

Socio-Economic Rights Vis-A-Vis Nigeria's Obligation to International Legal Rights Instruments

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Abstract

The provisions of chapter two of the 1999 Constitution of the Federal Republic of Nigeria contains political, economic, social, cultural and developmental rights of the citizens, but these rights are not enforceable. The implication of the non-justiciability of chapter two of the Constitution makes it impossible for citizens of Nigeria to obtain reasonable redress from the courts if denied any of the rights provided in the chapter. However, Nigeria being a signatory to the African Charter on Human and Peoples' Rights (ACHPR), Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and many other international rights instruments which provide for socio-economic rights is expected to implement these laws especially where they have been domesticated as part of her municipal legislations. It is found that the provision of chapter two of the 1999 Constitution of the Federal Republic of Nigeria makes social-economic rights non-justiciable which is contrary to the signed or domesticated international legal rights instruments which it has obligation to implement by international law and standard. Failure to perform such obligation affects Nigeria's credibility at the international community. This paper seeks to examine the non-justiciability of socio-economic rights vis-a-vis Nigeria's obligation to international legal rights instruments which it domesticated. The paper recommends that as part of Nigeria's international obligation, a provision should be made in the Constitution for the purpose of amending the Constitution to make it in consonance with any domesticated international legal rights instrument. The paper adopts the doctrinal research method to collate materials.

Keywords: Socio-Economic Rights, Fundamental Rights, Human Rights, Non-Justiciability, Obligation and International Legal Rights Instrument

1.1 Introduction

It is a truism that provisions of Constitutions of most democratic countries remain the organic laws or ground norms from which every other law must originate or be rooted.¹ It is also the basic and entrenched rule governing the conduct of government

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and citizens in a nation-state as well as establishing governance concepts, character and structure.² The provision of section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria³ established its supremacy over any other law in the country in that, any other law that is inconsistent with it, is void to the extent of the inconsistency. The 1999 Constitution as amended contains the rights and duties of the citizens. These rights are classified into generations. The first generation is contained in chapter four of the 1999 Constitution as amended to wit, fundamental rights. These rights can also be found in Articles 2–21 of the Universal Declaration of Human Right (UDHR) and Articles 7–17 of the African Charter.⁴ The second generation rights are contained in chapter two of the 1999 Constitution as amended known as socio-economic rights.⁵ Recently, the nationalist struggles of developing and dependent nations across the globe have yielded what can be termed the third generation rights also known as solidarity rights.⁶ These rights include the right to self-determination, right to peace, right to a balanced and safe environment, right to humanitarian relief during disaster, and the right to development.⁷

The Nigerian government is a signatory to several regional and international human rights instruments that recognize and urge enforceability of these socio-economic rights in member states. The Universal Declaration of Human Rights 1948⁸ which has on its preamble that all member nations (including Nigeria) not only pledged to give recognition to Economic, Social and Cultural Rights, but also to see that these rights are enforceable. Nigeria is also a signatory to *the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966*⁹, the Committee on

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¹Ogugua V C Ikpeze , ‘Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development’ *Developing Country Studies* [2015] (5) (18) 48

²Taiwo A. Olaiya, ‘Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria’ *Journal of Politics and Law* [2015] (8) (3) .23.

³The Constitution of the Federal Republic of Nigeria 1999 as amended , referred to as the 1999 Constitution as amended

⁴ Philip EbosetaleOamen, ‘The Justiciability of Economic, Social and Cultural Rights in Nigeria: A Call to Follow Global Trends’ *International Journal of Law and Interdisciplinary Legal Studies IJLILS* [2017] (3) (1) 52

⁵AjepeTaiwoShehu, ‘The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience’ *Journal of Sustainable Development Law and Policy* [2013] (2) (1) 101

⁶ Philip EbosetaleOamen (n 4)

⁷ Ibid

⁸ Adopted by the United Nations General Assembly Resolution 217 A, on 10 December 1948

⁹ Adopted by the United Nations General Assembly Resolution 2200 A (XXI) on 16 December 1966 and came in to force on 3 January 1976 and ratified by Nigeria in 1993

Economic, Social and Cultural Rights (the Committee) had posited that every signatory to the International Covenant on Economic, Social and Cultural Rights has the obligation to ensure that the principles of the Covenant are recognised and enforced within its domestic or municipal legal order and that remedial mechanisms should be put in place and any action or inaction of government that leads to global malnutrition, poverty, child mortality and lack of access to primary health and educational care amounts to a gross violation of human rights within the purview of Article 2(4) of the International Covenant on Economic, Social and Cultural Rights 1966.¹⁰ Furthermore, Nigeria is a signatory to the African Charter on Human and Peoples' Rights (ACHPR)¹¹ and has domesticated it as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act¹² and therefore part of Nigeria's municipal legislation.¹³ These rights can also be found in Articles 2–21 of the Universal Declaration of Human Rights and Articles 7–17 of the African Charter.

