



RESEARCH ARTICLE

SOCIO ECONOMIC RIGHTS UNDER THE NIGERIA LEGAL SYSTEM: ISSUES AND CHALLENGES

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ABSTRACT

Good governance can better be achieved where socio economic rights are provided and made justiciable. Socio economic rights give meaning to right to life and dignity of human person. It enables the people to live above poverty level if provided and guaranteed by the government. The study relied on both primary and secondary sources of data such as statutes, textbooks, articles in journal, internet and the likes. The data collected was subjected to content and contextual analysis to arrive at our conclusions. The study examined the legal regime of socio economic rights within the purview of Nigeria legal system as to its justiciability and enforcement. It is our conclusion that socio economic rights should be made justiciable as part of effort of government to reduce poverty and that judicial interpretation of these rights as encapsulated in Chapter II of the Constitution should be in consonance with right to life and dignity of human person as enshrined in section 33 and 34 of the Constitution.

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INTRODUCTION

Socio economic rights are those rights that give the people access to certain basic needs necessary for human beings to live a dignified life<sup>1</sup>. These rights include but not limited to: Right to education, Right to housing, Right to safe environment, Right to Adequate standard of living, Right to good health, Right to work etc. Various international instruments such as Universal Declaration on Human Rights (UDHR), African Charter on Human and Peoples' Right (ACHPR), International Covenant on Economic, Social and Cultural Right (ICESCR), Convention on the Right of a Child (CRC), recognise a number of social economic rights. Nation states who are signatories to these instruments are under obligation to respect and protect these socio economic rights. The level of compliance and protection of these rights within the Nigeria legal system has generated a lot of debates and what seems to cause this debate is the lack of precision of both local and international instruments on justiciability of socio economic rights.<sup>2</sup> However, the level of compliance with these rights in Nigeria is still at zero level with about 70% of its population living below poverty line, 69% of its population has no access to

proper sanitation, 39% have no access to portable drinking water, 39% illiteracy rate, 24% unemployment rates and the country is categorised as a country with a "very high risk" of major infectious disease.<sup>3</sup> Enforcement and justiciability of socio economic rights will be the right direction for the country in order to ensure speedy development, create a better standard of living for its citizenry and put the government on its toes to perform up to expectation. Anything fall short of this will be inimical to the growth of Nigeria as a country.

**Concept of socio economic rights:** According to Laski, rights are those conditions of social life without which no man can seek in general, to be himself at his best.<sup>4</sup> Benjamin explained right as an entitlement to demand for something that is right- in the sense of what is important or necessary for the proper quality of life- for every human being.<sup>5</sup> Rights is described as an entitlement or justified claim to a certain kind of positive and negative treatment from others, to support from others or non- interference from others.<sup>6</sup> Schuler posited that rights

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<sup>3</sup>Central Intelligence Agency Report on Nigeria, available at <<http://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>> accessed on 2 June 2014 cited in Omoruyi, B. "Enforcing Socio Economic Right to Adequate Standard of Living in Nigeria: Lesson from South Africa and India". *Ekiti State University Law Journal*. 6, 2015. P. 209.

<sup>4</sup> H. Laski, "The State in Theory and Practice". London: Transaction Publisher, 2009. P. 242.

<sup>5</sup> Omoruyi, B., "Taking Suffering Seriously: A Robust Approach to Enforcing the Right to Nationality of Stateless People." (Master of Law Thesis, University of Saskatchewan, 2013)P. 132 [Unpublished].

