

# **THE JUSTICIABILITY OF SOCIO-ECONOMIC RIGHTS IN NIGERIA**

**(Being the text of the Faculty Lecture delivered by Femi Falana SAN at the Faculty of Law, Osun State University, Ifetedo, Osun State, Wednesday, January 20<sup>th</sup>, 2016)**

## **Introduction**

The economic, social and cultural rights of the Nigerian people embodied in Chapter 2 of the Constitution have been deliberately made non-justiciable by members of the ruling class who drafted the document. Since judges are not ideological neutral the courts have repeatedly endorsed the non-justiciability of socio-economic rights. But the struggle for a welfare state led by the working class has compelled the government to enact laws which have made certain socio-economic rights justiciable. Indeed, certain public institutions have been created and funded by the State to ensure that socio-economic rights enshrined in welfare laws are enforced. Some of the legislations have even criminalised the failure to comply with the provisions of such welfare laws. Regrettably, majority of citizens are not aware of the welfare laws. Even the human rights community has limited the struggle for the defence of human rights to the promotion of political and civil rights.

In the process, the enforcement of socio-economic rights has been ignored to the detriment of the masses to whom political and civil rights are illusory. However, a section of the human rights community has recently obtained judgments from local and international tribunals in which the socio-economic rights of the Nigerian people have been upheld. This lecture sets out to review the historical context under which socio-economic rights were entrenched in the Constitution and the economic policy which has compelled the government to violate abandon the implementation of welfare laws. In justifying the breach of the fundamental objectives the government has complained of lack of funds. On the contrary we insist that the neoliberal policies adopted by the government and the criminal diversion of hundreds of billions of Naira by members of the ruling class with the connivance of western governments and financial institutions have frustrated the actualisation of socio-economic rights. Having regard to the enormous resources of the nation we shall conclude by calling on the labour movement

to lead the Nigerian people in the struggle for the justiciability of the provisions of chapter 2 of the Constitution and all welfare laws.

### **Genesis of socio-economic rights**

Human rights discourse in Africa is largely influenced by western notions of civil liberties. To hide the ideological bias of the discourse, human rights are said to be inalienable, immutable, universally valid and applicable. But history has shown that human rights have been never been static and that they have exploited by different classes at different historical epochs to advance their class interests. Under the slave trade which lasted for about four hundred years the human rights of the victims were never respected. Neither did the colonialism recognised the human rights of the subjects in spite of the much proclaimed universality and inalienability of human rights.

But on the eve of political independence the departing colonial regime ensured that the right to private property and other human rights were entrenched in the independence Constitution in a bid to protect the economic interests of foreign governments and companies. Since then human rights have been entrenched in the Constitution. But such rights are civil and political in nature. They include the right to life, right to dignity, right to personal liberty, right to fair hearing, right to personal property, freedom of expression, freedom of movement, freedom of assembly and association,, freedom and conscience, freedom from discrimination etc. But due to ignorance and poverty majority of the Nigerian people have been denied the opportunity to enjoy the guaranteed civil and political rights. As aptly captured by Claude Ake:

***"The western notion of human rights stresses rights which are not very interesting in the context of African realities. Even when they are interesting their salience is questionable. There is much concern with the right of peaceful assembly, self-determination, free speech and thought, fair trial etc. The appeal of these rights is sociologically specific. They appeal to people with a full stomach who can afford to pursue the more esoteric aspects of self-realization. The vast majority of our people are not in this position. They are facing the struggle for existence in its brutal immediacy. Theirs is a totally consuming struggle. They have little or no time for reflection and hardly any use for free speech. There is no freedom for hungry people, or those eternally oppressed by diseases. It is no wonder that***

***the idea of human rights has tended to sound hollow in the African context."*** [1]

However, the drafting of the 1979 Constitution took place during the era of oil boom in the 1970s. Even though the majority of the members of the 49-members Constitution Drafting Committee could not deny that the State had adequate resources to fund a comprehensive welfare programme for the people they recommended that fundamental objectives be entrenched in the Constitution as mere ideals ***"towards which the nation is expected to strive whilst the Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals."*** Being mere ideals the jurisdiction of the courts to hear and determine matters relating to them has been ousted by section 6 (6) (c) of the Constitution which states that "The judicial powers vested in accordance with the provisions of this section shall not, except as otherwise provided by this Constitution, extend to any issue or question 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."

In their reaction to the exclusion clause, two members of the Committee, Osoba and Usman, observed that having defanged the provisions by their non-justiciability, ***"the CDC draft has correspondingly robbed the masses of Nigerians of one major instrument for monitoring and controlling the conduct of those making public decisions on their behalf. We cannot grasp the value of a set of 'fundamental objectives and directive principles of state policy' which cannot be enforced in law even when it is clear to all and sundry that State policy decision-makers are constantly and consistently violating these objectives and principles."*** [2]

The provisions of the fundamental objectives in chapter 2 of the Constitution include socio-economic rights such as the right to security and welfare, right to political participation, right to education, right to health, right to environment, right to secure adequate means of livelihood including suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits and welfare of the disabled and other vulnerable people. In order to guarantee national prosperity the State is obligated to promote a planned and balanced economic development and harness the resources of the nation and distribute them equitably.

## **The justiciability of socio-economic rights**

In spite of the so-called non-justiciability of socio-economic rights the African Charter on Human and Peoples' Rights has been ratified and enacted into law by the National Assembly. Thus, the socio-economic rights enshrined in the African Charter (on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004 are applicable and enforceable in the courts. In fulfillment of its obligations under the African Charter Act and other welfare laws, the federal government established some agencies and commissions to provide welfare services to the people. Schools and hospitals were funded and maintained while other social services were provided and made accessible to the people. Employment opportunities were created even though the means of production and exchange are in the hands of a few people and corporate bodies.

But the imposition of the World Bank-sponsored Structural Adjustment Program by the Ibrahim Babangida junta in 1986 led to a phenomenal increase in the rate of poverty in the country. The complete or partial withdrawal of spending on public welfare negatively affected critical areas such as health, education with dire consequences on poor people. Unregulated trade liberalization supported by the World Trade Organization (WTO) destroyed local industries. In addition to the diversion of public funds by a handful of public officers the government has continued to take toxic loans from foreign financial institutions to fund the escalating costs of running an unproductive bureaucracy. Under an economy controlled by market forces the majority of citizens have been denied access to security, welfare and happiness.

In interpreting the provisions of Chapter II of the 1979 Constitution which is *in pari materia* with Chapter II of the 1999 Constitution in ***Archbishop Olubunmi Okogie (Trustee of Roman Catholic Schools) & Others v. Attorney-General of Lagos State*** [3] the Court of Appeal held that:

***"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 -makes it clear that 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."***

With respect, the Court of Appeal erred in its restrictive interpretation of section 13 of the Constitution as it did not consider the purport of the phrase, "***except as otherwise provided in this Constitution***" in Section 6(6)(c) thereof. If that had been done the Court would have come to a different conclusion as Section 13 of the Constitution has "otherwise provided" for the justiciability of chapter II by imposing an obligation on all organs of government and of all authorities and persons "***to conform to observe and apply the provisions of this Chapter of this Constitution.***" Since section 13 of the Constitution is a latter provision it has altered the provision of the said section 6(6)(c) of the Constitution.

To underscore the significance of the fundamental objectives it is mandatory on the part of all registered political parties in Nigeria to ensure that their programmes as well as aims and objects conform with the provisions of Chapter II of the Constitution.<sup>[4]</sup> In the light of the case of ***Amaechi v Independent National Electoral Commission*** <sup>[5]</sup> where it was held by the Supreme Court that elections are won by political parties in Nigeria it is submitted that elected public officials sponsored by political parties are bound to implement the socio-economic rights enshrined in Chapter II of the Constitution. Therefore, a court cannot decline jurisdiction to hear any case alleging non-compliance with the fundamental objectives on the part of the government.