The African Charter, the most potent document on economic, social and cultural rights in Nigeria, is a known rights instrument that serves as a tool to address African's political rights issues and provide for some modicum of enforceable economic, social and cultural rights with a view to protecting Africans from deprivation, poverty and other legal challenges peculiar to Africans. The African Charter thus seeks to combine African values with international norms in engendering a better rights package.¹⁴ There are other several international rights laws which obligate states that are signatories to cloth its citizens with all of these rights. However, the 1999 Constitution as amended makes these social and economic rights non-justiciable. The pertinent question to ask in the circumstance is - where does the pendulum swing considering the non-justiciability of socio-economic rights vis-a-vis Nigeria's obligation to these international legal rights instruments? To this end, this paper is divided into seven parts. The first part contains the introduction; the second part examines fundamental rights under the 1999 Constitution as amended; the third part dwells on the socio-economic rights under the 1999 Constitution as amended; the four part distinguishes between socio-economic rights and fundamental rights under the 1999 Constitution as amended; the fifth part treats fundamental rights and socio-economic rights under international legal rights instruments; the six part dwells on socio-economic rights and Nigeria's obligation to international legal rights instruments and part seven captures the conclusion and recommendations.

¹⁰ Ibid

¹¹ Referred to as the African Charter

¹² Cap A 9 Laws of the Federation of Nigeria 2004

¹³ AjepeTaiwoShehu, (n 5) 102

¹⁴ Philip EbosetaleOamen, (n 4) 54

1.2 Fundamental Rights under the 1999 Constitution as Amended

Human rights and fundamental rights are key principles that stand at the basis of any just and equal society. Although the two terms are often used interchangeably, there are key differences that cannot be overlooked.¹⁵ Fundamental rights are outlined and protected by the [Constitution](#) of any given State and thus, vary slightly from country to country. Human rights are universal and inalienable principles guaranteed at an international level and enforced by the United Nations and other international agencies. According to the United Nations, human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. In other words, fundamental rights are granted by individual governments and are awarded by national Constitutions while human rights apply to each and every individual, regardless of their nationality, ethnicity and religion.¹⁶

Human rights are rights which by their very nature, have become fundamental to existence. It is a basic moral guarantee that people in all countries and cultures allegedly have simply because they are people. Fundamental rights stand above the ordinary laws of the land and are antecedent to political society itself.¹⁷ It is a primary condition for civilised existence and all civilised societies use it as a standard by which the moral content of any law must be assessed. Therefore, the protection and promotion of human or fundamental rights becomes the fundamental purpose of government.¹⁸ These rights are rights guaranteed in the Nigerian Constitution and are found entrenched in chapter four of the Constitution. The provision of chapter four of the 1999 Constitution as amended spelt out the various rights and provided for their safeguard, guarantee and enforcement.¹⁹ It additionally provides the grounds on which such rights can be deprived. But in Nigeria, fundamental rights violation is pronounced in all aspects of the citizens' life (both public and private).²⁰ Violation of the rights is however, a result of several factors and from within the government-the justice system, other law enforcement agencies and civil-public agencies and the general public through many actions, inactions and reactions as well as socio-societal, cultural, religious and economic factors which also account for the problems associated with the fundamental rights in Nigeria.²¹ The fundamental rights contained in the 1999 Constitution as amended consists of

¹⁵ [Giulia Squadrin](#) 'Difference Between Human Rights and Fundamental Rights' <http://www.differencebetween.net/miscellaneous/legal-miscellaneous/difference-between-human-rights-and-fundamental-rights/> accessed 17 November, 2020.

