960 in the constitution of Nigeria under the fundamental human rights provision. In the 1960, and 1963 Constitution appeared but now provided in Chapter IV of the 1979 and 1999 justiciable per se in Chapter III. The economic rights appeared for the first time in the Nigeria constitution in the 1979 under Chapter II as Fundamental Objectives and Directive Principles of State Policy. Same provisions are repeated in the 1999 constitution of the Federal Republic but are non-justiciable up till date by the provision of section 6(6) (c) of the CFRN 1999 which is rather unfortunate.

Interestingly, the observation and preservation of these non-justiciable rights from part of the oath of office of person exercising legislative and executive powers thus:

...that I shall strive to preserve the fundamental Objectives and Directives Principles of state policy contained in the constitution of the Federal Republic of Nigeria.

Instructively, both the Oath of Allegiance and the Judicial oath for judges do not contain the preservation clause.... The question is could it be due to the concept of non-justiciability?

The answer is answered in the positive and clearly demonstrates s deliberate acts by the legislative and the executive arms of government to ensure the ouster of the Courts jurisdiction with regards to chapter II of the CFRN 1999. The writer of the hereby posits that it is high time Chapter II of the Nigeria constitution was made justiciable per se

A comparative analysis proved that in other jurisdictions, the position of economic rights have transcended to the status of indivisibility and universality of all human rights. More so, it is seen the best way to curb corruption especially in Nigeria as in the AG Ondo State and AG Federation supra.

The equity of justiciability of Chapter II of the CFRN 1999 can never be over emphasized. A scholarly jurist posited that equity is the ability to adopt the law of change in order to harmonies it with conscience so as to ensure justice. Justice is what Chapter II is all about particularly by section 14 therefore, the courts must use the African Charter on Human and People's Rights already domesticated to pronounce on chapter II of CFRN 1999. The Court ought to use expansive and integrative interpretation of justiciable rights as demonstrated by Lord Denning MR in *Parker v Parker* (1970) AC 777 where he opined thus:

If we do not do something just because it has never been alone before, the law will not develop while the rest of the world moves ahead. This would be bad for both.

The Courts must further adopt the concept of the Realist school

of thought that “what the courts say and nothings more pretentious are what is meant by the law”

The Nigeria Courts must be boldly as assume their ousted jurisdiction with regards to provisions in Chapter II of the CFRN 1999. The time is now of only to curb or stem the looting of the Treasury of Nigeria and transfer of finances out of Nigeria which will yield to accountability. Great strength id founded in the write up by hongqing (2013) that Rights have played important role in empowering the China citizenry and judicial enforcement of human rights has been quite successful... but given the fact that so many other strategies for corruption prevention have largely been unsuccessful and that there is little political will to tackled the problem as part of good governance, Constitutionally empowering the China citizenry with certain rights against government for corrupt activities may be against government for corrupt activities may be helpful... there are systemic checks and balances that result in the intervention of the Courts... The time to make chapter II CFRN 1999 justiciable now.

8. Conclusion

Suffice it to say that the Nigeria Constitution is the supreme and organic law as well as the grundnorm from which all other laws most originate. Therefore any provision of the constitution especially as relating to economic and social rights, good governance that is not justiciable is undesireous in the present human right implementation. It is suggested that Chapter II of the CFRN 1999 should be amended and made justiciable per se and section 6(6)(c) repealed. Such will guarantee all categories of rights as well as accord Nigerian citizens ideal constitutional rights and make government of Nigeria accountable to the people in accordance with the CFRN 1999.

This will ensure good governance and sustainable development which is the goal of any democratic government. In the end justiciability of chapter II of the CFRN 1999 will remove the ouster clause in the CFRN which strictly speaking is an aberration. Suffice it to state that study has shown the indivisibility interwovenness of economic at the rights; Thus the full realization of the civil and political rights without the concomitted intended to fully enjoy the economic rights is impossible.

8.2 Recommendations

The following recommendations are made:

1. The Executive

- a. Must as of urgent necessity embark on processes of making chapter II of the CFRN 1999 justiciable by presenting Executive Bill to that effect
- b. Demonstrate the political and conscious will to observe and the provisions of Chapter II of the said CFRN 1999 as if it were justiciable per se.
- c. More to remove immunity clause in the CFRN 1999 for purposes of taking seriously the issue of accountability and to stem the overt (endemic) corruption in Nigeria. This will accord with the spirit of leadership by example.
- d. Instituting mechanism for annual subjection of the executive arm to assessment or corruption. This will encourage easy legislation of provisions of Chapter II into justiciable constitutional provisions.

