SARDONIC *SOLIVAGANCY* OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCRS) AS A DICHOTOMISED RAMPART OF RIGHTS IN NIGERIA: A CLARION CALL FOR REALIGNMENT OF THE LEGAL COORDINATES

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Abstract

Economic, social, and cultural rights (ESCRs) constitute a vital component of the international and domestic human rights framework, aimed at guaranteeing an adequate standard of living. In Nigeria, however, the realisation of these rights remains contested, largely due to their classification as non-justiciable Fundamental Objectives and Directive Principles of State Policy under Chapter II of the 1999 Constitution. This study examines the extent to which ESCRs are recognised, protected and enforced within Nigeria's constitutional and legal architecture. The problem addressed is the persistent gap between the formal recognition of ESCRs in the Nigerian legal framework, weak enforcement, constitutional limitations, judicial restraint and structural barriers to access to justice. The primary aim of this research is to assess whether existing legal frameworks and judicial approaches in Nigeria adequately support the realisation of ESCRs and to explore avenues for strengthening their enforcement. Adopting a doctrinal research methodology, the study relies on the analysis of constitutional provisions, statutes, case law, and international human rights instruments, supported by relevant scholarly literature. The findings reveal that while ESCRs are implicitly recognised and reinforced through international obligations and judicial activism, their domestic enforcement is undermined by non-justiciability, weak legislative implementation and limited judicial intervention. The research recommends constitutional and legislative reforms to clarify and enhance the justiciability of ESCRs, greater incorporation of international human rights standards into domestic law, and a more proactive role of the judiciary in advancing social justice. These measures are essential for improving the quality of life and protecting the rights of vulnerable populations in Nigeria.

Keywords: ESCRs, Non-justiciability, Fundamental objectives and directive principles of state policy, International human rights standards, Judicial intervention/activism.

Introduction

Economic, social, and cultural rights (ESCRs) are the general guide for a state to regulate the welfare and standard of living for its citizens.[740] A successful invocation of ESCRs is attained where every citizen enjoys an adequate standard of living, food, clothing and housing, and a general improvement in living conditions.[741] The ESCRs originate from the mandates of international legal instruments to nations to integrate these rights into their national constitutions as form of rights. For instance, Article 55(a) and (b) of the Charter of the United Nations (UN)[742] mandates the organisation to promote higher standards of living, full employment, and conditions of economic and social progress and development and the solution of international economic, social, health and related problems as well as international cultural and educational cooperation.

The Preamble of the Constitution of the Federal Republic of Nigeria, 1999 outlines the political antecedents of the country. It also sets the pace for a transformative focus on improved quality of life for all citizens and for the exploration of the potential in each person.[743] The 1999 Constitution classifies certain rights under Chapter IV and these rights guides the government on how to meet the sociopolitical needs of Nigerians.[744] Part of the focus of this article is to examine classification of economic, social, and cultural rights (ESCRs) in Nigeria, and the justiciability or non-justiciability of these rights in the country. The article draws on comparative experiences between national laws of Nigeria and international legal instruments and judicial activism on the attainment of qualitative life for the citizens of both countries. It further interrogated the effect of the entrenchment of these ESCRs in the 1999 Constitution. Also, the article examined the attitude of both Nigerian and foreign courts in respect of justiciability of the ESCRs, with a view to drawing lessons on the progressive means in which courts are giving effect to these rights.

[740] International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966, Article 1.
[741] Olaniyi Felix Olayinka, 'Implementing the Socio-Economic and Cultural Rights in Nigeria and South Africa: Justiciability of Economic Rights' (2019) 27(4) *African Journal of International and Comparative Law*, 564.
[742] United Nations, 'Charter of the United Nations' (1945) 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html> accessed 27 December 2025.
[743] Olayinka (n 2) at 566.
[744] Okeke (n 7).

CONCEPTUAL ANALYSIS

Rights

There is considerable disagreement about what is precisely meant by the term rights.[745] It has been used by different groups and thinkers for different purposes. With different and sometimes opposing definitions, there is yet a consensus on a single definition of rights. A right is said to be an entitlement or justified claim to a certain kind of positive and (or) negative treatment from others, to assistance from others or non-interference from others.[746] Rights are legal, social or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some Legal System, Social Convention or Ethical Theory.[747] Rights are often considered fundamental to civilisation, being regarded as established pillars of society and culture, and the history of social conflicts can be found in the history of each right and its development.