In ***Attorney-General of Ondo State v. Attorney-General of the Federation*** <sup>[6]</sup> the Supreme Court decided to adopt the reactionary position of the Court of Appeal in ***Archbishop Anthony Olubunmi Okogie*** (*supra*) when Uwaifo JSC (as he then was) said:

***"Whatever was necessary was done in India to see that they (Directive Principles) are observed as much as practicable so as to give cognizance to the general tendency of the Directives. It is necessary therefore to say that our own situation is of peculiar significance. We do not need to seek uncertain ways of giving effect to the Directive Principles in Chapter II of our Constitution.."***

Since it was the Judiciary which did "*whatever was necessary*" to breathe life into the Fundamental Objectives and Directive Principles of State Policy

contained in the Indian Constitution Justice Uwaifo missed the point when he said that it is for the Executive and the Legislative to give expression to the provisions of Chapter II of the Constitution through appropriate enactment. The Supreme Court ought to have followed its decision in **Ariori v. Elemo**[7] wherein the court was urged to take cognizance of "the nascence of our Constitution, the comparative educational backwardness, the socio-economic and cultural background of the people of this country..."

In the same vein, Justice Chuckwudifu Oputa tried, in vain, to persuade his learned brethren to engage in judicial activism to fill the "gap between the tempo of change in society and amendment in the law or legal processes to effect such change"[8]. However, in **Olafisoye v. FRN** [9] the Supreme Court of Nigeria reviewed its stand on the non-justiciability of the provisions of chapter II of the Constitution. In adopting the progressive stand advocated by Eso and Oputa the apex court (per Niki Tobi JSC) said:

***"In my humble view, the non-justiciability of section 6(6)(c) of the Constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words 'except as otherwise provided by this Constitution'. This means that if the Constitution otherwise provides in another section which makes a section of Chapter II justiciable, it will be so interpreted by the section, which makes a section or sections of Chapter II justiciable, it will be so interpreted by the court."***

As the State is required by Section 15(5) of the Constitution to "abolish all corrupt practices and abuse of power" Justice Tobi asserted that it could no longer be said that Chapter II is "a toothless dog which could only bark but cannot bite". Convinced that the case of **Olafisoye** has radically and positively advanced [10] the Nigerian jurisprudence on socio-economic rights Uzokwu has opined that if the judgment is followed and applied in subsequent cases "***it will usher in an era of social revolution in Nigeria in a way that may even approximate that of India***". [11] The progressive trend was followed by the Federal High Court in **Femi Falana v. Attorney-General of the Federation (No. 1)** [12] when Idris J. held that "**Section 13 of the Constitution imposes a duty and responsibility on the Government to observe Chapter II and any law promulgated pursuant to the said Chapter of the Constitution, including the Nigerian Education Bank Act**".

Notwithstanding the non-justiciability of socio-economic rights the courts are not precluded from exercising jurisdiction with respect to certain provisions of Chapter II of the Constitution which have been enacted into law by the National Assembly. Such enactments include the Price Control Act [13], the Peoples' Bank Act [14], the Nigerian Education Bank Act [15], the Child's Right Act 2003, the Compulsory, Free, Universal Basic Education Act 2004, the Independent Corrupt Practices and Other Related Offences Commission Act, 2000, the Freedom of Information Act 2011 etc. Furthermore, the Government of Nigeria has ratified some international human rights instruments which have recognized the socio-economic rights of citizens.

### **Interdependence of human rights**

The interdependence of all human rights is in line with the Preamble to the African Charter on Human and Peoples' Rights wherein it is stated that "civil and political rights cannot be divorced from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights as a guarantee for the enjoyment of civil and political rights" [16] Unlike all the human rights enshrined in Chapter 4 of the Constitution with emphasis on the legal right of the individual, the African Charter has made some provisions for the collective rights of the people.

In celebrating the bill of rights, African lawyers and judges have failed to address the socio-economic conditions which make it impossible for poor and disadvantaged people to enjoy human rights which have been incorporated in the post colonial constitutions of all the member states of the African Union. Therefore, members of the legal profession and the human rights community should be mindful of the fact that:

***"African conditions shift the emphasis to a different kind of rights - rights which can mean something for poor people fighting to survive and who are burdened by ignorance, poverty and disease, rights which can mean something for women who are cruelly used, rights which can mean something for the youth whose future is rendered more improbable every day. If a bill of rights is to make sense, it must include among others, a right to work and to a living wage, a right to shelter, to health, to education... that is the least we can strive for, if we are going to have a society which realizes basic human needs."***

**[17]**

To ensure that the provisions of the Constitution which guarantee human rights have life and practical meaning to the poverty stricken people of Africa the directive principles of state policy should no longer be relegated to irrelevance and insignificance. African lawyers and judges should always bear in mind that the promotion of human rights has to be linked with the struggle for popular democracy and development. On the nexus between the struggle for development and human rights protection in Africa, Oyebode has emphatically insisted that ***"Africa is at the bottom of the ladder in relation to nearly all indices of development. Accordingly, Africa's struggle to emerge from the labyrinths of poverty, ignorance and disease has cast a pale shadow on human rights protection in many countries."*** [18]

In calling on the civil society led by the labour movement to campaign for the enforcement of socio-economic rights in Nigeria Femi Aborisade has insisted that:

**"Today, there is a paradigm shift (since 1986), from the state being the engine of economic power to the private sector being the engine of economic power. Hence, privatization of public enterprises has become the primary programme of government. There is therefore a linkage between the tendency to hold that Chapter II is not justiciable and neoliberal policy of privatization. Let us recall that Chapter II provides essentially for state ownership in the major sectors of the economy. Therefore, the enforcement of Chapter II has to be politically resolved. The judiciary itself is susceptible to political influences and cannot therefore be relied upon absolutely to realize implementation of Chapter II."** [19]

### **Mechanism for Enforcing Socio-economic Rights**

The mechanism for implementing socio-economic rights has been institutionalized in Nigeria. Apart from seeking redress in municipal courts and regional judicial organs, aggrieved individuals and groups may file complaints on human rights violations before local and international commissions to demand investigation and redress. However, most of the cases relating to socio-economic rights filed in the various courts in Nigeria by some human rights lawyers and non-governmental human rights bodies were struck out for want of ***locus standi***. Since the issues involved in such cases pertained to

public interest it was held that the plaintiffs could not show evidence that they had suffered any greater injury than other members of the public.

In the process, the courts have unwittingly encouraged the Government to abdicate the duty of defending and promoting socio-economic rights. In ***Femi Falana v. Minister of Works*** [20] the plaintiff had sought to compel the defendant to repair the Lagos-Ibadan road which had then become a death trap. The case was struck out for want of ***locus standi*** on the ground that the plaintiff was not the only one using the road. The trial court placed heavy reliance on the case of ***Abraham Adesanya v. The President*** [21] which was the ***locus standi*** on the matter. But in ***Fawehinmi v. Akilu*** [22] the Supreme Court discarded the doctrine of ***locus standi*** in the area of public interest litigation. In his contribution to the judgment, Justice Eso categorically confirmed the new progressive position of the court in the area of public interest litigation when he said:

***"My humble view, and this court should accept it as such, is that the present decision of my learned brother, Obaseki JSC, in this appeal has gone beyond the Abraham Adesanya's case. I am in complete agreement with the new trend, and with respect, my agreement with the judgment is my belief that it has gone beyond the Abraham Adesanya case."***

Under item 60 of the Exclusive Legislative List it is the constitutional responsibility of the National Assembly to make laws with respect to the establishment and regulation of authorities for the Federation or any part thereof to promote and enforce the observance of the fundamental objectives and directive principles contained in this Constitution. The National Assembly appears to have discharged the responsibility in 2010 when it amended the Act establishing the National Human Rights Commission to empower the body to deal with all matters relating to the promotion and protection of the human rights guaranteed in the Constitution and all regional and international human rights instruments including the African Charter on Human and Peoples' Rights and the International Convention on Economic, Social and Cultural Rights to which Nigeria is a signatory.

Pursuant to Article 18 (3) of the African Charter on Human and Peoples' Rights all conventions on the right of the woman and the child are applicable in Nigeria. Some of them are the United Nations' Convention on the Elimination of Discrimination Against Women, the African Union Charter on the rights of Women and the Convention of the Rights of the Child. Through

such incorporation by reference the Commission is under a legal obligation to enforce the socio-economic rights of the Nigerian people set out in the aforementioned human rights instruments.