<sup>6</sup>[http://www.civilization.ca/ijcr/subject/Political\\_Science/soe/rights](http://www.civilization.ca/ijcr/subject/Political_Science/soe/rights)

<sup>1</sup> S. Khoza, Socio Economic Rights in South Africa: A Resource Book. 2007

<sup>2</sup> Nwando, S. I. "Legal Framework for the Protection of Social Economic Rights"

represented demands and claims which individual and groups make on society, some of which are protected by law and have become part of the nations' laws (Lex lata) or municipal law while others remain aspirations to be attained in future.<sup>7</sup> Rights can be categorised into: Natural Rights, Legal Rights, and Moral Rights but the concern of this paper is legal right. Legal right can be further subdivided into: Civil Rights, Political Rights, and Economic Rights. The enforceability of both civil and political rights seems not to generate much controversy unlike economic rights. Economic rights are those rights which provide economic security to the people. These rights are connected to the basic needs of every person such as right to work, right to house, right to education, etc. Historically, socio economic rights are developed in the twentieth century and the purpose of these rights is to bridge the gap between the rich and the poor. These rights are mostly available for the poor in the society. Socio economic rights are regarded as 'Second Generation of Human Rights'. Principally, legal framework for socio economic rights in Nigeria legal system is traceable to Fundamental Objectives and Directive Principles of state policy as contained in Chapter II of the 1999 Constitution<sup>8</sup> and Article 15- 24 of the ACHPR.<sup>9</sup> Apart from these, there are other legislations that provide for socio economic rights. They are: Child Rights Act, Children and Young Persons Laws, NESREA Act 2007, etc. There are various debates as to the justification of socio economic rights. In justifying these rights, Professor Bilchitz opined that:

*One of the society primary goals should be to ensure that its members are provided with the enabling conditions in which to live lives of value to them. There are two elements necessary to attain a life of value: 1. the ability to have experiences; 2. The ability to live a life with purpose. People cannot fulfil these thresholds when they are unable to nourish or protect themselves. Thus, it is the government's obligation to provide their citizens with necessary amenities.*<sup>10</sup>

From this precept, socio economic right is seen as a drive towards eradication of poverty in the society. The preamble of the 1999 Constitution is also explicit on the need to promote the welfare of the people, hence justifying the concept of socio economic rights in our legal system.<sup>11</sup> In the case of *Minerva Mills & Ors v. Union of Indian & Ors*, the Indian Court identified the importance of socio economic rights as follow:

*They project the high ideal which the constitution aims to achieve; they are so fundamental in the governance of any country. In fact, there is no sphere of public life where delay*

*can defeat justice with more telling effect than in the non-implementation of socio economic rights.*<sup>12</sup>

In criticizing socio economic rights, Professor Maurice Granston opined that:

*I believe that a philosophically respectable concept of human rights has been muddled, obscured and debilitated in recent years by an attempt to incorporate into it specific rights of a different logical category. The traditional human rights are political and civil such as the right to life, liberty and a fair trial. What are now being put forward as universal rights are economic and social rights such as the right to employment, insurance, old age, pension, medical services and holiday with pay. There is both a philosophical and logical objection to this. The philosophical objection is that the new theory of human rights does not make sense. The political objection is that the circulation of a confused notion of human rights hinders the effective protection of what are correctly seen as human rights.*<sup>13</sup>

Looking at the practice and enforcement of socio economic rights, particularly in Nigeria, one will be tempted to concur with the reasoning of Granton that socio economic rights does not make any sense. However, there are various levels of enforcement of socio economic rights. Aolin and Mckeever make the distinction between the different levels of legal enforcement of socio economic rights. They are the minimalist approach and the substantive model of enforcement approach.<sup>14</sup> According to them, the constitution does not identify explicit substantive socio economic entitlements in the minimal level of enforcement (minimalist approach). It only seeks to protect these rights in the due process sphere. This approach indirectly protected socio economic rights. Example of this approach can be found in the Constitution of the Union of India. Substantive model of enforcement gives protection directly and substantively to socio economic rights.<sup>15</sup> Example of this can be found in the Constitution of the Federal Republic of South Africa.