Therefore, rights primarily belong to individuals.[748] When an individual's rights are violated by a system of government, or when the consent of the governed ceases to exist or cannot be freely discussed, the government forfeits its rights to existence, and the whole question of authority reverts to the people to abolish the existing authority by any means available and set up whatever new form of organisation will actually guarantee the rights of everyone and hold the consent of the governed.[749]

Economic Rights

Economic rights are rights of access to resources such as land, labor, physical, and financial capital that are essential for the creation, legal appropriation, and market exchange of goods and services.[750] Economic rights are self-evident. However, for their full recognition, economic rights require at least three conditions:

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[745] Chigozie Nwagbara, 'The Concept of Rights' (2015) *Seahipaj* available at <https://seahipaj.org/journals-ci/sept-2015/IJBLR/full/IJBLR-S-5-2015.pdf> accessed 27 December 2025.
[746] Jan Garett, 'The Concept of Rights' (2004) *People* available at <http://people.wku.edu/jan.garrett/ethics/rights.htm> accessed 27 December 2025.
[747] ibid.
[748] ibid.
[749] ibid.
[750]Carmine Gorga, 'Toward the Definition of Economic Rights' (1999) *Markets and Morality* available at <https://www.marketsandmorality.com/index.php/mandm/article/download/641/631> accessed 27 December 2025.

i. They require a knowledge of basic economic needs for a person to operate in the economic world;
ii. They require a knowledge of their legal characteristics; and
iii. They have to be fully integrated into the theory of justice.[751]

The basic economic needs of any human being extend over one or more functions that are related to the creation, legal appropriation, and market exchange of goods and services.[752] These needs have traditionally been satisfied through access to labour and land, which also includes natural resources. In the modern world, one must include access to physical as well as financial capital among the prerequisites of an independent and productive economic life.[753]

Social Rights

Social right is not a concept which is directly recognized in common law jurisdictions. Neither is it widely used as a general description to classify rights for the purposes of exposition.[754] On one of the few occasions where the term has been used by the judiciary, it has been run together with civil rights, both being contrasted with rights which are inherent in an individual because of the concept of the person enshrined in the Constitution.[755] Social rights are human rights and have all their characteristics. Social rights are moral, legal or societal rules and an understanding of what is necessary to fulfil people's social needs and to promote social inclusion and social solidarity. Social rights concern how people live and work together and the basic necessities of life[756]. They are based on the ideas of equality and guaranteed access to essential social and economic goods, services, and opportunities[757].

[751] ibid.
[752] ibid.
[753] Gorga (n 28).
[754] Diarmuid Phelan, 'The Concept of Social Rights' (1994) *Academia* available at<https://www.academia.edu/30070352/The_Concept_of_Social_Right> accessed 27 December 2025.
[755] *O'Reilly v Limerick Corporation* [1989] ILRM 181.
[756] Council of Europe Portal, 'Social Rights' *COE* available at<https://www.coe.int/en/web/enter/social-rights#:~:text=Social%20rights%20are%20moral%2C%20legal,the%20basic%20necessities%20of%20life> accessed 27 December 2025.
[757] Ibid

Social rights are the rights of people to achieve their basic human needs. In domestic constitutional orders, common social rights include the right to healthcare (right to health), right to housing, right to food, right to education, right to social security, and right to work[758]. In both international law and domestic constitutional law, these rights are often called 'second-generation' rights, to differentiate them from 'first-generation rights', which include civil and political rights like the freedom of expression and freedom of religion[759].

Cultural Rights

Cultural rights are part of the corpus of human rights and concern many areas of life (not only artistic, literary or traditional, but also political, social, economic, technological, and spiritual).[760] In this regard, these rights par excellence incarnate the universality, the indissolubility and the interdependence of human rights. In fact, the right to education, to information, to freedom of opinion and expression, to free association, to participation in decision making, to cite only a few, are indispensable to the enjoyment of cultural rights.