¹⁶ Ibid

¹⁷ John Funsho Olorunfemi and Ifeoma P. Enemo 'Human Rights and National Development in Nigeria' *Law and Policy Review* [2011] (2) 21

¹⁸ Ibid

¹⁹ Isah Mohammed Shehu and Nazariah Osman and Muhammad Fuad Othman 'Nigerian Citizens and Fundamental Rights: Myth' *Manoeuvre and Reality Journal of International Studies* [2016] (12) 57

²⁰ Ibid

²¹ Ibid

the right to life²²; the right to dignity of human person²³; the right to personal liberty²⁴; the right to fair hearing²⁵ the right to private and family life²⁶; the right to freedom of thought, conscience and religion²⁷; the right to freedom of expression and the press²⁸; the right to peaceful assembly and freedom of association²⁹; the right to freedom of movement³⁰; the right to freedom from discrimination³¹; the right to acquire and own immovable property anywhere in Nigeria³² and right to freedom from compulsory acquisition of property.³³

1.3 Socio-Economic Rights under the 1999 Constitution as Amended

Socio-economic rights under the 1999 Constitution as amended are contained in chapter two, titled the Fundamental Objectives and Directive Principles of State Policy. The chapter contains nine sections namely sections 13-24. The introductory section of chapter two, namely section 13 provides thus, ‘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 Chapter of this Constitution.’³⁴ The economic, social, and cultural rights as provided in the 1999 Constitution as amended can be summarised into the following: right to work under just and humane condition; right to adequate standard of living, including food, clothing, and housing, right to physical and mental health, right to social security, right to a healthy environment, and right to education etcetera.³⁵ According to Oamen, these rights include the right to work, right to fair and just conditions of service, right to form and belong to a trade union, right to freedom from unemployment, right to social welfare, right to clothing, shelter, food and education and the right to an adequate standard of living.³⁶ In older literature, they were sometimes called positive rights since they promoted a positive view of

²² 1999 Constitution as amended, section 33

²³ Ibid section 34

²⁴ Ibid section 35

²⁵ Ibid section 36

²⁶ Ibid section 37

²⁷ Ibid section 38

²⁸ Ibid section 39

²⁹ Ibid section 40

³⁰ Ibid section 41

³¹ Ibid section 42

³² Ibid section 43

³³ Ibid section 44

³⁴ Section 13 of the Constitution of the Federal Republic of Nigeria

³⁵ Sections 16-20 of the 1999 Constitution as amended. See also, Centre for Economic and Social Rights ‘What are Economic, Social and Cultural rights?’ <<https://www.cesr.org/what-are-economic-social-and-cultural-rights>> accessed 17 November 2020

³⁶ Philip Ebosetale Oamen, (n 4) 52

liberty as opportunities for flourishing or well-being, as contrasted against a negative view of liberty simply regarded as non-interference.³⁷ Articles 22–27 of the Universal Declaration of Human Rights also contain second generation rights. The economic, social and cultural rights are part of the body of human rights law that developed in the aftermath of World War II. Human rights law includes all economic and social rights, as well as civil and political rights like the right to free speech and the right to a fair trial.³⁸ The chapter though powerfully introduced in section 13 of the 1999 Constitution as amended with the word ‘shall’, was rendered impotent by the same Constitution as the justiciability of the same chapter was ripped off by the provisions of section 6 (6) (c) of the 1999 Constitution as amended which provides 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 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 2 of the Constitution.

It is the position of this paper that civil and political rights and socio-economic rights are inseparably interwoven as each permeates the other. The paper agrees with Bobai and Mafuyai when they stated that without the satisfaction of socio-economic needs like the provision of water, food, cloth, health, clean and disease free environment etcetera, civil and political concerns are secondary and perhaps meaningless and hence its interrelatedness and interdependence. Civil and political rights can both derive from the unifying notion of human dignity. They complement each other.³⁹ In *Indian Council for Enviro-Legal Action v Union of India*,⁴⁰ the Supreme Court, held that the national government’s failure to control an industry’s release of toxic chemicals violated citizens’ right to life. The interdependence and the interrelatedness of civil and political rights and socio-economic rights have been recognised in the United Nations General Assembly’s Resolution and World Conferences. For instance the Proclamation of Teheran⁴¹ provides thus:

³⁷Dawood Ahmed and Elliot Bulmer, ‘Social and Economic Rights’ *International Institute for Democracy and Electoral Assistance (International IDEA)* (2017) (2) .6

³⁸ Centre for Economic and Social Right, ‘What are Economic, Social and Cultural Rights’ <<https://www.cesr.org/what-are-economic-social-and-cultural-rights>> accessed on 17 November 2020

³⁹Bobai Paul Ali and Mafuyai Mahan Wallangs, ‘Justiciability of Socio-Economic Rights: The Panacea for Sustainable Development in Nigeria’ *Yola Bar Journal* [2014] (1) (1) 16

⁴⁰3 SCC 212 (1996)

⁴¹The Proclamation of Teheran of 1968 para 13

Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development

Similarly, the Vienna Declaration and Programme of Action⁴² provides thus:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, and on the same footing and with the same emphasis... it is the duty of states, regardless of their politics, economic and cultural system to promote and protect rights and fundamental freedom.