By virtue of section 254 of the Constitution as amended the National Industrial Court has been granted exclusive jurisdiction to hear and determine any application pertaining to breaches of fundamental rights arising from employment and apply all conventions and protocols of the International Labour Organisation (ILO) which have been ratified by Nigeria relating to employment and industrial relations. Nigeria has ratified 43 of the ILO conventions. It is worthy to note that most of the conventions and protocols pertain to socio-economic rights. Under Section 1 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act [23] the courts are empowered to enforce the provisions of the African Charter which include the right to development and socio-economic rights which are similar to the rights contained in Chapter II of the Constitution.

### **Fundamental Rights Enforcement Procedure Rules 2009**

Pursuant to section 46(3) of the Constitution, the Chief Justice of Nigeria enacted the Fundamental Rights (Enforcement Procedure) Rules 2009 to secure the enforcement of fundamental rights enshrined in Chapter IV of the Constitution and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act [24]. Under the Rules any person whose human rights protected by the African Charter on Human and People' Rights Act 2004 are violated may seek redress by filing an application in a High Court of a state where the violation occurred. In **General Sani Abacha v. Chief Gani Fawehinmi** [25] the Supreme Court dwelt *in extenso* on the significance of the African Charter in our human rights jurisprudence in Nigeria.

### **Prosecution and defence of cases by indigent persons**

Cognizant of the fact that many citizens lack the economic wherewithal to prosecute or defend cases in court adequate provisions have been made in the High Court (Civil Procedure) Rules of each state to take care of the interests of such persons. Accordingly a judge is empowered to admit an indigent person to sue or defend a suit in the State or Federal High Court through a procedure called *in forma pauperis* without the payment of filing or professional fees.

Such a person is required to write an application to the Chief Judge accompanied by an affidavit stating that he/she is unable to afford the services of a legal practitioner. By writing a letter to the Chief Judge an indigent petitioner seeks to invoke the "epistolary jurisdiction" of the High Court. If the application is meritorious the Chief Judge shall appoint a legal practitioner for the Applicant [26]. *Similar provisions are contained in the Acts and the Rules of procedure of the Court of Appeal and the Supreme Court of Nigeria.* In **Lagos State University v. Professor Adele Jinadu & Ors**[27] the Respondents who were challenging the termination of their appointments by the respondents were granted an order which waved payment of filing fees on the ground they did not have the means.

## **Regional Remedies**

### **African Commission on human and peoples' rights**

Victims of human rights abuse may also seek redress in the African Commission on Human and Peoples Rights in Banjul, the Gambia and the United Nations Human Rights Committee in Geneva, Switzerland. But both institutions can only make recommendations unlike municipal regional courts whose decisions are binding on parties who have submitted to the jurisdiction or accepted the competence of such juridical institutions. The African Commission on Human and Peoples Rights has consistently interpreted and upheld the right to development and the socio-economic rights of the Nigerian people in line with the provisions of the African Charter on Human and Peoples' Rights. In such matters, the uncritical application of the doctrine of *locus standi* to public interest cases has been relaxed in order to promote good governance, human rights, constitutionalism and rule of law.

### **African Court on human rights**

Unlike the African Commission whose decisions are not binding on the member states of the African Union the judgments and orders of the African Court on Human and Peoples' rights have binding force. In **Femi Falana v. African Union** [28] the plaintiff questioned the legal validity of Article 5(3) of the Protocol of the Court for denying him access to the court for the failure of his country to make a declaration recognizing the competence of the court. The defendant raised a serious objection to the suit on the ground that the plaintiff's country had not complied with the Article 5(3) of the Protocol. In the judgment delivered in the open court for the first time since the establishment of the court it was held by a split decision of 10-3 judges that the court lacked

the jurisdiction to hear and determine the matter since Nigeria, the country of the plaintiff has not made the declaration accepting the competence /of the court.

### **ECOWAS Court**

In January 2005, the jurisdiction of the Community Court of Justice of the Economic Community of West African States (ECOWAS) was extended to include the enforcement of human rights. Since then the court has upheld the human rights of community citizens including the socio-economic rights entrenched in the African Charter. As the court is empowered to deal with complaints of human rights abuses which occur in any part of the sub-region it has decided many cases filed by aggrieved community citizens from Nigeria. The fundamental rights of the Nigerian people to education and to a safe and healthy environment have been upheld by the court.

### **Petitions to International Human Rights Bodies**

Having ratified the United Nations International Covenant on Social, Economic and Cultural Rights and other international human rights instruments Nigeria is required to submit periodic reports of compliance to certain committees. Non-governmental organizations with observer status in the relevant bodies are at liberty to equally submit reports relating to compliance by member states. Complaints may be submitted to any of the following bodies:

- i. United Nations' Committee on Economic, Social and Cultural Rights (CESCR);
- ii. Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- iii. Commission on the Status of Women; United Nations High Commissioner for Human Rights;
- iv. United Nations Educational, Scientific and Cultural Organization (UNESCO);
- v. International Labour Organization (ILO);
- vi. World Health Organization (WHO);
- vii. United Nations Children's Fund;

- viii. United Nations Development Programme (UNDP); and
- ix. African Experts on the Rights and Welfare of the Child.

### **Right to Health**

Section 17 of the Constitution requires the State to provide “adequate medical and health facilities for all persons.” [29] As the State has failed to adopt necessary measures to protect the health of the Nigerian people due to alleged lack of funds citizens who have the economic wherewithal travel abroad for medical attention while majority of citizens are compelled to patronize hospitals which have been reduced to consulting clinics. In ***Femi Falana v Attorney-General of the Federation*** [30] the Federal High Court turned down the application to secure the right of the applicant to life and health. However in ***Joseph Odafe and Others v. Attorney-General of the Federation and Others*** [31] it was held that the right to health was justiciable pursuant to Article 16 of the African Charter Act. In that case, the applicants who were awaiting trial inmates at the Port Harcourt prison in Rivers State were tested HIV positive and segregated from other prisoners and were not given adequate medical treatment.

Another case in which the right of a patient suffering from HIV is that of ***Georgina Ahamefule v. Imperial Medical Centre & Anor.*** [32] where the Plaintiff, an auxiliary nurse in the service of the Defendants sought medical attention from them. The tests conducted by the defendants confirmed that she was HIV positive. Consequently, her appointment was terminated on the ground that the defendants could not “compromise the entire hospital and patients *vis-à-vis* the risk of your new state following confirmed report from LUTH”. The Plaintiff filed an action at the Lagos State High Court wherein she challenged the violation of her fundamental right to dignity.

The Court declared that the Defendants’ action in subjecting the Plaintiff to HIV testing without her informed consent constituted an unlawful battery on her and that the Defendants’ action in denying the Plaintiff medical care on the ground of her HIV positive status was a violation of the right to health guaranteed under article 16 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ratified by Nigeria in 1993). The plaintiff was awarded damages of N5,000,000.00 (Five Million Naira only) for the wrongful

termination of the Plaintiff's employment and N2,000,000.00 (Two Million Naira only) for the unlawful conduct of HIV test without the Plaintiff's informed consent and for the Defendants' negligence.

### **Citizens' right to basic health**

Under the National Health Act, 2014 every citizen is entitled to basic minimum package of health services. To achieve the objective the Act has provided a comprehensive legal framework for the regulation, development and management of a national health care system and set standard for rendering health services in the Federation. The Act has also established a Basic Health Care Provision Fund which shall be financed from the annual grant of not less than one percent (1%) of the consolidated revenue fund of the federal government; grants by international donors and funds from any other source.

To qualify for a block grant for the provision of health service, a state or local government shall contribute not less than 25% of the costs of projects. Money from the fund shall be used to finance the following:-50% for the provision of basic minimum package of health services to citizens through the National Health Insurance Scheme (NHIS); 20% for the provision of essential drugs, vaccines and consumables for eligible primary health care; 15% for the provision and maintenance of facilities, equipment and transport for eligible primary health care facilities; 10% for the development of human resources for primary health care; and 5% for emergency.