It is obvious that many definitions can be given to "culture" and that this notion covers multiple elements and facts. The United Nations Educational, Scientific and Cultural Organization (UNESCO) Universal Declaration on Cultural Diversity of 2 November 2001[761] declares that culture encompasses:

> The set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.[762]

According to the Committee on Economic, Social and Cultural Rights (the Committee) the concept of culture:

> Encompasses, inter alia, ways of life, language, oral and written literature, music and songs, non-verbal communication, religion

[758] David Landau, 'Social Rights' (2016) *Oxcon* available at<https://oxcon.ouplaw.com/display/10.1093/law:mpeccol/law-mpeccol-e172> accessed 27 December 2025.
[759] ibid
[760] Melik Ozden, 'Cultural Rights' (2015) *CETIM* available at<https://www.cetim.ch/legacy/en/documents/bro15-culture-A4-eng.pdf> accessed 28 December 2025.
[761] Stenou Katerina, 'UNESCO Universal Declaration on Cultural Diversity: A Vision, A Conceptual Platform, A Pool of Ideas for Implementation, A New Paradigm' (2002) *UNESCO* available at <https://unesdoc.unesco.org/ark:/48223/pf0000127162> accessed 28 December 2025.
[762] UNESCO Universal Declaration on Cultural Diversity 2002, Art. 5.

> or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and manmade environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.[763]

According to a more sociological definition, culture is:

> the total sum of activities and material and spiritual products of a given social group which distinguish it from other similar groups [and] a system of values and symbols as well as the corpus of practices that a particular cultural group reproduces over time and which gives individuals the reference points and the meanings necessary for their behaviour and social relations in daily life.[764]

Thus, according to this definition, culture can be perceived as a product, a process and a way of life.[765] Defined as "rights in the field of culture[766]", cultural rights cover panoply of rights which are enshrined in several international norms. While the United Nations human rights instruments play a central role, United Nations Educational, Scientific and Cultural Organization has also contributed to fashioning cultural rights through several international conventions.

All international human rights treaties enshrine cultural rights in at least some of their aspects, starting with the Universal Declaration of Human Rights (UDHR), which states in Article 27:

a. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits; and
b. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.[767]

Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), states that a central provision enshrining cultural rights as human rights reproduces these different

[763] Katerina (n39).
[764] ibid.
[765] ibid
[766] ibid
[767] Universal Declaration of Human Rights 1948, Art. 27.

elements of cultural rights.[768] These are expressed in terms similar to those used in the Universal Declaration of Human Rights and subdivided into three distinct but interdependent rights:

i. The right to participate in cultural life;
ii. The right to benefit from scientific progress and its applications;
iii. The right [of everyone] to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which she/he is the author.[769]

REVIEW OF LITERATURE

There are disagreements over whether human rights were practiced in Africa before colonisation or if they even existed at all. Writers like Eze[770] found that there was a human rights promotion mandate and an efficient legal system in pre-colonial times. The discovery has led to the disapproval and criticism of Western academics who have failed to acknowledge the existence of strong human rights traditions in Africa, indicating that Africans are not familiar with the idea of human rights. Among the other academics who supported this viewpoint were Shivji. Regarding the theoretical foundations of human rights in Africa, Shivji[771] argues that African definitions of the term "human rights" are distinct from those used in western countries. His argument is based on the observation that Africans exhibit a discrepancy in thinking, prioritising collective interest of the group over the individual rights of individuals.[772] According to Conteh,[773] human rights were recognised in early traditional civilizations, albeit within a very different framework than that of the West.

The greatest changes in Africa occurred during the colonial era. Ayittey[774] proposed that there was a rejection of human rights and an attempt to completely eradicate African customary law throughout the colonial era, and that the African people had been systematically suppressed and

[768] International Covenant on Economic, Social and Cultural Rights, Art. 15.
[769] Universal Declaration of Human Rights 1948, Art 15.
[770] Osita Eze, *Human Rights in Africa: Some Selected Problems* (Lagos: Macmillan Nigeria Publishers, 1984) 9.
[771] Issa Shivji, *The Concept of Human Rights in Africa* (Dakar: CODESRIA Book, 1989) 24.
[772] ibid.
[773] Musa Bala Contech, 'Human Rights Teaching in Africa: The Socio-Economic and Cultural Context' in Eide Amos and Theo Michaels (eds.), *Frontiers of Human Rights Education* (New York: Columbia University Press, 1983) 58.
[774] George Ayittey, *Africa Beyond* (New York: Transnational Publishers Inc., 1992) 82.

used for the benefit of the colonial masters. According to Eze,[775] the advent of colonialism in Africa caused the law to change adequately since Africans were no longer responsible for its advancement or for it to keep up with the demands of the continent's citizens. It is clear that the majority of colonial programmes implemented in Africa had similar objectives and yielded similar outcomes.