Arguments have been advanced for the non-justiciability of socio-economic rights. According to Nwoha, socio-economic rights are vaguely and ambiguously worded to allow judges to justify decisions on whether violations have occurred. Therefore while adjudicating such rights, questions may arise as to what constitutes, for example hunger, adequate housing or fair wage.⁴³ Some persons posited that socio-economic rights are uncertain; they do not contain immediate and enforceable rights, being mere aspiration to be attained sometime in the future. This is due to the fact that they depend on the availability of resources for them to be attained. How can rights or obligations that depend on the availability of scarce resources be in fact rights or obligations in any meaning?⁴⁴ It is submitted that these arguments are not

⁴²The Vienna Declaration and Programme of Action adopted by the World Conference on Human Right in Vienna on 25 June 1993 para 5. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights 2nd-6th June 1986 para 3; the Bangalore Declaration and Plan of Action 1995 para 3 and the Maastricht Guidelines on violation of Economic, Social and Cultural Rights of 1997 para 4.

⁴³S A Nwoha, *Principle of Nigerian Law and Real Practice* (John Jacobs Classic Publishers Ltd 2006) 18 cited in E A Udu, 'The Unfolding Justiciability of Economic, Social and Cultural Rights in Developing African Economies: Nigeria in Perspective' *Ebonyi State University Law Journal*[2016] (7) (1) 165

⁴⁴J Dennis and D P Steward, 'Justiciability of Economic, Social and Cultural Rights: Should there be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing and Health?' *America Journal of International Law* [2004] (89) (462) 6, cited in E A Udu, 'The Unfolding Justiciability of Economic, Social and Cultural Rights in Developing African Economies: Nigeria in Perspective' *Ebonyi State University Law Journal* [2016] (7) (1) 165

quite tenable particularly in the context of Nigeria. The paper agrees with Udu when he opined that economic, social and cultural rights just like civil and political rights suffer from vagueness and ambiguity. However, in the case of civil and political rights, through constant adjudication over the years, judges have been able to deal with such questions and distill and cleared those ambiguities. Same could as well be achieved if economic, social and cultural rights are fully made justiciable.⁴⁵ On the scarcity of resources, Nigeria is endowed with tremendous natural resources that should warrant the full enjoyment of these rights and thus the non-justiciability cannot be justified.

1.4 The Differences Between Socio-economic Rights and Fundamental Rights Under the 1999 Constitution as Amended

Although fundamental rights and socio-economic rights are both internationally recognised as fundamental rights, they are not seen as the same under the 1999 Constitution as amended. While fundamental rights which are internationally recognised as the blue rights or first generation rights are enshrined in chapter four of the 1999 Constitution as amended, socio-economic rights also known as red rights or second generation rights are provided for in chapter two of the 1999 Constitution as amended.⁴⁶ What is referred to as fundamental rights under the 1999 Constitution as amended is known internationally and generally as civil and political rights. They are seen as the most important rights. They are individualistic in nature. They are rights that govern the very essence of existence. They are meant to protect individuals from the excesses of the State. These set of rights deal essentially with liberty and participation in political life. For any society to be seen as legitimate and democratic, it must enforce these rights. These rights are provided for and protected in Nigeria. They are enshrined in chapter four of the 1999 Constitution as amended.⁴⁷ These rights are enforceable under the Constitution.⁴⁸

On the other hand, socio-economic rights are second generation rights or secondary rights. While the international community is trying to ensure that these rights are enforced in all the nations of the world, not much has been achieved in this regard. Generally, they are rights that guarantee different members of the citizenry equal condition and treatment.⁴⁹ Some of these rights are provided for under chapter two of the 1999 Constitution as amended. However, section 6(6)(c) of the 1999 Constitution as amended strips chapter two of enforceability. Section 6(6)(c) makes the provision non-justiciable and in effect a mere pious provision.