Other laws which have been enacted to ensure that citizens have access to health include **National Agency for the Control of HIV and AIDS (Establishment) Act [33]**; the National Health Insurance Act [34]; the National Agency for Food and Drug Administration and Control Act; the Food and Drugs Act [35]; the Dangerous Drugs Act [36]; the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act[37]; the Quarantine Act [38] .

### **Right to Education**

In furtherance of its educational objective the State shall "as and when practicable" provide: (a) free, compulsory and universal primary education, (b) free university education and (c) free adult literacy [39]. Although the Federal Government has promulgated some laws to guarantee the right of citizens to education, combat adult illiteracy and promote science and

technology the rate of children who drop out of school and adult illiteracy has reached an alarming proportion. In the area of science and technology the State has failed to formulate any coherent policy. Indeed, the State promotes superstitious beliefs through uncensored films and miracles which are regularly performed and shown on television. In the 2016 proposed budget of the federal government it is provided that undergraduates studying science subjects will be entitled to scholarship.

In order to ensure that the petroleum industry was indigenized the Federal Government enacted the **Petroleum Technology Development Fund Act.**<sup>[40]</sup> Under the law a Fund is established for the purposes of training Nigerians to qualify as graduates, professionals, technicians and craftsmen in the fields of engineering, geology, science and management in the petroleum industry in Nigeria or abroad. Specifically, the Fund shall be utilized to provide scholarships and bursaries, wholly and partially in universities, colleges, institutions and in petroleum undertakings in Nigeria and abroad; to maintain, supplement, or subsidize such training or education and to make suitable endowments to faculties in Nigerian universities, colleges, or institutions.

### **The right of every child to education**

In partial fulfillment of its duty to provide education for citizens the State has enacted the Child's Rights Act, 2003 and the Compulsory, Free, Universal Basic Education Act, 2004. Both laws have guaranteed the right of every Nigerian child to compulsory education from primary to junior secondary school at the expense of the State. The Federal and state governments have consistently kicked against all measures adopted to ensure the implementation of the ube. Thus, in ***Femi Falana v Attorney-General of the Federation & 36 ors*** <sup>[41]</sup> sought the defendants raised objection to the *locus standi* of the plaintiff to maintain the suit which sought to compel them to ensure that every Nigerian child was enrolled in school. The Federal High Court upheld the defendants' preliminary objection and struck out the case.

But in the ***Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) V Nigeria*** <sup>[42]</sup> the ecowas court upheld the right of every Nigerian child to education pursuant to article 17 of the African Charter and by the combined effect of section 2 of the UBE Act and section 15 of the Child's Right Act. In view of the evidence that some officials had diverted part of the money budgeted for ube the court directed the federal Government to provide the money to cover the shortfall of funds.

## **Duty of the State to eradicate illiteracy**

Pursuant to the objective of eradicating illiteracy in the country the Federal Government enacted the National Commission for Mass Literacy, Adult and Non-Formal Education Act [43]. The Commission is required to work in co-operation with all concerned to eradicate illiteracy; design and promote strategies and programmes for the conduct and implementation of a national mass literacy campaign in consultation with appropriate agencies of the Federal and State Governments, the universities and non-governmental agencies.

## **The commercialization of education in Nigeria**

In fulfillment of the obligation of the State to provide education for Nigerians the Federal Government took over all private schools in Nigeria in 1977, declared free and compulsory primary education, reduced the fees fixed in secondary schools and abolished the payment of tuition in tertiary institutions. The policy led to the provision of substantial funding for education by the Government. But the quality of education commenced a gradual decline in 1986 following the imposition of the Structural Adjustment Programme on the nation. As the funding of education at all levels was substantially reduced tuition fees were re-introduced in tertiary institutions while exorbitant fees were charged in secondary schools.

In **Femi Falana v. Attorney-General of the Federation (No 1)**[44] the plaintiff challenged the official derelict and prayed the Federal High Court to order the Federal Government to establish the Nigerian Education Bank pursuant to the *Nigerian Education Bank Act* [45] to provide loans to indigent students in all institutions of higher learning. In a judgment delivered on May 26, 2014 the learned trial judge, M.B. Idris J. dismissed the preliminary objections of the defendant on the ground that as a concerned citizen the Plaintiff has the *locus standi* to compel the Federal Government to discharge its duties under the Constitution and other laws.

## **Right to Work**

As part of the Fundamental Objectives and Directive Principles of State Policy the State is obligated to direct its policy towards ensuring that all citizens have the opportunity for securing adequate means of livelihood and suitable employment, that conditions of work are just and humane and that there are

adequate facilities for leisure and for social, religious and cultural life. Specifically, the right to work under equitable and satisfactory conditions has been protected by law[46] as the State shall ensure that the health, safety and welfare of all employees are safeguarded and not endangered or abused and that there is equal pay for work without discrimination. Equally guaranteed is the right of workers to regular payment of reasonable minimum living wage, pensions for retired employees and benefits to unemployed people.[47]

The struggle of Nigerian workers for improved working conditions, which commenced under the colonial regime, has been won on many fronts. In the process, the rights of workers to humane working conditions have been recognized in various laws. Others have been incorporated in staff manuals in line with the conditions of service and collective agreements based on negotiations between employers and employees as well as international labour standards. The labour laws include the Labour Act [48] the Factory Act[49] the National Minimum Wage Act 2011, the Pension Reforms (Amendment) Act 2014[50] the Employees' Compensation Act 2010, Trade Union Act and Trade Disputes Act.

### **International Labour Standards**

Pursuant to section 254 of the Constitution the National Industrial Court has been conferred with exclusive jurisdiction in matters relating to labour, employment, trade unions, industrial relations matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, workers and matters connected to unfair labour practice, discrimination or sexual harassment at work place; to interpret and apply fundamental rights guaranteed in Chapter IV of the Constitution as they relate to labour matters and international labour standards apply and interpret the provisions of all International Labour Organisation which have been ratified by Nigeria.

### **Right to Safe Environment**

The right to environment is part of the Fundamental Objectives and Directive Principles of State Policy enshrined in chapter II of the Constitution. It is not a justiciable right. However, the right is enforceable by virtue of article 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004 which guarantees the right of all peoples to a general satisfactory environment favourable to their

development. Even though there are comprehensive penalties in the environmental protection laws, the enforcement agencies do not prosecute corporate bodies and individuals who destroy the environment.

The Constitution has placed a mandatory duty on the State to **"protect and improve the environment and safeguard the water, air and land."**[51] As part of the measures adopted to ensure safe environment the Federal Government enacted the Federal Environmental Protection Act in 1988.[52] The Federal Government also enacted the Urban and Regional Planning Act[53] which provides for physical and development planning in Nigeria, the protection of environment for development and the maintenance of waste land and public acquisition of land for development purposes. The constitutional validity of the Law was successfully challenged by the Lagos State government in the **Attorney-General of Lagos State v. Attorney-General of the Federation.** [54]

Other laws for the protection of the environment include the Associated Gas Re-Injection Act [55], the National Oil Spill Detection and Response Agency (Establishment) Act [56], the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007, the Niger Delta Development Corporation Act (Establishment, Etc) Act. [57], the Electric Power Producing Development Commission (Establishment, Etc,) Act [58], the Hydrocarbon Oil Refineries Act, The Harmful Waste (Special Criminal Provision, Etc.) Act [59], the Nuclear Safety and Radiation Protection Act, the Nigerian Radiation Safety in Nuclear Well Logging Regulations, 2008, Petroleum Act [60], Environmental Impact Assessment Act, Oil Pipelines Act, the West African Pipeline Project Act. The right to environment has been upheld in a number of cases including **Socio-Economic Rights Accountability Project (SERAP) v. Federal Republic of Nigeria (No 1)**,[61] **Socio-Economic Rights and Accountability Project v. Federal Republic of Nigeria (No 2)** [62], **Baytide (Nig) Ltd. v. Aderinokun & Ors.** [63]

### **Resort to litigation by oil producing communities**

Owing to frustration with the legal system in Nigeria many victims of environment pollution and other acts of injustice have resorted to seeking legal redress in foreign countries. Some of the cases have been amicably resolved by oil companies which cannot manipulate the legal system as they are wont to do in Nigeria. For instance, in **Ken Wiwa v. Royal Dutch Petroleum Co (Shell) and Brian Anderson** [64], the defendant was

ordered by a United States District Court to pay \$15.5 million settlement of a legal action in which it was accused of having collaborated in the illegal execution of Ken Saro-Wiwa and eight other Ogoni leaders on November 8, 1995.