While the background has been established on the disposition of African societies on the concept of rights and human rights, it is important to highlight the influence and structure of socioeconomic rights in Nigeria. Acknowledging the existence of socioeconomic rights in Nigeria, Nwatu[776] highlights that the enforcement of these rights in Nigeria is fraught with challenges, especially the issue of justiciability, which creates debate and poses thorny legal obstacles on enforcement of the rights. The author further recommends that courts in Nigeria must utilise their interpretative jurisdiction to expound the respect and protection bound obligations of the State towards the protection of socioeconomic rights.

Examining challenges to implementing economic, social, and cultural rights in Nigeria, Ibe[777] further highlights that factors, such as *locus standi* and the doctrine of dualism pose additional challenges to the enforcement of these rights in the nation. The author further recommends that while courts in Nigeria, as the last hope of the common man is saddled with the responsibility of giving life to these rights through judicial activism, the most potent approach to safeguarding these rights is through constitutional amendment. The author further recommends other measures, such as citizens' education, empowerment, and mobilisation.

Oluwadayisi[778] attempts to examine the legal architecture of socioeconomic rights in Nigeria using unconventional approach. Oluwadayisi examines the legal framework of these rights in Nigeria using analysis of the fundamental objectives of the state as a constitutional guide for the making of political manifestoes and subsequent formulation of governmental agenda for implementation rather than a subject matter of justiciability in court. The author argues that rather than wait for judicial activism from the officers of the nation's court or complex processes of constitutional

[775] Eze (n 32) at 14.
[776] Samuel Nwatu, 'Legal Framework for the Protection of Socio-Economic Rights in Nigeria' (2012) 10 *The Nigerian Juridical Review*, 22.
[777] Ibe (n 11).
[778] Akin Olawale Oluwadayisi, 'Economic and Socio-Cultural Rights in the Democratic Governance of Nigeria: Enforcement Mechanisms Beyond Justiciability' (2014) *NAUJILJ*, 105.

amendment, it is better for all political parties contesting elections to be guided by the provisions of Chapter II on economic, social, and economic rights in the making of their manifestoes and agenda.

Ikpeze and Udemezue[779] stress that while there a number of international and regional instruments as well as national legislations that exist for the enforcement of the socioeconomic rights in Nigeria, the enforcement of these rights in the country have been gagged with a number of systemic impediments. The authors argue that in order to progress as a nation and to create an egalitarian society where every segment of the country's welfare is protected, it is important that these rights are enforced to the latter without impediments.

Obi[780] argues that in developing nations, such as Nigeria, socioeconomic rights must be legally enforceable, otherwise it withers the social contract between the leaders and the led in Nigeria. The author further contends that there is a connection between civil and political rights that are enforceable under Chapter IV of the 1999 Constitution and socioeconomic rights under Chapter II of the Constitution, since one cannot fully enjoy former without the latter. Thus, according to Obi, this highlights the importance of the enforceability of socioeconomic rights. The author further recommends the enforcement of socioeconomic rights by removing Section 6(6)(c) from the 1999 Constitution and substituting it with a constitutional provision that stipulates a minimum percentage of budgets for states and national governments that must be expended on socioeconomic related infrastructure and services.

However, while there is a wealth of literatures on the subject, they did not directly examine how the current legal frameworks are performing vis-à-vis ESCRs as guaranteed by the 1999 Constitution. They did not also assess how the Nigerian judiciary is approaching the constitutionally guaranteed ESCRs given its non-justiciability status. It is these gaps that this article sought to fill.