### **Legislative framework of socio economic rights under nigeria legal system**

**The 1999 constitution:** Socio economic rights are provided for under the Chapter II of the Constitution. Section 13 of the Constitution provides that:

*It shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or judiciary powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.*<sup>16</sup>

Socio economic rights provided for under the Constitution are: Right to general welfare and security,<sup>17</sup> Right to suitable and adequate shelter,<sup>18</sup> Right to adequate food,<sup>19</sup> Right to

<sup>7</sup> Schuler, M. A. (et al.) "Women's Rights, Step by Step." Washington, Women Development International. In Ikpeze, V.C. "Non Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights & Development . Developing Country Studies. 5 (18) 2015, P. 49.

<sup>8</sup> Section 13- 23, 1999 Constitution of the Federal Republic of Nigeria (As Amended).

<sup>9</sup> African Charter on Human and Peoples' Right (Ratification and Enforcement) Act.

<sup>10</sup> D. Bilchitz, "Poverty and Fundamental Rights: The Justification and Enforcement of Socio Economic Rights." Oxford: Oxford University Press. 2006.

<sup>11</sup> Paragraph 2 of the preamble of the 1999 Constitution says that... to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country.... Also Section 14(2)(b) of the same Constitution provides that the security and welfare of the people shall be the primary purpose of government.

<sup>12</sup> AIR. 1789. 1981 SCR (1) 206.

<sup>13</sup> M. Granston, "What are Human Rights?" London: The Brodley Head. 1973. P.22.

<sup>14</sup> N. Aolin & Mckeever, "Thinking Globally, Acting Locally: Enforcing Socio Economic Rights in Northern Ireland. EHRLR. 2004, P.

<sup>15</sup> Ibid.

<sup>16</sup> 1999 Constitution of the Federal Republic of Nigeria (As Amended)

<sup>17</sup> Ibid. Section 14(2)(b)

<sup>18</sup> Ibid. Section 16(2)(d)

<sup>19</sup> Ibid.

reasonable national minimum wage,<sup>20</sup> Right against exploitation of human/natural resources other than the good of the community,<sup>21</sup> Right to employment,<sup>22</sup> Right to free education,<sup>23</sup> Right to safe environment.<sup>24</sup> However, the constitution expressly provides that the above enumerated socio economic rights are not justiciable. Section 6(6)(c) provides that:

*The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of state policy set out in Chapter II of this Constitution.*<sup>25</sup>

It need be stated that the non-justiciability of chapter II of the Constitution is not an absolute one. There are however two main schools of thought on the justiciability of fundamental objectives. They are: Pro Justiciability and Anti-Justiciability. The Anti Justiciability School. This school of thought opines that the directive principle should be eradicated from the Constitution as a substitute for a guide to governance rather than a non justiciable right per se. The socio economic right according to this school of thought is nothing but a mere manifesto of aims and aspirations; a moral homly; toothless bulldogs.<sup>26</sup>

Ojo opines that:

*The inclusion of these objectives and directives in the constitution may be a good politics, but it is certainly not good law or constitution making. They should be expunged from the Constitution and severely left to where they properly belong-Party political manifestoes.*<sup>27</sup>

The school of thought also placed reliance on section 6(6)(c) of the Constitution which makes Chapter II non justiciable .

The Pro Justiciability School

This school of thought is of the view that section 6(6)(c) does not absolutely foreclose enforcement of socio economic rights under the Chapter II of the Constitution. In the case of *Federal Republic of Nigeria V. Anache*,<sup>28</sup> the Court held that since section 6(6)(c) is qualified by the phrase, “save as otherwise provided by this constitution”, the justiciability of Chapter II is not absolutely foreclosed.

Also, in the case of *Olafioye V. Federal Republic of Nigeria*, the Supreme Court held that:

*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 the Constitution”. This means that if the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiciable, it will be so interpreted by the Court.*<sup>29</sup>

Item 60(a) of the Exclusive Legislative List places responsibility on the Federal Government to establish and regulate authorities or any part thereof:-

*(a) To promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.*<sup>30</sup>

A learned writer, Samuel argued that 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. He further states that the decision of the Supreme Court in the case of *Attorney General of Ondo State V Attorney General of the Federation & Ors*<sup>31</sup> has effectively opened a new vista in the quest to give the socio economic rights enshrined in Chapter II constitutional potency. He concluded by saying that what the constitution has done in effect by the provision of 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.<sup>32</sup> From the above explication, socio economic rights contained in the Chapter II of the Constitution will be justiciable under these two conditions:

1. If another provision of the Constitution provides for it.
2. If the legislative enacts laws for the enforcement of any aspect of the fundamental objectives.