In another suit, ***Bodo Community v. The Shell Petroleum Development Company of Nigeria Limited*** [65] filed in the United Kingdom by the Bodo community in Ogoniland, the Plaintiffs sued for compensation for two oil spills which occurred in 2008 in Bodo, Gokana Local Government Area, Rivers State, Nigeria. It was averred that the spills had caused extensive and long lasting devastation to the claimant's lands and fishing waters and have a serious detrimental impact on the life of the community. The defendant was driven to make an out-of-court settlement of £55 million (N15 billion) as compensation to the Plaintiffs.

In order to protect multinational corporations from being sued in the United States the United States Supreme Court of that country has said that nothing in the Alien Torts Act of 1789 "evinces a clear indication of extra territorial reach" and that the US Federal Courts lack the jurisdiction to hear lawsuits filed against foreign corporation accused of aiding in human rights abuse abroad. The suit which was filed in a District Court in New York by 12 Nigerians based in the United States had accused Shell of complicity in a violent crackdown of protesters in Ogoniland by the military junta from 1992-1995. [66]

### **Right to residency, movement of persons and goods**

In promoting and encouraging national integration the State is obligated to provide ***"adequate facilities for and encourage free mobility of people, goods and services throughout the Federation and secure full residence rights for every citizen in all parts of the Federation."***

Equally guaranteed is the fundamental right of every citizen to acquire and own immovable property anywhere in Nigeria. [67] The right to property "may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws". [68] It is pertinent to note that the right of citizens to reside in any part of the country includes the right to be provided with the facilities for free mobility of persons, goods and services.

On many occasions the violations of the right of citizens to housing have been declared illegal by local courts and international tribunals. In ***Socio-***

***Economic Rights Action Centre and Anor. v. Federal Republic of Nigeria*** [69] the Commission said:

***"... although the right to housing or shelter is not explicitly provided for under African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing."***

In order to address the crisis and ensure a progressive realization of the right of citizens to housing and residency the State has enacted the following Laws; the Federal Housing Act [70], the Employees Housing Schemes (Special Provisions) Act [71], the Federal Mortgage Bank Act [72], the National Fund Act. To protect tenants from forced eviction each of the state governments in Nigeria has enacted a law for regulating rents and ejection of tenants from residential or commercial premises. See ***Professor Itse Sagay & Anor v. University of Benin*** [73]

### **Residency right of citizens**

Aside the freedom of movement of every citizen guaranteed by the Constitution, every community citizen is entitled to move freely in West Africa by virtue of the Protocol of the Economic Community of West African States on Free Movement of Persons, Residence and Establishment which has been ratified by Nigeria. [74] Furthermore, the human right of every individual to freedom of movement and residence within the borders of a State provide that they abide by the law is protected by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. [75] See ***Alhaji Shugaba Abdurrahman Darman v. Minister of Internal Affairs*** [76].

The deportation of beggars and the destitute from state capitals and dumped them in their states of origin. Contrary to the allegation that the expulsion of 14 beggars of Anambra state origin by the Lagos State Government was targeted at a particular ethnic the policy was part of the urban renewal programmes being executed by all the state governments. Regardless of economic condition or social status, no citizen can be forcefully removed or

expelled from any part of the country. See *Director-General, State Security Service v. Olisa Agbakoba* [77] the Supreme Court upheld the right of Nigerian citizens to reside in any part of the country.

### **Right to development**

The right to development is "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social and cultural development, in which all human rights and fundamental procedures can be fully realized". [78] It is a right which includes the exercise of full sovereignty over national resources, self determination, popular participation in development and equality of opportunity. [79] Accordingly, the State shall direct its policy towards ensuring the promotion of a planned and balanced economic development and ensure that the economic system is not operated in such a manner as to permit the concentration of wealth or the mean of production and exchange in the hands of a few individuals or of a group. [80]

Having ratified the African Charter on Human and Peoples' Rights the State is under a duty to ensure the exercise of the right to development and respect the economic, social and cultural rights of the people with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. [81] Apart from ensuring that the nation's material resources are harnessed and distributed to serve the common good the State shall ensure that suitable and adequate shelter, suitable and adequate food, old age care and pension, sick benefits and welfare of the disabled are provided for all citizens. [82]

A key component of the economic objectives of the State is the "control of 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." [83] Therefore, the State shall prevent the "exploitation of human and natural resources in any form whatsoever for reasons, other than the good of the community". [84] Hence, the entire property in and control of all natural resources vested in the Government of the Federation shall be managed in such manner as may be prescribed by the National Assembly. [85] The demand for the control of the country's natural resources was a component element in the struggle for independence from the British colonial regime. But upon the attainment of political independence the status quo has remained on the economic front.

Realizing that the socio-economic rights of the people cannot be meaningfully guaranteed without the control of the natural resources of the member states of the African Union the duty to freely dispose of the commonwealth in the exclusive interest of the people has been imposed on the government. The domination of the Nigerian economy by free market forces has stultified the development and growth of an efficient, dynamic and self-reliant economy in Nigeria. The legal justification for the exercise of control over the natural resources in Africa was considered in **Social and Economic Rights Action Centre and Anor. v. Federal Republic of Nigeria**[86] where it was held:

*"The origin of this provision may be traced to colonialism, during which time the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa's precious resources and people still vulnerable to foreign misappropriation. The drafters of the Charter obviously wanted to remind African governments of the continent's painful legacy and restore cooperative economic development to its traditional place at the heart of African society.*

### **Price control regime**

The Price Control Act [87] was enacted to prevent the sale of commodities above the controlled price. Accordingly, it shall be unlawful for any person to sell, agree to sell or offer to sell any or employ any other person, whether or not that other person is of full age, to sell any controlled commodity at a price which exceeds the controlled price. [88] With respect to the prices of petroleum products the Minister of Petroleum Resources shall, by order published in the Federal Gazette, fix the prices at which petroleum products or control any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereto.

The legal validity of the decision of the Federal Government to deregulate the downstream sector of the petroleum industry by allowing market forces to fix the prices of petroleum products was challenged by the Plaintiff in the case of **Bamidele Aturu v. Honourable Minister of Petroleum & Ors.** [89] at the Federal High Court. In the action the Plaintiff alleged that the policy of the government is a violation of section 16(1) of the Constitution, section 6 of

the *Petroleum Act* [90] and section 4 of the *Price Control Act*. [91] In his judgment the judge said :

***“By enacting the Price Control Act and the Petroleum Act and providing in sections 4 and 6 of those Acts, for the control and regulation of prices of petroleum products, the National Assembly working in tandem with the government has made the economic objective in section 16(1) of the Constitution in Chapter II justiciable. The enactments are to secure the economic objectives of the State to control the national economic system in such manner as to secure the maximum welfare, freedom and happiness of every citizen of Nigeria. ’***

### **Economic empowerment of the people**

Following the unprecedented level of poverty sequel to the imposition of the Structural Adjustment Programme on the country, some limited grants and loan facilities were made available to poor and disadvantaged people. The Small and Medium Scale Enterprises Development Agency was established under the Medium Scale Enterprises Development Agency Act [92] and charged with the responsibility for promoting and facilitating the development programmes in the small scale industries sub-sector.

As an empowerment programme the Family Economic Advancement Programme was also established by virtue of the Family Economic Advancement Programme (Establishment, Etc.) Act [93] and designed specifically for locally based producers of goods and services and potential entrepreneurs, to provide basic working capital requirements for small scale farming as loans to the low income groups; provide facility for the procurement of machinery and equipment for Nigerians to set up and run cottage and small scale industries; encourage the design and manufacture of appropriate plants, machinery and equipment; create employment opportunities at ward levels through the establishment of enterprises and pilot projects in the wards; and encourage producers of goods and services at ward levels to form co-operative societies.