[779] Ogugua Ikpeze and Oluchukwu Louis Udemezue, 'Enforcement of Economic, Social, and Cultural Rights in Nigeria – A Slippery Slope' (2022) 18 *UNIZIK Law Journal*, 53.
[780] Azubuike Frederick Obi, 'Enforcement of Economic, Social and Cultural Rights in Nigeria' (2022) 5(1) *African Journal of Social Issues*, 215.

LEGAL REGIME AND ROLE OF THE COURT

The Tragedy of the Economic, Social, and Cultural Rights under the 1999 Constitution

Before 1979, Nigeria's past constitutional experiments had been concerned with traditional civil and political rights. It was the 1979 Constitution of Nigeria that, for the first time, in line with the developing global trend provided for socio-economic rights. Chapter II of that Constitution is styled "Fundamental Objectives and Directive Principles of State Policy". Its inclusion in that Constitution was quite polemical having been subjected to the competing ideals of whether to include the Chapter and make it non - justiciable, by regarding it as presenting a philosophical road map to the good life; or to include it and make it justiciable, considering its contents as determinants of state legitimacy; or to jettison it as being impolitic for inclusion in a legal charter.

The 1999 Constitution also replicates the same Fundamental Objectives and Directives Principles of State Policy in its Chapter II, which runs from sections 13-24.[781]The Chapter spells out the political, economic, social, educational, foreign policy and environmental objectives of Nigeria. It also outlines the national ethics, obligations of the mass media, directives on Nigerian culture and the duties of the Nigerian citizen. However, the tragedy of Chapter II of the Constitution is located in section 6(6)(c) of the Constitution,[782] 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 II of the Constitution.

Thus, by virtue of section 6(6)(c), Chapter II of the Constitution is enfeebled as it is rendered non-justiciable. This in the view of this researcher amounts to a dislocation of the foundation of the whole edifice of the Nigerian nation-state. Item 60 of the Exclusive legislative list clothes the National Assembly with the power to establish and regulate authorities for the promotion and enforcement of the observation of the provisions of the Fundamental Objectives and Directive

[781]Constitution of the Federal Republic of Nigeria (CFRN) 1999, s. 13(24).
[782] ibid, s. 6(6)(c).

Principles of State Policy. In *Attorney General of Ondo State v Attorney General of the Federation & Ors*[783], the Supreme Court held that section 4(2) of the 1999 Constitution[784] provides that the National Assembly has the power to make laws for the peace, order and good government of Nigeria, and by item 60(a) of the exclusive legislative list, it is vested with the power to legislate on matters within Chapter II of the Constitution.

Thus the phrase "enforce the observance" of the provision of Chapter II is probably to be achieved not just through such established authorities but also through the investigative and other regulatory powers of the National Assembly. These submissions do not hold the whole truth. As this article argues, the efficacy of Section 6(6)(c) will only arise in the absence of any provision to the contrary in the Constitution. The combined reading of item 60(a) of the exclusive legislative list and section 4(2) of the Constitution constitute an exception to the rule of non-justiciability of Chapter II in section 6(6)(c) of the Constitution. The decision of the Supreme Court has effectively opened a new vista in the quest to give the socio-economic rights enshrined in Chapter II constitutional potency. Instructively Section 13 of the Constitution[785] 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 Chapter of the Constitution.

So, what the Constitution has done in effect by this provision in relation to item 60(a) of the Exclusive Legislative List and Section 4(2) is to set a robust agenda for legislative action in addressing issues of socio-economic rights. A perusal of the provisions of Chapter II of the 1999 Constitution will reveal that it draws inspiration from established human rights norms under the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights. This is instantiated by certain sections of Chapter II. Section 16(2)(d)[786] which discusses suitable and adequate shelter, food, age, and pensions, sick benefit and welfare of the

[783] [2002] 9 NWLR (Pt. 772) 222.
[784] CFRN 1999, s.4(2)
[785] CFRN, 1999, s.13.
[786] ibid, s.16(2)(d).

disabled, undoubtedly has its ancestry in Article 25 of the Universal Declaration of Human Rights[787] and Article 11 of the International Covenant on Economic, Social and Cultural Rights.[788]

Section 18(1)[789] and (3)(a) – (c)[790] restate the right to education in Article 26 of the Universal Declaration of Human Rights[791], and 13[792] and 14[793] of the International Covenant on Economic, Social and Cultural Rights. The directive on Nigerian cultures is an adaptation of Article 15 International Covenant on Economic, Social and Cultural Rights.