⁴⁵E A Udu, 'The Unfolding Justiciability of Economic, Social and Cultural Rights in Developing Economies: Nigeria in Perspective' *Ebonyi State University law Journal* [2016] (7) (1) 165

⁴⁶Imasogie M O, 'Socio Economic Issues: Lessons from South Africa' *NJPCL* [2001] (2) 2

⁴⁷1999 Constitution as amended, section 33-44

⁴⁸Ibid section 46

⁴⁹Philip EbosetaOamen (4)

1.5 Fundamental and Socio-Economic Rights under International Legal Rights Instruments

International legal rights instruments refer to the treaties and international texts that serve as legal sources for international human rights law and the protection of human rights in general. They are of varying types but most can be classified into two broad categories which are Declarations and Conventions. Declarations are adopted by bodies such as the United Nations General Assembly. They are declaratory by nature. They are not legally binding, although they may be politically authoritative and very well respected guiding principles. On the other hand, Conventions are multiparty treaties designed to become legally binding. They usually include prescriptive and very specific language concluded by long procedures which frequently require ratification by State's legislature.⁵⁰ International legal instruments can also be divided into global instruments to which any State in the world can be a party and regional instruments which are restricted to States in a particular region of the world. An example of a regional instrument is the African Charter on Human and Peoples Rights, which was passed by a resolution of the Organisation of Africa Unity (O.A.U) in 1981 and came into force on the 21 October 1986 after ratification by a number of member States, Nigerian inclusive.⁵¹ The Universal Declaration of Human Rights 1948 is generally agreed to be the foundation of international human rights laws and it has resulted in several legally binding international human rights treaties. It represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone and that everyone is born free and equal in dignity and rights regardless of nationality, residence, gender, national or ethnic origin, colour, religion, language or any other status. The Universal Declaration of Human Rights together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights form the International Bill of Rights.⁵²

Fundamental rights that are provided for under international legal rights instruments include; right to life, freedom from slavery, freedom from discrimination, equality before the law, freedom from torture and inhumane treatment, freedom of opinion, expression, thought and religion, right to fair judicial treatment, right to trial, right to presumption of innocence, right to nationality, right to asylum, right to marry and

⁵⁰The United Nations Educational, Scientific and Cultural Organisation, 'General Introduction to the Standard Setting Instruments of UNESCO' <https://www.portal.unesco.org/en/ev.phpd-URL_ID=23772&URL_DO=DO_TOPIC&URL_SECTION=201.html#name=1> accessed on 5 January 2021

⁵¹Oba A A, 'The African Charter on Human and People's Rights and Ouster Clauses under Military Regimes in Nigeria Before and After September 11' *African Human Rights Law Journal* [2004] (2) 276

⁵²United Nations Human Rights Office of the High Commissioner, 'Universal Human Rights Instruments' <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>> accessed 5 February 2021

have a family, right to freedom of democracy, right of assembly, right to rest and holiday, social security amongst others. Some of the major international legal rights instruments are Charter of the United Nations namely, Universal Declaration of Human Rights 1948; International Covenant on Economic, Social and Cultural Rights 1966; International Covenant on Civil and Political Rights 1966; International Convention on the Elimination of all Forms of Racial Discrimination 1965; International Convention on the Elimination of all Forms of Discrimination Against Women 1979; Convention on the Rights of the Child 1987 amongst others. It should be noted that fundamental rights and socio-economic rights under most international legal rights instruments are inseparably interwoven.⁵³

1.6 Socio-Economic Rights and Nigeria's Obligation to International Legal Rights Instruments

There are three main sources of socio-economic rights in Nigeria. They are the international covenants to which Nigeria is a signatory⁵⁴, the African Charter on Human and People's Rights⁵⁵ and the 1999 Constitution as amended. The socio-economic rights as contained in International Covenant on Economic, Social and Cultural Rights and the African Charter include the right to work, right to work in just and favourable working conditions, right to social security, right to adequate standard of living including adequate food, clothing and housing, right to enjoyment of the highest attainable standard of physical and mental health and the right to education etcetera. As stated earlier, some of these rights are provided under chapter two of the 1999 Constitution as amended.⁵⁶ However, the chapter has been rendered non-justiciable by the provision of section 6 (6) (c) of the 1999 Constitution as amended. Hence, the provision of chapter two cannot be brought under any legal framework or invoked by any individual or group in the courts in Nigeria. This was the decision in the case of *Archbishop Olubunmi Okogie & Ors v Attorney General of Lagos State and Ors*,⁵⁷ where the plaintiff challenged as unconstitutional, a circular released by the Lagos State government purporting to abolish private primary education in the state as it violated section 13 of the 1979 Constitution now section 18 under the 1999 Constitution as amended.. The court, on the basis of the

⁵³The African Charter is a classic example in this regard.