Community Banks were established under the Community Banks Act [94] to promote rural development through the provision of finance and banking services; enhance the rapid development of productivity activities, especially in the rural areas; and improve the economic status of small-scale producers, both in the rural area and urban areas. The Peoples Bank of Nigeria was also

established by law to provide basic credit requirements for under-privileged Nigerians involved in legitimate economic activities in both urban and rural areas and who could not normally benefit from the services of the orthodox banking system due to their inability to provide collateral security.[95]

In **Femi Falana v. Attorney-General (No. 2)**[96] the Plaintiff prayed the Federal High Court to direct the Federal Government to re-establish the Peoples Bank of Nigeria to provide loans to underprivileged Nigerians. It was the contention of the Plaintiff that the Bank was abolished without a repeal of the Peoples Bank of Nigeria Act by the National Assembly. The contention of the Defendants that other poverty reduction agencies have been established by the Federal Government was discountenanced by Idris J. who ordered that the Peoples Bank be re-established by the Federal Government.

### **Unlimited access to loans and intervention funds by the rich**

Following the so called global economic meltdown of 2008 the Central Bank of Nigeria set aside trillions of naira to bail out the rich. In addition to the aviation intervention fund, bank intervention fund and agricultural intervention fund the National Assembly enacted the AMCON Act to take over the huge loans of the rich from commercial banks. Before the crisis the ruling class has facilitated access to loans and grants by rich people. The banks and intervention funds specially dedicated to investors and industrialists include:

- i. Nigerian Industrial Development Bank (Guarantee) Act[97]
- ii. Nigerian Export-Import Bank Act [98]
- iii. Urban Development Bank of Nigeria Act
- iv. Agricultural Credit Guarantee Scheme Fund Act[99]
- v. National Economic Reconstruction Fund Act [100]
- vi. Revolving Loan Fund for Industry Act[101]
- vii. Nigerian Investment Promotion Commission Act[102]
- ix. Venture Capital (Incentives) Act.[103]

## **Protection of Consumers**

The Utilities Charges Commission has been established pursuant to the Utilities Charges Commission Act[104] to evaluate, on a continuing basis, trends in tariffs charged by any of the public utilities with a view to providing the Federal Government with such information as would enable the Federal Government to determine permissible increase. The public utilities listed in the Act are:

- a. National Electric Power Authority (NEPA);
- b. Nigerian Telecommunication Limited (NITEL);
- c. Nigerian National Petroleum Corporation (NNPC);
- d. Nigeria Airways (Domestic Operations); Nigerian Railways Corporation;
- e. Ferry Services Organizations; Nigerian Ports Authority;
- f. Road Transportation Organizations;
- g. Nigerian Postal Services (NIPOST); Such other public utilities as may be determined, from time to time, by the Commission).

## **Consumer Protection Council**

In order to protect consumers the Consumer Protection Council Act [105] has established a Council to provide a speedy redress to consumers' complaints through negotiation, mediation and conciliation. Apart from the Consumer Protection Council there are other regulatory agencies to which complaints can be lodged with respect to services which fall below standards. They include:

- a. Nigerian Copyright Commission (NCC);
- b. Nigerian Communications Commission (NCC);
- c. Nigerian Broadcasting Commission (NBC);

- d. Nigeria Maritime Administration and Safety Agency (NIMASA);
- e. Standards Organisation of Nigeria; f. Nigerian Press Council (NPC);
- g. Central Bank of Nigeria (CBN);
- h. Corporate Affairs Commission (CAC);
- i. National Insurance Commission (NAICOM);
- j. Fiscal Responsibility Commission (FRC);
- k. Nigeria Deposit Insurance Corporation (NDIC);
- l. Nigerian Electricity Regulatory Commission (NERC);
- m. Energy Commission of Nigeria (ECN);
- n. Department of Petroleum Resources (DPR);
- o. Petroleum Product Pricing Regulatory Agency (PPPRA);
- p. National Agency for Food and Drug Administration and Control (NAFDAC)
- q. National Emergency Management Agency (NEMA));
- r. National Oil Spill Detection and Response Agency (NOSDRA); and
- s. National Environmental Standard and Regulation Enforcement Agency.

### **The right to transparent and accountable government**

In order to establish a welfare system in the country the Constitution has imposed a duty on the State to direct its policy towards ensuring ***the promotion of a planned and balanced economic development;*** and that ***the material resources of the nation are harnessed and distributed as best as possible to serve the common good and 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*** [106] But with the privatization and control of the economy by foreign economic interest groups and their local agents and through privatization, grant of duty waivers and intervention funds made available to captains of industry the economy has been completely concentrated in the hands of a few people.

Contrary to the above economic objective, the State has stopped the planning of the economy, refused to harness the resources of the country and failed to address grand corruption and abuse of office. But in view of the debilitating effects of corruption on the society the State has adopted some measures to promote transparency and accountability in governance. In addition to the penal and criminal codes which have provided for stringent penalties for fraud, embezzlement, stealing, conversion etc other laws which are designed to promote good governance are the Independent Corrupt Practices and Other Related Offences Commission Act, Economic and Financial Crimes Commission Act, Code of Conduct Act, Public Procurement Act, and Fiscal Responsibility Act. In demonstration of its resolve to combat corruption the Government has ratified the United Nations Convention on Corruption and the African Union Convention on Corruption.

Aside the collaboration with some countries to tackle corruption through Mutual Legal Assistance the Federal Government has enacted a number of laws for encouraging ethical standards and promoting good governance. Notwithstanding the corpus of anti-graft laws and the establishment of anti corruption agencies, official corruption has stultified growth and development and exposed the country to ridicule before the comity of nations. This is not unexpected given the nature of the country's neo-colonial capitalist economy compounded by impunity on the part of the ruling class.

### **Constitutionality of anti-graft agencies**

In order to stop the anti corruption war being prosecuted by the federal government the law setting up the Independent Corrupt Practices and Other Related Offences Commission Act was questioned in the case of **Attorney-General of Ondo State v. Attorney-General of the Federation**. [107] the The Supreme Court did not hesitate in dismissing the suit. The constitutional validity of the Economic and Financial Crimes Commission Act, 2004 was also challenged questioned in **Attorney-General of Abia State v. Attorney-General of the Federation**. [108] The suit was equally thrown out by the apex court. Since the anti graft agencies have come to stay

desperate measure have been adopted to frustrate them from discharging their statutory duties. Some judges have been granting injunctions to stop the agencies from prosecuting politically exposed leaders. Others have been granting stay of execution pending frivolous appeals.

Kola Olaniyan has contended that "corruption cannot be effectively combated by reliance only on the criminal and law enforcement approach, and a comprehensive and multi-disciplinary approach which incorporates human rights law will be required to adequately and effectively deal with the problem and effects on human rights".<sup>[109]</sup> With respect, corruption cannot be effectively dealt with without challenging the political economy of the postcolonial capitalist states in Africa. In view of Article 21 of the African Charter on Human and Peoples' Rights which has imposed a duty on all African countries to "undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their people to fully benefit from the advantages derived from their national resources" the expropriation of the commonwealth by a few persons including foreigners is untenable.

Without a commitment on the part of African States to comply with Article 21 of the African Charter the majority of the people cannot enjoy socio-economic rights. After all, Olaniyan has opined that "implicit in Article 21 are the guarantees to the right of citizens to demand better management by States of wealth and national resources in order to ensure that the resources benefit the people to the maximum extent, and not a few ranking officials".<sup>[110]</sup>

### **Duty of citizens to fight corruption**

The duty conferred on citizens "to render assistance to appropriate and lawful agencies in the maintenance of law and order" has been said to include the duty to expose corruption by reporting allegations of corrupt practices to the anti-graft agencies. In **Alhaji Sani Dododo v. Economic & Financial Crimes Commission and Ors.**<sup>[111]</sup> it has been held that every citizen has the locus standi to fight corruption. In fact, the court of appeal held that the duty to fight and expose corruption has been imposed on the Nigerian people. For that reason president Buhari and the anti graft agencies cannot be left alone to fight the menace of corruption in the country. Nigerians ought to realise that corruption assumed a dangerous dimension to the extent that parents and their children are being charged with corrupt practices in the same courts.