### **African charter on human and peoples’ right**

The African Charter on Human and Peoples’ Right also contained socio economic rights. These rights are: Right to work,<sup>33</sup> Right to physical and mental health,<sup>34</sup> Right to education,<sup>35</sup> Right to existence and self determination,<sup>36</sup> Right to freely dispose one’s wealth and natural resources,<sup>37</sup> Right to peace and security,<sup>38</sup> and Right to satisfactory environment.<sup>39</sup> It is trite that ACHPR which is incorporated into our municipal laws becomes binding and Nigeria courts are bound to give effect to its provisions like any other laws falling within the judicial power of the Court.<sup>40</sup> By implication, it shows that the rights under the ACHPR are enforceable in Nigeria Courts.

### **Justiceability of socio economic rights under the achpr**

<sup>29</sup> (2005) 51 WRN 52.

<sup>30</sup> Item 60(a) Exclusive Legislative List, Part I, Second Schedule, 1999 Constitution of the Federal Republic of Nigeria.

<sup>31</sup> (2002) 9NWLR. Pt 772. P. 222 where the Supreme Court held that section 4(2) of the 1999 Constitution 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 executive legislative list, it is vested with the power to legislate on matters within Chapter II of the Constitution.

<sup>32</sup> Nwatu, S.I. *Op.cit.* P.33.

<sup>33</sup> Article 15 African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act.

<sup>34</sup> Ibid. Article 16.

<sup>35</sup> Ibid. Article 17.

<sup>36</sup> Ibid. Article 20.

<sup>37</sup> Ibid. Article 21.

<sup>38</sup> Ibid. Article 23.

<sup>39</sup> Ibid. Article 24.

<sup>40</sup> Abacha v Fawchinmi (2000) 6 NWLR (Pt. 600) 228.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid. Section 17

<sup>22</sup> Ibid. Section 17(3)

<sup>23</sup> Ibid. Section 18(3)

<sup>24</sup> Ibid. Section 20.

<sup>25</sup> Ibid. Section 6(6)(c)

<sup>26</sup> Popoola, A.O. “Fundamental Objectives and Directive Principle of State Policy: Executive Responsibility and the Justiciability Dilemma” in Azinge, E. and Owasanoye, B. (2010). Pp.324- 368.

<sup>27</sup> Ojo, A. In Sunday Times, 31 October 1976. Cited in Popoola, A.O. *Op.Cit.*

<sup>28</sup> (2004) 14 WRN 1, SC.

Can we say socio economic rights under the ACHPR are justiciable considering the above stated position of law? Can we further say that such rights can be enforced in our legal system? These and more are the concern of this section. Having seen that socio economic rights under the Constitution are not justiciable except as highlighted above, one is put in a dilemma as to the position of law under the ACHPR. Order II Rule I of the Fundamental Rights (Enforcement Procedure) Rules provides that:

*Any person who alleges that any of the fundamental rights provided for in the Constitution or African Charter on Human & Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs, or is likely to occur for redress.*"<sup>41</sup>

This shows that the ACHPR is justiciable within the Nigeria legal system. But can Nigeria Courts entertain jurisdiction as regards socio economic rights contained in Article 15- 24 of the ACHPR? We humbly posit that Nigeria Courts cannot entertain jurisdiction. This is because section 1(3) of the Constitution provides that

*If any other law is inconsistent with the provision of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void.*<sup>42</sup>