2. The Legislature

- a. Must make up from its legislative inertia cum passivism.
- b. To of immediate importance and urgency commence repeal of section 6(6)(c) of the CFRN 1999.
- c. Make chapter II fundamental by domestication of the international covenant on Economic, Social and Cultural Rights (ICESCR or ECOSOC rights) 1966
- d. Amend other provisions of the CFRN 1999 to give sharp teeth on its chapter II.
- e. Establishment of a Constitutional Court so as to develop human rights (rights) jurisprudence.

3. The Judiciary

- a. Judicial Activism is a desirable approach to remove any form of ouster clause in a democratic setting and guard its jurisdiction jealously.
- b. The Rule in AG Ondo v AG Fed (2002) 7 NWLR (pt 772) must external to other provisions of chapter II of the CFRN.
- c. To borrow examples of recovery of Courts' like India, South Africa and Botswana and inconsonance with the 1998 judicial colloquium in Bangalore India.
- d. To carry out its duty of checking the Legislative and the Executive and refuse to be the lame duck among the three arms of government.

4. The Citizens

- a. To be bold to challenge infringement of the rights provided in chapter II of the CFRN 1999 even by Public Interest Litigation (PIL).
- b. To systematically lay claim to their socio-economic rights as provided in Chapter II CFRN 1999.

5. Role of Lawyers

To aggressively engage in Public Interest Litigation (PIL) as one of the mechanisms to encourage legislation on justiciability of Chapter II CFRN 1999.

References

- Akinseye – George, Y.,(1998) The Constitutional Court in the 1995 Draft Constitution- Implications for Human Rights, Democracy Review Vol.1 Issue 3 February – March
- Ayua, I.A. et al, (2000) Nigeria, Issues in The 1999 Constitution N.I.A.L.S.
- Bhagwati P.N., (1988) The Inaugural Address at the Judicial Colloquium in Bangalore, 24 – 26 February on Developing Human Rights Jurisprudence, as Published by the Commonwealth Secretariat.
- Black H.C., (1968) Black's Law Dictionary (USA West Group Publishing Co.
- Blackwell, A.M., (2008) Essential Law Dictionary, USA, Sphinx Publishing.
- Brookes, I., (2006), The Chambers Dictionary (India, Chambers, Harrap Publishers Ltd .
- Eze, O., (1984) Human Right in Africa, Some Selected Problems Nigeria (N.I.A.L.S.) MacMillan Nig. Publishers. P.5
- Egbowole, W.O. (2012), et al Law and Sustainable Development in Africa, Ilorin Nigeria, Al-Fattah Publications Ltd.
- FGN (1999) Constitution of the Federal Republic of Nigeria Cap C23 Laws of Federation of Nigeria (LFN) 2004 .
- FGN, (1983), The African Charter on Human and Peoples Rights, Laws of the Federation of Nigeria (LFN) 2004. Cap C10 LFN 1990 Now Cap A(LFN 2004.
- Falana, F., (2010), Fundamental Rights Enforcement in Nigeria (2nd Ed. Lagos: legal text Publishing Co. Ltd.
- Hongqing, T. (2013), Transparency Governance and Anti-Corruption in China: Walking on two legs, (Mann J.S. et al Eds.) India (Centre for Transparency and Accountability in Governance) Natural law University Delhi press.
- Hornby A.S.,(2006), The Oxford Advance Learners' Dictionary, (Oxford, Oxford University Press.
- Ikpeze, O.V.C.(2015) Legal Education in the 21st Century Nigeria: Need for Diversity in Content Paradigm Journal of Law, Policy and Globalization (Online) Vol. 39.
- Ikpeze, O.V.C. (2009) Gender Dynamics of Inheritance Rights in Nigeria, Folmech Printing & Pub. Co.
- Ikpeze, O.V.C. (2008), Human Rights and Fundamental Freedoms: A must know for All Gender Rights law in Nigeria, Onitsha, Folmech Printing and Publishing Co. Ltd.
- Ikpeze, O.V.C. (2008), Right to Education: Case of the Rural Poor And Globalization in Nigeria, Journal of Women and Minority Rights (JWMR) Vol.1 Nos. 1.
- India (1950), The Constitution of India (97th Amendment) Act 2011
- Obiaraeri, N.O., (2001), Human Rights in Nigeria – Millennium Perspective (Lagos, Perfect Concept)
- Rodney, W. (1976), How Europe Underdeveloped Africa London Boyle – Looverture.
- Schuler, M.A. et al, Women's Rights, Step by Step, Washington, Women Development International.
- South Africa (1995) The Republic of South Africa Constitution.
- Taylor, C., (2010) Constitutional and Administrative law 2nd Ed. England, Pearson Education Ltd.
- Uganda, (1995), The Constitution of Uganda (3rd Amendment) Act 2005.

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:

<http://www.iiste.org>

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: <http://www.iiste.org/journals/> All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

Academic conference: <http://www.iiste.org/conference/upcoming-conferences-call-for-paper/>

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