The Nigerian people must take more than a passing interest in the ongoing investigation of the erstwhile military officers and their civilian collaborators who engaged in the criminal diversion of huge funds earmarked for the procurement of arms and armament. Since about 25,000 people have been killed and over two million others displaced as a result of the sabotage of the counter insurgency operations by the criminal suspects they must bear full responsibility for the atrocities perpetrated by the satanic Boko Haram sect in the last 6 years. We are not unaware that following the report of the Arms Procurement Panel set up by President Buhari has confirmed the criminal diversion of \$2.1 billion and N643 billion through a former National Security Adviser, Col. Sambo Dasuki (retd) and \$2 billion and N29 billion through some officers in the Nigerian Air Force in collaboration with Col. Dasuki.

### **Relevance of an anti corruption court**

The federal government deserves commendation for the renewed fight against corruption and impunity in the country. Regrettably, the anti corruption battle cannot be won through the regular courts. Under the pretext that the regular courts are congested corruption cases are being adjourned to the delight of politically exposed persons. The ICPC has over 400 corruption cases in the courts. It is not in doubt that the EFCC has many more cases which are pending in the regular courts. Some of the cases being prosecuted by the ICPC were filed in the courts as far back as 1999!

It has just been disclosed by the Minister of Information, Mr. Lai Mohammed that 55 ex-public officers standing trial for allegedly stealing N1.3 trillion have had their cases subjected to interminable delays. Owing to congestion of cases in the regular courts corruption cases are being adjourned to upwards of three months instead of hearing them day by day as stipulated by the Administration of Criminal Justice Act, 2015. As if that is not enough, the suspects are being granted bail in self recognizance and other liberal terms notwithstanding the gravity of the offences alleged against them. Experience has shown that once granted bail in corruption cases suspects adopt all manners of dilatory tactics to frustrate trial.

With the ongoing investigations into serious allegations of massive corruption in the office of the NSA, NNPC, CBN, NIMASA, NPA etc it is clear that the regular courts cannot cope with the trial of the many suspects that are likely to be indicted and recommended for prosecution. It is high time the Executive sponsored a Bill for the establishment of an anti corruption court. Otherwise, a decade from now the corruption cases which were commenced

17 years ago will remain in the docket! The proposed court will specifically handle cases of corruption, terrorism, drug trafficking, human trafficking, advance fee fraud and other economic crimes. The proposed courts should be manned by judges of proven integrity.

In addition to the establishment of the anti corruption court there is the urgent need to reorganise the ICPC, code of conduct bureau and code of conduct tribunal. The recent organisation of the EFCC by President Buhari is already producing positive results. Time is not on our side! Trial of military officers involved in arms deal by courts-martial

Last week, the Federal Government referred the report of the Arms Procurement Panel to the EFCC for further investigation and the prosecution of the indicted suspects. The military authorities have assured the nation that the military officers among the suspects would be handed over to the EFCC for trial. In a similar vein, while receiving the report of the panel which inquire into the role of military personnel in the subversion of the electoral process in Ekiti and Osun states last year the Chief of Army Staff promised that some of the suspects would be referred to the EFCC for prosecution. With respect, there is no legal justification for asking the EFCC to handle cases of military officers who have committed war related crimes. Since the indicted military officers are subject to service law they be referred to the military police for urgent investigation and prosecution before special or general courts-martial convened by the relevant military authorities in line with the provisions of the Armed Forces Act, Cap 20, Laws of the Federation of Nigeria.

It is my submission that the military officers who diverted billions of dollars and naira earmarked for procurement of arms and armament are liable to be charged under section 45 for aiding the enemy and section 52 for mutiny by impeding or sabotaging the counter insurgency operations and thereby collaborating with the enemy, section 62 for failure to perform military duties and section 66 for stealing under the Armed Forces Act. Although retired military officers cannot be subjected to trial after 3 months after retirement the limitation does not apply to mutiny by virtue of section 169 (2) of the AFA. The proposed trial before military courts will meet the justice of the case and the expectations of the public. More so, that the Rules of Procedure applicable in courts-martial have no room for frivolous adjournments, motions for bail, interlocutory appeals, stay of proceedings of proceedings and interim or perpetual injunctions.

## **On loot recovery**

Contrary to the claim that the federal government cannot fund socio-economic rights on account of lack of resources Nigeria is extremely rich in terms of human and natural endowment. The over \$150 billion stolen and taken abroad in the last 10 years is enough to fund socio-economic rights and the infrastructural development of the nation. Ours is a country whose citizens have been pauperised by a rogue ruling class. President Buhari has requested western governments to help Nigeria recover her stolen wealth. President Jonathan reacted by saying that the figure of the loot has been exaggerated. With the revelations oozing out of the EFCC President Buhari may have underestimated the extent of the loot.

The Managing Director of the International Monetary Fund, Christien Lagarde stated that a loan from the IMF was not discussed with the federal government but that a team from the institution would visit the country to study the economic crisis and make appropriate recommendations. She also promised that IMF would help Nigeria in the recovery efforts. It is doubtful if Nigerians are aware that the IMF boss is under investigation in her country, France over her handling of a €405 million (£322m) state payout made to Bernard Tapie, a disgraced tycoon, in 2008 when she was France's finance minister. Apart from lacking the moral integrity to recover loot for Nigeria the IMF and World Bank as well as western government are complicit in the promotion of capital flight and looting of the treasury of Nigeria.

Notwithstanding the frustration of western banks the federal government has recovered not less than \$4 billion from the Abacha loot. But the World Bank and a former Managing Director of the bank, Mrs Ngozi Okonjo-Iweala recently produced a report which gave the false impression that only \$500 million had been recovered. A 700-page tissue of lies which listed phantom projects executed with the recovered loot was produced by the bank. Instead of relying on the foreign financial institutions governments that have fed fat on the corrupt practices of Nigerian leaders the federal government should commission a panel of experts to ensure that the \$150 billion is recovered and repatriated to the country.

## **Conclusion**

It is however curious to note that in spite of the progress that has been recorded in the enforcement of socio-economic rights in Nigeria many lawyers including civil rights advocates are not familiar with the new trend in human rights jurisprudence. Nigerian Law on Socio-Economic Rights is therefore motivated by the desire to challenge the popular belief among judges, lawyers and even human rights activists that socio-economic rights are not justiciable in Nigeria. The book reviews the laws and the human rights treaties on socio-economic rights which have been interpreted by local and regional judicial tribunals. It also contains information on the relevant bodies established to enforce socio-economic rights as well as the mechanism for enforcing them. Although some of the decisions reviewed in this book pertain to the abuse of the civil and political rights they have been included because human rights are interdependent and interconnected.

However, to reclaim the welfare state from its obstinate opponents in government the Nigerian people have to be mobilized to ensure compliance with the various welfare laws and intensify the campaign for the full justiciability of the provisions of the socio-economic rights set out in Chapter 2 of the Constitution. This means that the struggle for the economic empowerment of the masses transcends the legal arena. It is a battle for popular democracy as opposed to liberal democracy. It is a battle for the democratic control of the economy in the overall interests of the people. It has to be a sustained battle as the government is administered by an army of neo-liberal ideologues with commitment to the defense of market fundamentalism. It is hoped that this book will equip the legal profession and the human rights community to reposition the people to play an active role in defending their human rights including the right to exercise full control over the abundant resources of the nation.

## ENDNOTES

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- [2] *A General Report of the Work of the Constitution Drafting Committee: A Minority Submission* by Olusegun Osoba and Bala Usman, August 1976, p.6.
- [3] (1981) 2 NCLR 337 at 350.
- [4] Section 224 of the Constitution.
- [5] (2008) 10 W.R.N. 164
- [6] (2009) 9 NWLR (PT 722) 222 at 383.
- [7] (1984) 5 NCLR 1 at 14.
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- [10] Fabian Ajogwu, *Law and Society*, Centre for Commercial Law Department, Lagos, 2013, pp. 100 – 101
- [11] Livy Nzokwu, Constitution, Abolition and Judicialization of Directive Principles of State Policy. *In Law and Its Leeway*, in honour of Emeritus Professor Isaac Agbede, GEM Communications Resources, Lagos 2014.
- [12] Unreported Suit No: FHC/L/CS/1122/2011
- [13] Cap P28 Laws of the Federation of Nigeria, 2004.
- [14] Cap P7 Laws of the Federation of Nigeria, 2004.
- [15] Cap N104 Laws of the Federation of Nigeria, 2004.
- [16] Preamble to the African Charter on Human and Peoples' Rights.