It is perhaps the constitutional disability of Chapter II that accentuates the impression that there is no legal rationale for the inclusion of a seeming charter of pious exhortations in a legal document such as the Constitution. Such mindset ignores the fact that a constitution is both a legal as well as a political charter.[794] What is a constitution, if not the assemblage of principles governing the organization, structures and procedures of a political community within the contexts of a peoples' cherished ideals and collective aspirations? It therefore follows that a constitution should not only be a vehicle of legal rules but also as a courier of the memorial for the organization of man into a political community. Great philosophers of the enlightenment era posit that the reason for man exiting the state of nature, which in the words of Thomas Hobbes was 'short, brutish and nasty', in favour of a political community was to achieve security and mutual advantage. A society in which the people live in dehumanizing conditions has divorced itself from the very reason for entering into the social contract. So, what happens to the social pact when the welfare and security[795] of the people abandoned by the government?

Hume, for instance, said that the people 'are freed from their premises and return to that state of liberty which preceded the institution of government."[796]The situation is even more compounded when there is nothing to serve as a constant reminder to those who govern of their responsibility

[787] Universal Declaration of Human Rights 1948, Art.25.
[788] International Covenant on Economic, Social and Cultural Rights, Art.11.
[789] CFRN, 1999, s.18(1).
[790] ibid, s.3(a)(c).
[791] Universal Declaration of Human Rights 1948, Art.26.
[792] International Covenant on Economic, Social and Cultural Rights, Art.13.
[793] ibid, Art.14.
[794] Benjamin Nwabueze, *The Presidential Constitution of Nigeria* (London: C. Hurst & Co 1982) 11.
[795] CFRN 1999, s.14(2)(b).
[796] Wade Robison, 'Hume and the Constitution' (1988) *ResearchGate* available at <https://www.researchgate.net/publication/225917459_The_constitution_and_the_nature_of_law> accessed 27 December 2024.

to the governed. This article argues that the import and significance of Chapter II is to constantly keep welfare issues in the front burner and serve as a medium of silent social revolution, so that those in power will live in the consciousness of who their masters really are.

It is a barometer to appraise the nascent democracy of Nigeria. After all, section 14(2)(a) reminds everyone that "sovereignty belongs to the people of Nigeria from whom the government through this Constitution derives all its power and authority". It is perhaps for this reason that section 224 of the 1999 Constitution[797] insists that the programme as well as the objects of a political party shall conform to the provisions of Chapter II of the Constitution.

Section 16 of the 1999 Constitution[798] provides for the economic objectives of the state though it is synonymous to economic rights. Even where economic right is so important to the survival of the individual citizens of the nation, it is never a right so far as it is referred to as the objective of the state rather than right. Section 17 of the Constitution provides for social objectives of the state. It states that the State's social order is founded on ideals of Freedom, Equality and Justice and in furtherance of the social order every citizen shall have equality of rights, obligations and opportunities before the law. It further guarantees that the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced and governmental actions shall be humane. Similarly, it forbids exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community and ensure the maintenance and security of the independence, impartiality and integrity of courts of law, and easy accessibility thereto.

Nigeria is rich with culture. There are multifarious ethnic groups in Nigeria with different cultural backgrounds, cultural affiliations and cultural orientations. The formation of Nigeria was much challenged particularly on the ground of ethnic/cultural diversity, ethnic domination and fear of minority. Thus, in response to this inherent and unique character of Nigeria society, section 21of the 1999 Constitution states that, the State shall:

> a. Protect, preserve and promote the Nigerian Cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter; and

[797] CFRN1999, s.224.
[798] CFRN 1999, s.16.

b. Encourage development of technological and scientific studies which enhance cultural values.

The Position of the Court

The 1999 Constitution does not admit or express justiciability of Chapter II of the Constitution. The decision to make Chapter II of the Constitution non-justiciable was informed by the exaggerated fear that empowering the courts with such powers would force the government to provide specific economic and social rights to Nigerians. This fear dissolves in the face of the more coercive power of judicial review of legislative and executive actions, the exercise of which has curtailed legislative and executive lawlessness, and shunted governments onto the path of good governance.