⁵⁴International Covenant on Civil and Political Rights adopted by the United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966 and came in to force on 23 March 1976 and the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966 and came in to force on 3 January 1976 and Nigeria ratified both Covenants in 1993

⁵⁵African Charter on Human and Peoples Rights adopted on 27 June 1981 which came to force on the 21 October 1986, O. A. U. Doc. CAB/LEG/67/3/Rev.

⁵⁶Iyabode Oguniran, 'Enforceability of Socio-Economic Rights: Seeing Nigeria through the Eyes of other Jurisdiction' *Nnamdi Azikwe University Journal of International Law and Jurisprudence* (2010) (1) 63

⁵⁷(1981) 2 NCLR at 337

provisions of section 6 (6) (c), of the Constitution held that no court has the jurisdiction to pronounce any decision on whether or not any organ of government has acted or is acting in conformity with the provisions of chapter 2 - the Fundamental Objectives and Directive Principles of State Policy.

As a signatory to several international legal instruments, Nigeria should, as a matter of course, enforce most of the international human rights treaties especially those that have been domesticated by an Act of the National Assembly. Such domesticated instruments should have binding force in Nigeria by virtue of the provisions of section 12 (1) and (2) of the 1999 Constitution as amended. In *Reinsurance Corp. v Fantaye*,⁵⁸ the Supreme Court held that courts in Nigeria must give effect to treaties binding on the Federal Government. In the same vein, the Court of Appeal, in *Chief J E Oshevire v British Caledonia*,⁵⁹ held *inter alia*, that any domestic legislation in conflict with an international convention is void. More so, it is argued that socio-economic rights as enshrined in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983 can be enforced in the Nigerian courts, notwithstanding the provision of section 6 (6) (c) of the 1999 Constitution as amended. This argument is in line with Supreme Court's position in *Oguguv The State*,⁶⁰ where the court held thus:

Since the African Charter has become part of our domestic laws, the enforcement of its provisions like all other laws fall within the judicial powers of the courts as provided by the constitution and all other laws relating thereto. It is apparent from the foregoing that the rights of the African Charter are enforceable by the several High Courts depending on the circumstances of each case and in accordance with the rules, practice and procedure of each court.

However in *Abacha v Fawehinmi*,⁶¹ the Supreme Court, on the position of the African Charter on Human and People's Rights (Ratification and Enforcement) Act 1983 in relation to the 1999 Constitution as amended held thus:

No doubt Cap.10 is a statute with international flavour. Being so, therefore, I would think that if there is a conflict between it and another statute, its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation.

⁵⁸(1986)1 NWLR(Pt.14) 113

⁵⁹(1990) 7 NWLR (Pt.163) 489

⁶⁰(1994)9 NWLR (Pt.366) 7 at 26-27 paras H-G, Per Bello J.S.C

⁶¹(2000) 6 NWLR (Pt.660) 255 at 389 paras E-F, Per Ogundare J.S.C

To this extent I agree with their Lordships of the court below that the Charter possesses a greater vigour and strength than any other domestic statute. But that is not to say that the Charter is superior to the Constitution as erroneously, with respect was submitted by Mr Adegboruwa, learned counsel for the Respondent.

The import of the decision in *Abacha v Fawehinmi* is that the provisions of international legal instruments can be enforced in the courts once the said instrument has been domesticated in as much as they are not in conflict with the 1999 Constitution as amended.