[17] Ibid.

[18] Akin Oyeboade, *International Law and Politics, An African Perspective*, Lagos: Balabay Publications, 2003, p. 129.

[19] femiaborisade.[blogspot.com/.../the-imperatives-of-justiciability-of\\_1.htm](http://blogspot.com/.../the-imperatives-of-justiciability-of_1.htm)..

[20] Unreported suit no FHC/L/CS/115/2001.

[21] (1981) A.N.L.R 1 at 24.

[22] (1987) 4 NWLR (PT 67) 797 at 847.

[23] Cap A9, *Laws of the Federation of Nigeria*, 2004.

[24] The Fundamental Rights (Enforcement Procedure) Rules 2009 which came into force on 1<sup>st</sup> December, 2009 replaced the Fundamental Rights (Enforcement Procedure) Rules 1979. In line with the progressive trend on *locus standi*, the Fundamental Rights (Enforcement Procedure) Rules 2009 have expressly stated that “no human rights case may be dismissed or struck out for want of locus standi”.

[25] (2000) 6 NWLR (PT 660) 228; (2001) 51 WRN 29.

[26] See Order 47 of the Lagos State High Court (Civil Procedure) Rules 2004; Order 38 of the Federal High Court (Civil Procedure) Rules 2009.

[27] Appeal No: CA/L/299/2002.

[28] Application No: 001/2001.

[29] Section 17(3)(d) of the Constitution.

[30] Unreported Suit No: FHC/IKJ/CS/M59/2010.

[31] (2004) AHRLR 205.

[32] Unreported Suit No: ID/1627/2000 of September 27, 2012.

[33] See Act No 2 of 2007.

- [34] Cap N42 Laws of the Federation of Nigeria, 2004.
- [35] Cap F32 Laws of the Federation of Nigeria, 2004.
- [36] Cap D1 Laws of the Federation of Nigeria, 2004.
- [37] Cap C34 Laws of the Federation of Nigeria, 2004.
- [38] Cap Q2 Laws of the Federation of Nigeria, 2004.
- [39] Section 18 of the 1999 Constitution
- [40] Cap (PIS) Laws of the Federation of Nigeria, 2004.
- [41] Unreported Suit No FHC/ABJ/CS/82/2006.
- [42] (2009) AHRLR 331.
- [43] Laws of the Federation of Nigeria (CAP N18) 2004
- [44] Unreported Suit No FHC/L/CS/1122/2011.
- [45] Cap N104 Laws of the Federation of Nigeria, 2004.
- [46] Article 15 of the African Charter on Human and Peoples' Rights.
- [47] Section 16(2)(d) of the Constitution.
- [48] Cap L1 Laws of the Federation of Nigeria, 2004.
- [49] Cap F1 Laws of the Federation of Nigeria, 2004.
- [50] Cap P4 Laws of the Federation of Nigeria, 2004.
- [51]** Section 20 of the Constitution.
- [52]** The law has been repealed and replaced by the National Environmental Standards and Regulations Enforcement Act.
- [53] Urban and Regional Planning Act (Cap. N138) Laws of the Federation of Nigeria, 2004. The Act provides for physical and development planning in

Nigeria, the protection of environment for development and the maintenance of waste land and public acquisition of land for development purposes.

[54] (2003) 12 NWLR (PT 833) 1, (2003) 6 SC (PT 1) 24.

[55] Cap A25 Laws of the Federation of Nigeria, 2004.

[56] Cap N157 Laws of the Federation of Nigeria, 2004. The penalty for failure to report an oil spill is N500,000.00 for each day. The failure to clean up the impacted site shall attract a further fine of N1,000, 000.00.

[57] Cap N86 Laws of the Federation of Nigeria, 2004.

[58] No 87 OF 2010.

[59] Cap H1 Laws of the Federation of Nigeria, 2004.

[60] Cap P10 Laws of the Federation of Nigeria, 2004.

[61] (Unreported) Suit No ECW/CCJ/APP/08/09.

[62] Footnote missing.

[63] (2013) LPELR-19956 (CA)

[64] 226. F.3d 88 (2nd Cir. 2000).

[65] Claim No HQ11X01280.

[66] The judgment was delivered on 17 April, 2013.

[67] Section 43 of the Constitution.

[68] Article 14 of the African Charter on Human and Peoples' Rights.

[69] Footnote missing.

[70] Cap F14 Laws of the Federation of Nigeria, 2004.

[71] Cap E8 Laws of the Federation of Nigeria, 2004.

[72] Cap F16 Laws of the Federation of Nigeria, 2004.

[73] Unreported Suit No: B/384/87/.

[74] 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment sets out right of Community citizens to enter, reside and establish in territory of member states without visas; 1985 Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) requires states to grant to Community citizens who are nationals of other member states the right of residence in its territory for the purpose of seeking and carrying out income earning employment; 1989 Supplementary Protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment; and 1990 Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right to Establishment) defines the right of establishment emphasizing non-discriminatory treatment of nationals and companies of other member states except as justified by exigencies of public order, security or health.

[75] Article 12 of the African Charter on Human and Peoples' Right.

[76] (1981) 2 NCLR 459.

[77] (1999) 3 NWLR (PT 595) 314.

**[78] Footnote missing.**

[79] UN General Assembly Declaration on the Right to Development 1977.

[80] Section 162)(c).

[81] Article 22 of the African Charter on Human and Peoples' Act, 2004.

[82] Section 16(2)(d).

[83] Section 16(1)(b) of the Constitution.

[84] Section 17(1)(d) of the Constitution.

[85] Section 41(3) of the Constitution.

[86] (2002) CHR 537.

[87] Cap P28 Laws of the Federation of Nigeria, 2004.

[88] The Law was effectively applied when it was enacted in 1976. But with the privatization and commercialization of public enterprises the government allowed market forces to determine the prices of goods and services contrary to the provisions of the law.

[89] Unreported Suit No: FHC/ABJ/CS/591/2009 was filed after the January 2012 general strike and mass protests against the removal of fuel subsidy by the Federal Government.

[90] Cap P10 Laws of the Federation of Nigeria, 2004.

[91] Cap P28 Laws of the Federation of Nigeria, 2004.

[92] Cap S19 Laws of the Federation of Nigeria, 2004.

[93] Cap F3 Laws of the Federation of Nigeria, 2004.

[94] Cap C18 Laws of the Federation of Nigeria, 2004.

[95] The People's Bank of Nigeria was established in October 1987 by the Federal Government to cater for poor professional people and traders who could not access loans in the commercial banks due to stringent conditions. In 1992 the bank had 200 branches located throughout the country and had granted loans to 245,000 people, reported in Agence France Presse (AFP) Paris, 17 January 1992.

[96] Unreported Suit No: FHC/L/CS/1121/11.

[97] Cap N111 Laws of the Federation of Nigeria, 2004.

[98] Cap N106 Laws of the Federation of Nigeria, 2004.

- [99] Cap A11 Laws of the Federation of Nigeria, 2004.
- [100] Cap N32 Laws of the Federation of Nigeria, 2004.
- [101] Cap R8 Laws of the Federation of Nigeria, 2004.
- [102] Cap N117 Laws of the Federation of Nigeria, 2004.
- [103] Cap. V2 Laws of the Federation of Nigeria, 2004.
- [104] Cap. U17 Laws of the Federation of Nigeria, 2004.
- [105] Cap P7 Laws of the Federation of Nigeria, 2004.
- [106] Section 16(2) of the Constitution.
- [107] (2002) 27 WRN 1.
- [108] (2007) 6 NWLR (PT 1029) 2007.
- [109] Kolawole Olaniyan; *Corruption and Human Rights Law in Africa*, Oxford and Portland, Oregon, 2014 p. 275.
- [110] Section 24 of the Constitution.
- [111] (2013) 1 N.W.L.R (PT1336) 468.