From this provision, it shows that Articles 15- 24 of the ACHPR are inconsistent with the provisions of the Constitution particularly section 6(6)(c) and to that extent void. The constitution is the grundnorm, while the ACHPR has the status of an Act of the National Assembly. Also, the tenor of Order II Rule I of the FREP Rules 2009 admits that there are some rights which an Applicant may not be entitled to by the word "to which he is entitled to..." However, ECOWAS Court and African Human Rights Commission can entertain jurisdiction in respect of the ACHPR making socio economic rights therein justiciable even within the Nigeria legal system. It is thus plausible to say that socio economic rights under the ACHPR are justiciable in Nigeria if adjudicated upon by the Commission or ECOWAS court.<sup>43</sup> The challenge here will be that of the enforcement of these socio economic rights. Since ECOWAS Court does not have enforcement procedure and agency, socio economic rights under the ACHPR can't be enforced within the Nigeria legal system. Approaching ECOWAS Court or the Commission on such rights will be an effort in futility or shadow chasing exercise since the judgement of the commission is in form of a "recommendation" to the State involved. However, like all "recommendations" there is no legal duty on the part of the State involved to obey or accept.<sup>44</sup>

**Comparative analysis of socio economic rights in other jurisdictions:** This section will consider the practice and status of socio economic rights in other nation state. The selected jurisdictions are South Africa and United Kingdom.

### South Africa

The South Africa Constitution is known for entrenchment of varieties of socio- economic rights. These rights are guaranteed under the Constitution. The rights include but not limited to right to safe environment, right to land, housing, healthcare, food, water, social assistance and education.<sup>45</sup> The Constitution requires the state to implement, respect, protect, promote and fulfill these rights as contained in the Constitution.<sup>46</sup> It also enables the enforcement of socio economic rights and creates avenue for redress through which complaints that the states or others have failed in their constitutional duties can be determined and enforced.

The duties placed on the state by the Constitution have been further elaborated by Brand. According to him, *the duty to respect requires the state to refrain with interfering the enjoyment of rights. This means that the state must not limit or take away people's existing access to socio economic rights without good reason and proper legal procedure. He further states that the duty to protect requires the state to protect the existing enjoyment of rights and the capacity of people to enhance their enjoyment of rights or newly to gain access to the enjoyment of rights against third party interference, while the duty to fulfill requires the state to act, to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures, so that those that do not currently enjoy access to rights can gain access and so that existing enjoyment of rights is enhanced.*<sup>47</sup>

From the foregoing, the concept of rights in South Africa legal system is predicated on two different obligations on the part of the state viz: negative obligation and positive obligation. It is however believed that socio economic fall in the category of negative obligation due to various interpretations of socio economic rights by the Constitutional Courts. The traditional distinction between civil and political rights as conferring only negative obligations and socio economic rights as positive rights has been rejected in the jurisprudence of the Constitutional Court.<sup>48</sup> The Court in series of cases<sup>49</sup> has adopted two factors for determining the enforcement of socio economic rights which are: reasonableness and availability of resources. The court held in the case of *Minister of Health v. Treatment Action Campaign (TAC)*<sup>50</sup> that the constitution contemplates a restrained and focused role for the Courts, which was to require the state to take measures to meet its constitutional obligations and to subject the reasonableness of these measures to elevation. The Court has also held that it is

<sup>41</sup> Fundamental Rights (Enforcement Procedure) Rules 2009. Order II Rule I.

<sup>42</sup> Section 1(3) 1999 Constitution of the Federal Republic of Nigeria.

<sup>43</sup> SERAC v. Nigeria. Communication 155/96, Fifteen Annual Activity Report of the African Commission on the Human and Peoples' Right 2001 - 2002 where the Ogoniland brought a case against the Federal Government and Oil Companies for violation of their right to safe environment and it was held by the African Human Rights Commission that there is violation of Article 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and peoples' Right Right of which generally provides for the socio economic rights of the Ogoni people.