Indeed, in other climes the recognition and enforcement of social and economic rights by the courts have become de-rigueur and no cataclysm has ensued. Interestingly, the Economic Community of West African States (ECOWAS)Court has had occasion to order the Nigerian government to make adequate arrangements for the free and compulsory education of every Nigerian child, and the African Commission on Human and Peoples' Rights has endorsed the observance of the respect bound obligation for the realization of economic, social and cultural rights.

Section 13 of the 1999 Constitution[799] enjoins all authorities and persons exercising legislative, executive or judicial power, to conform to, observe and apply the provisions of Chapter II of the Constitution. Also, Section 14 of the Constitution takes it further by stating that "the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice." One only needs to read eight further sections to discover the true foundations of an ideal Nigerian State. Therefore, a society that stifles the means to self-actualization negates the first principle for the establishment of a political community and thereby discharges its citizens from any form of political obligation. In the words of Oputa:

> While it is true that the courts cannot right wrongs overnight, it is also true that the reaffirmation of – say the Directive Principles – by the courts will build up a body of public opinion which may compel all "the persons and institutions" enumerated in section 13 of the Constitution to wake up and do what is expected of them. Also, in its judgments

[799] CFRN 1999, s.13.

> on justiciable issues like the Right to life, the courts can call on the legislature to actualize the expectations in the Directive Principles by passing appropriate and enabling Laws.[800]

It must be admitted that as a result of the courts' lethargic attitude towards expanding the jurisprudential frontiers for the justiciability of Chapter II, the Nigerian judiciary is facing a legitimacy crisis as to whether it really deserves such cognomens as "the fountain of justice," "the last hope of the common man," "the bastion of human rights," and "the watch-dog of the Constitution."[801]

The courts must begin to interpret the constitution with a view to securing a concrete basis for the justiciability of socio- economic rights. To be able to do this, the courts must shed 'the phonographic theory of common law tradition that judges do not make law, and are concerned with legal not social justice.' The myth of formalism and legal justice must be exploded so as not to through interpretation manacle social justice.[802] In an attempt to grapple with this problem, the Indian Supreme Court says Justice Bhagwati,

> ... started wielding judicial power in a manner unprecedented in its history and developed the strategy of Public Interest Litigation calculated to bring social justice and human rights within the reach of the common man.

He continued:

> What the Court did was to bring about a revolution in the judicial process. The Court expanded the frontiers of fundamental rights and natural justice and in the process rewrote some parts of the Constitution. The right to life and personal liberty enshrined in Article 21 of the Indian Constitution[803] was converted de facto and de jure into procedural due process clauses contrary to the intention of the makers of the Constitution. This expanding right was construed, through a process of judicial interpretation to encompass the right to bail, the right to speedy trial, the right to dignified treatment in custodial institutions, the right to legal aid in criminal proceedings, the right to live with basic human dignity, the right to livelihood, and above all, the right to a healthy environment. The Supreme Court developed a new normative regime of rights insisting that the State cannot act arbitrarily but instead, must act reasonably and in public interest on pain of its action being invalidated by judicial intervention. The breath-taking incursions made by the Indian Supreme Court present a model for our courts.[804]

[800] Ayodele John, 'The concept of rule of law and the notion of justice in the survival of the Nigerian State' (2021) *AJOL* available at <https://www.ajol.info/index.php/gjss/article/view/213209/201072> accessed 29 December 2025.
[801] Ibid.
[802] John (n 83).
[803] Indian Constitution, Art.21.
[804] John (n 83).

A few instances will exemplify the approach of the Indian Courts. In *Deo Singh Tomer v. State of Bihar*[805]it was held that a persons' right to hearing was intrinsic to his right to life. Similarly, in *Mohim Jain v. State of Katamaka*[806], the Indian Supreme Court invalidated a state law which permitted medical colleges to charge exorbitant admission fees on the ground that it discriminated against the poor, and in effect curtailed the right to education which is essential to the right to life.