It is the position of this paper, with due respect, that the position as enunciated in *Abacha v Fawehinmi* is contrary to the principle of international obligation. If a country signs and domesticates an international legal instrument, it is presumed the country does it voluntarily and accepts it hook line and sinker and therefore has the attendant sacred responsibility of implementing the instrument to the letter. If its laws are contrary to the instrument, it behooves on the country to amend the laws and make them to be in line with the instrument. It will be unbecoming for a country that signed and domesticated an international legal instrument to turn out and say it is contrary to its laws and therefore not enforceable or subordinate it to its ground norm. According to Lukashuk, the principle that treaty obligations must be fulfilled in good faith is one aspect of the fundamental rule that requires all subjects of international law to exercise in good faith their rights and duties under the law. The existence and meaning of the principle to fulfill obligations and its subsidiary rules are determined by the requirements of the world community. The normal functioning of the system of international relations is impossible without legal regulation. Therefore the legal force of the rules of international law should be recognised.⁶² Jean stated that, in Civil Law States, international laws are as paramount as domestic. Based on the 1958 French Constitution, treaties ratified and published operate as laws within domestic system. The provisions of a particular treaty are superior to those of domestic law on the basis of reciprocity. The French courts may also declare legislation inapplicable if it conflicts with an earlier treaty or prohibits the legislature from enacting a legislation that will contradict a treaty. Under the Germany Constitution, the general rules of public international law are an integral part of the federal law, which goes beyond treaties and includes custom, a major source of international law. Treaties take precedence over laws and directly create

⁶²ILukashuk, 'The Principle of Pacta Sunt Servanda and the Nature of Obligation under International Law' *America Journal of International Law* [1989] (3) 515<<https://www.jstor.org/stable>> accessed on 23 February 2021

rights and duties for the inhabitant of the Germany territory.⁶³ It should be noted that some countries as part of their effort to honour international obligations provided in their Constitutions that international legal instruments which they are signatory to and domesticated should be complied with. For example the section 40 of the Constitution of Ghana provides thus:

In its dealings with other nations, the Government shall (c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means; (d) adhere to the principles enshrined in or as the case may be, the aims and ideals of i) the Charter of the United Nations ii) the Charter of the Organisation of Africa Unity iii) the Commonwealth iv) the Treaty of the Economic Community of West Africa States; and v) any other international organisation of which Ghana is a member.

More so, Ghana in its bid to enforce socio-economic rights as part of its international obligation to international legal rights instruments and to ensure the judicious use of its resources to improve the lives of the citizens recognises socio-economic rights and make same justiciable. The Constitution guaranteed the economic rights, education rights, cultural rights practices, women's rights, children rights, rights of disabled persons, rights of the sick etcetera. And all of these rights are justiciable.⁶⁴ Similarly, the Constitution of South Africa recognises socio-economic rights and made same justiciable. Interestingly, fundamental rights and socio-economic rights are provided under chapter two and titled Bill of Rights. The Constitution guaranteed the right to housing, right to water and food, healthcare and social assistance; children rights; right to education including universal basic education. These rights are justiciable by providing right of access to court for the purpose of enforcement.⁶⁵ Cases abound in several countries of the world that demonstrate the fact that socio-economic rights can be subject to judicial enforcement. In the South African case of the *Government of South Africa v Grootboom & ors*,⁶⁶ the respondents were evicted from their informal homes situated on a private land earmarked for low-cost housing. They applied to the High Court for an order requiring the government to provide them adequate basic shelter or housing until they obtain permanent accommodation. The court held that the state is obliged to provide rudimentary shelter to children and their parents on demand if the parents are unable to provide shelter for their children. In the Indian case of *Unnikrishnan JP and Ors v State of*

⁶³ JeanGrosdidierdeMatons, *A Review of International Legal Instruments* (SSATP Africa Transport Policy Program 2014) 9 <<https://www.ppp.worldbank.org/files>> accessed on 23 February 2021