<sup>44</sup> Omoruyi, B., "Enforcing Socio Economic Right to Adequate Standard of Living in Nigeria: Lesson from South Africa and India" *Ekiti State University Law Journal*. 6, 2015. P. 222- 223.

<sup>45</sup> Constitution of the Federal Republic of South Africa. 1996.

<sup>46</sup> Ibid. Article 7(2).

<sup>47</sup> Brand, D. "Introduction to Socio Economic Rights in South Africa Constitution." *Law, Democracy and Development*. 2 (153), 1998, P. 9-10.

<sup>48</sup> Jagwanth, S.& Soltau, F. Socio Economic Rights & Implication for Intergovernmental Fiscal Relations In South Africa. Paper Prepared for South Africa Financial and Fiscal Commission. August, 2014. P.6.

<sup>49</sup> In the case of Soobramoney, the Court held that the claim against the state in the context of the provincial health budget to provide dialysis treatment was an unreasonable in road into the budget while in Grootboom's case, the Court held that the measures taken to achieve the right to housing must be calculated to attain the goal expeditiously and effectively but the availability of resources is an important factor in determining what is reasonable.

<sup>50</sup> 2002 (5) SA 721. (CC) at para 38.

institutionally inappropriate for a court to determine precisely what the achievement of any particular social and economic rights entail. Such duty is said to be the exclusive duty of the executive and legislative arms of government.<sup>51</sup> From the above analysis of the concept of socio economic rights as practised in South Africa, one will see that socio economic rights are made justiciable subject to Article 7 of the South Africa Constitution and that the duty placed on the State are interpreted in line with negative obligation, that is, the state is expected to design his policies in achieving these rights and a duty not to interfere with the already existing enjoyment of these rights. One will see that the attitude of the Court is that the executives and the legislatures are the one saddled with the responsibility of providing these rights. One advantage thus is that by so doing, the Court has been able to compel the States in promoting these rights and forestall abuse of these rights already enjoyed by the citizens.

### United Kingdom

The United Kingdom legal system consists of a lot of socio economic rights. These rights are encapsulated in the various international instruments in which UK is a signatory. Principally, the Human Rights Act (1998) consists of various political and civil rights and also incorporates some of these international instruments. Also, the European Convention on Human Rights (ECHR) which forms part of the UK national laws contains various socio economic rights. However, it is widely believed that socio economic rights are difficult to enforce via judicial remedies and pronouncement. This is borne out of the fact that socio economic rights involve complex paucity resource allocation<sup>52</sup> and that such rights are predicated on man's need which is by nature, insatiable. The above difficulty is believed can best be resolved by democratically elected law makers. This difficulty is echoed by Thomas Bingham MR in the case of R v. Cambridge Health Authority Ex parte B when he said that

*Difficult judgment on how a limited budget is best allocated to the maximum advantage of the maximum number... is not a judgment a court can make.*<sup>53</sup>

With due respect, the view of his Lordship as stated above does not aptly captured the whole scope of socio economic rights. This is because not all socio economic rights require resources for its enforcement or realization; some only requires sincere government policies. The recent trend now is that the judiciary has stated that socio economic rights are legally enforceable as 'target duties'. Target duties are owed by the public authority and not enforceable by individuals.<sup>54</sup> The new vista that is available for the enforcement of individual socio economic rights is when the power conferred on the public authority is not discretionary<sup>55</sup> or cost has not implicitly or explicitly been a factor in the public policy's decision. Thus, socio economic rights in the U.K legal system are not explicitly recognised but the Court has resulted to the protection of human dignity as a basis for identifying socio economic rights. They only intervene in cases of extreme and

exceptional degradation. What however constitutes extreme and exceptional degradation is inherently uncertain.

### Challenges facing enforcement of socio economic rights

There are various challenges facing the concept of socio economic rights in Nigeria. The principal challenge facing socio economic is its non justiciability as provided by the Constitution. However, the fact that socio economic rights are non justiciable does not preclude government and its agencies from providing same for the people. This paper will identify and discuss three major challenges facing socio economic rights in Nigeria.