Also, in *UPSE Board v. Harri Shanker,*[807] the court reaffirmed that the right to education is an intrinsic part of the right to life. The court observed that though it cannot enforce the observance of the principles, they are nevertheless bound to evolve, affirm and adjust principles of interpretation which will further and not hinder the goals set out in the Directive Principles.

Every society and more especially every democratic society is often confronted with certain critical questions which relate to issues of social justice, protection of human rights, curbing executive lawlessness, and checking corruption. To grapple with these issues, the courts must, therefore, consciously engage in judicial law making so as to exemplify the interrelatedness of law and social change.

In the realm of justiciability of Chapter II of the Constitution what we expect of the courts is to demonstrate a preparedness to, as the courts in India have done, through progressive interpretation utilize the justiciable and enforceable provisions of Chapter IV, to make Chapter II enforceable. It is gratifying to note, however, that the Nigerian courts seem to be waking up from long and deep slumber. The attitude of the Supreme Court in *Atake v. Afejuku*[808] is quite commendable. In that case one of the issues was whether the appellant, a retired judge, could represent himself as a legal practitioner in view of section 256 of the 1979 Constitution which provides that a judicial officer ceasing to hold office cannot 'appear or act as a Legal Practitioner.' In holding that the appellant could represent himself the court had recourse to the non-justiciable section 17(2)(a) in Chapter II of the 1979 Constitution and section 33(1) of the justiciable Chapter IV of the same Constitution.

[805] [1988] AIR SC 1782.
[806] [1992] AIR SC 1964.
[807] [1999] AIR SC 65.
[808] [1994] 9 NWLR (Pt. 368) 399.

Similarly, in *Adamu v. A.G. Borno State*[809], it was held that where in the implementation of Fundamental Objectives and Directive Principles of State Policy, say on ground of religion, a breach of a citizen's fundamental right of freedom of religion and freedom from discrimination occurs that breach of fundamental right is justiciable.

These cases highlight how courts in Nigeria have navigated the realm of non-justiciability of the ESCR rights to provide protection for citizens. However, this approach is limited. In order to provide full protection for Nigerian citizens, these rights must be supported by legislative seal enforcing their justiciability.

Conclusion

The research on ESCRs in Nigeria underscores the critical intersection of legal frameworks and the imperative for robust protection and realisation of these fundamental rights. Through meticulous examination of laws, cases, and literatures on the topic, the research has illuminated the complex landscape of ESCRs in Nigeria, revealing both strengths and challenges in the legal framework and its implementation.

The research highlights the fragmented nature of Nigeria's legal framework concerning ESCRs, characterised by provisions in the 1999 Constitution. This fragmentation poses challenges in interpretation, enforcement, and access to justice, undermining the effective protection of socioeconomic entitlements for the population. Furthermore, the research identifies systemic barriers and constraints faced by courts in adjudicating ESCR-related claims, including non-justiciability of these rights and the reticence of Nigerian courts to enforce these rights.

However, amidst these challenges, the research also underscores opportunities for enhancing the protection and realisation of ESCR in Nigeria. Recommendations for aligning national laws with international human rights frameworks, strengthening judicial capacity and independence, promoting access to justice, combating corruption, and investing in social infrastructure emerge as critical pathways for realising the right in the country.

[809] [1996] 8 NWLR (Pt. 465) 203.

Recommendations

In line with the findings made in this research, the following actions are recommended:

1. The capacity of the judiciary should be strengthened to effectively adjudicate ESCR-related claims by providing specialised training on human rights principles, legal standards, and procedural mechanisms. Also, judicial independence is crucial and should be ensured to promote impartiality and integrity in decision-making.
2. International human rights frameworks on ESCR should be generously incorporated into Nigerian laws as it is essential for ensuring the effective protection and realisation of these rights for all individuals and communities. By harmonising national legislation with globally recognised standards and principles, Nigeria can strengthen its legal framework, enhance accountability, and promote the wellbeing and dignity of its citizens.
3. Since Nigeria is a signatory to important human rights frameworks, such as the Universal Declaration of Human Rights, International Covenant on Economic, Social, and Cultural Rights (ICESCR)., it is recommended that the nation transpose the rights established by these international human rights frameworks in its laws, especially the Constitution. That way, these rights are protected and can be enforced by courts in Nigeria.