⁶⁴ Section 24-34 of the Constitution of the Republic of Ghana

⁶⁵ Section 26-34 of the Constitution of the Republic of South Africa 1996

⁶⁶ (2000)ZACC19

Andhra Pradesh and Ors,⁶⁷ the Supreme Court held that right to education is implicit in and flows from the right to life guaranteed under Article 21 of Constitution of India. In other words, the right to education is concomitant to the fundamental rights enshrined under part III of the Constitution of India. In the Bangladesh case of *Ain O Salish Kendra (ASK) v Government of Bangladesh & Ors*,⁶⁸ a large number of residents of Dhaka City were evicted without notice and their homes were demolished with bulldozers. The case was institute as public interest litigation by two residents and three citizens. The Supreme Court held that the inhabitants had some rights to shelter and fair hearing. In the Nepal case of *Frakash Mani Sharma v Minister of Council*,⁶⁹ the petitioner relying on the Directive Principles in the Constitution of Nepal sought a writ of mandamus from the Supreme Court to prevent a construction project on public lands adjacent to Rani Pokhani (Queen's pond), a pond with historical, cultural and environmental significance. Despite argument by the respondent that these provisions were not enforceable by any court, the Supreme Court stated that it is the duty of both the legislature and the executive to abide by these Directive Principles and where they are violated the court should make appropriate order and give the provisions meaningful effect. The position of the courts in some of these cases were by way of proactive and progressive interpretation of the constitutional provisions that provide for socio-economic rights which in most cases are not justiciable. This paper agrees with Inegbedion and Okunrobo⁷⁰ that the 1999 Constitution as amended can be progressively interpreted by the courts in order to advance the realisation of the Directive Principles.

The adoption and implementation of national human rights plans is considered internationally as a best practice and can represent a useful tool for a coherent and effective action towards the realisation of all human rights. In the area of economic, social and cultural rights, the enactment of framework legislation and the adoption of national plans and strategies towards the full realisation of rights recommended by the Committee on Economic, Social and Cultural Rights. These strategies are identified as very important elements of the compliance with obligation to fulfill the rights enshrined in the International Covenant on Economic, Social and Cultural Rights.⁷¹ In addition to the general framework described, the United Nations treaty bodies, especially the Committee on Economic, Social and Cultural Rights, as well as some national courts and authorities have fundamentally contributed to interpret and operationalise the provisions of relevant international instruments. Great

⁶⁷(1993) 1 SCC 645, (1993) AIR 2178

⁶⁸19 BLD (1999)488 <https://www.escri-net.org/caselaw/ain-o-...> accessed on 19 March 2021

⁶⁹Writ No. 2961 and 2052

⁷⁰Nathaniel A Inegbedion and Hadiza O Okunrobo, 'Non-Justiciability of Environmental Matters under Chapter II of Nigeria's 1999 Constitution: The Way Forward' *Ebonyi State University Law Journal* [2016] (7) (1) 130

⁷¹International Commission of Jurist, 'State Obligations Stemming from International Law' <<https://www.icjorg>2-3-1-state-obligation...>> accessed on 24 February 2021

progress has been made in defining the scope of State obligation with regard to economic, social and cultural rights. Regarding the misconception in this area, the work of the Committee on Economic, Social and Cultural Rights among others has largely contributed to demystifying the misconception on economic, social and cultural rights and challenging the perception that justiciability over these rights would open the door to all kinds of unreasonable claims upon the State. For instance it has been established that the right to health is not the right of everyone to be healthy or that the right to work and to housing do not result in a right of everyone to claim a job or a house from the State. Rather States must ensure minimal level of protection in these areas and exert their best efforts towards full realisation using available resources and appealing to international cooperation and assistance when necessary. States have also an obligation not to interfere with the enjoyment of economic, social and cultural rights and to take protective measures to prevent third parties from doing so.⁷²

1.7 Conclusion

The imperativeness of enforcing socio-economic rights as part of the fulfillment of international obligation to international legal rights instruments which Nigeria signed and domesticated cannot be over emphasised. The seriousness with which a country will be taken at the international community is largely dependent on its ability to respect and carry out international obligations. It is the position of this paper, that the implementation of international legal rights instrument as part of Nigeria's international obligation will place the country on a honourable path among the comity of nations and help in the judicious management of the country resources against the backdrop of the fact that the citizens are complaining of lack of adequate access to education, joblessness, poverty, lack of adequate health facilities to mention but a few. This may be achieved when chapter two of the 1999 Constitution as amended is made justiciable. Our government has used section 6 (6) (c) as a cloak under which they can hide while failing in their duty to deliver the dividends of democracy. As was held in *Reinsurance Corp v Fantaye*⁷³ the courts could interpret international legislations to be binding and enforceable. More importantly, Nigeria has a sacred obligation to implement all international legal instruments that it domesticated. In view of the foregoing, this paper recommends as follows:

- (a) The 1999 Constitution be reviewed to make the provisions of chapter two enforceable in line with international legal rights instrument which Nigeria has domesticated.
- (b) The 1999 Constitution be amended to insert a section that will provide for the immediate and consequential amendment of the Constitution to be in conformity with a domesticated international legal rights instrument as part of the fulfillment of its international obligation

⁷²Ibid

⁷³(Supra)