- a. **Corruption:** this remains a virus causing dislocation in every sector of Nigeria government. Government in a bid to provide socio economic rights has established agencies saddled with the responsibility of providing same. However, fund which are meant for providing social infrastructures have been and is still being diverted to private pockets of the few. Those that are not diverted are distributed based on mediocrity and favouritism instead of giving it to those who are vulnerable and are in need of same.
- b. No doubt that Nigeria has a lot of resources that can cater for its citizen but mismanagement has been the hallmark of distribution of our resources. Until this cankerworm called corruption is fought to a standstill, socio economic rights cannot be actualised in Nigeria. Even if it is made justiciable by the Constitution, corruption will frustrate such justiciability and what we will be left with will be a flood of litigation against the government and its agencies.
- c. **Government Policy:** most government policies which would have provided for socio economic rights are not effective. For instance, the National Housing Insurance Scheme is a good platform for actualising right to shelter for the masses if adequately funded and made effective. Even right to free education for the primary school pupil is now been violated by some state government where students were asked to pay a developmental fee in Ekiti and Ondo States for instance. Most government hospitals insist on payment before attending to patient on emergency thereby depriving some of their lives. One will wonder if these obnoxious and anti people policies are meant to further and promote right to life which the Constitution regarded as sacrosanct let alone socio economic rights that are not justiciable. Services paid for are not rendered satisfactorily by government agencies let alone the ones that are not paid for. It is our humble view that government policies should be designed in order to promote and facilitate the right of the people whether justiciable or not.
- d. **Bad Leadership:** most of the socio economic rights canvassed by both local and international instrument are common good for the common man. The essence of social contract is that the people submit their will to the government in exchange for their security and welfare. Where the government cannot guarantee such security and welfare, then the social contract has failed in its entirety. Due to bad leadership, the state can no longer

<sup>51</sup> Mazibuko v. City of Johannesburg 2010 SA (4) 1 (CC) at para 61

<sup>52</sup> James, A. P. "The Forgotten rights – The case for the Legal Enforcement of Socio Economic Rights in the UK National Law.

<sup>53</sup> (1995)2 All ER 129 (CA)

<sup>54</sup> R v. Inner London Education Authority ex parte Ali (1990) 2 Admin LR 822; R (G) v. Barnet LBC (2003) UKHL 57.

<sup>55</sup> R v. Barnet LBC (2003) UKHL 57.

guarantee socio economic rights which is one of the basis for entering into the social contract.

### Conclusion and recommendation

In this paper, attempt is made to examine the possibility of enforcing socio economic rights within Nigeria legal system. It was found that socio economic rights in Nigeria is a myth far from reality despite the domestication of various international instruments that provides for socio economic rights in which Nigeria is a signatory. The standard of living of the masses attests to this fact. It is thus suggested that socio economic rights as contained in the Chapter II of the Constitution be made justiciable by expunging section 6(6)(c) from our Constitution. Our judges should also embark on judicial activism by following the trend in India and South Africa legal system. Right to life and dignity of human person should be expanded and interpreted to include socio economic rights such that a denial of these socio economic rights should be tantamount to a denial of right to life and dignity of human person.

This is justified in the words of Ewing when he reiterates the notion that socio rights are logically prior to exercising political rights.<sup>56</sup> This view underscores the claim that socio economic rights are not a distinct compartment of rights. The Court should also ensure that existing government policies are implemented most especially policies that are aimed at promoting socio economic rights or those that are ancillary to it. The legislative arm, both at the National and State levels, should also wake up to the task of making laws that will ensure and guarantee socio economic rights to the people. This will foster rapid social and infrastructural development and make government at all levels to be more responsible to the people in terms of eradication of poverty and creating a better standard of living for the people.

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<sup>56</sup> K.D Ewing. "Constitutional Reform & Human Rights- Unfinished Business?" *Edinburg Law Review*. 5, 2001. P.8