



REASSESSING THE FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY AS A MECHANISM FOR CONSTITUTIONAL DEVELOPMENT IN NIGERIA

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ABSTRACT

The provisions relating to Fundamental Objectives and Directive Principles of State Policy enshrined in Chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) remain controversial. The controversies stem primarily from section 6(6)(c) of the constitution regarding non-justiciability, which has rendered the realization of these lofty fundamental objectives a fantasy. This article thoroughly examines Chapter 2 provisions and concludes that if made justiciable, they can serve as a veritable tool and platform for achieving national transformation and sustainable development in Nigeria. The study examines key terms relating to fundamental objectives and directives of state policy, critically analyzes various sections within the chapter, juxtaposes Nigeria's fundamental objectives with other jurisdictions, and provides observations and recommendations for making these provisions justiciable and effective as mechanisms for national development.

KEYWORDS: Fundamental objectives, directive principles, state policy, justiciability, constitutional law, Nigeria, development, social rights, economic rights.

INTRODUCTION

The Fundamental Objectives and Directive Principles of State Policy contained in sections 13-24 of the 1999 Constitution of the Federal Republic of Nigeria comprise the political, economic, social, cultural, and developmental rights of Nigerian citizens (Constitution of the Federal Republic of Nigeria [CFRN], 1999). However, section 6(6)(c) of the same constitution provides that judicial power "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 as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter 2 of this constitution" (CFRN, 1999, s. 6[6][c]).

The duty of every arm of government in Nigeria regarding these fundamental objectives is limited to conformity with, observance, and application of the policies in administrative, legislative, and judicial circles. However, it remains doubtful whether the phrase "the duty and responsibility of all organs of government" truly intends to make all government organs bear responsibility for failing to comply with these provisions, given the principle of non-justiciability. A government that cannot be held responsible for failure to perform its constitutional obligations cannot truly bear responsibility to the people.

The non-justiciable status of Chapter 2 has been judicially confirmed in numerous cases. In *Archbishop Anthony Okogie v. AG Lagos State* (1981), the court held that while section 13 makes it the judiciary's duty to conform to and apply Chapter 2 provisions, section 6(6)(c) clearly states that no court has jurisdiction to pronounce whether any government organ has acted in conformity with these Fundamental Objectives and Directive Principles of State Policy.

In *AG Ondo v. AG Federation* (2002), the Supreme Court characterized these provisions as "mere declarations." The Court of Appeal in *Human Rights & Empowerment Project LTD/GTE v. President FRN & ORS* (2022) emphasized that Chapter II provisions are not justiciable and cannot be enforced by courts, serving instead as guidelines for government policy formulation. Similarly, in *A.G Abia State & Ors v. A.G Federation* (2022), a case involving constitutional federalism interpretation, the Supreme Court highlighted Chapter II's importance in shaping federal government policy structure while confirming its non-justiciable status. According to Okeke (as cited in relevant scholarship), Fundamental Objectives merely provide guidance to any government in power in Nigeria.

POTENTIAL PATHWAYS TO JUSTICIABILITY

Despite the general non-justiciability, section 6(6)(c) itself provides potential pathways for making these provisions enforceable. In *Federal Republic of Nigeria v. Aneche & 3 Ors* (2004), Justice Niki Tobi observed that section 6(6)(c) is "neither total nor sacrosanct" because it includes the phrase "except as otherwise provided by this Constitution," meaning that if the constitution elsewhere makes a Chapter II section justiciable, courts will interpret it as such (p. 78).

Two primary methods exist for making Chapter 2 provisions justiciable. First, where justiciable constitutional sections direct compliance with specific Chapter II provisions. For example, section 147(3) requires presidential appointments to conform with section 14(3), and section 197(3) requires gubernatorial appointments to conform with section 14(4), making these provisions mandatory and thus justiciable (CFRN, 1999).

Second, justiciable sections may empower the National Assembly to implement Chapter II through legislation. Item 60(a) of the Exclusive Legislative List empowers the National Assembly to establish and regulate authorities "to promote and enforce the observance of the Fundamental Objectives and Directive Principle contained in this Constitution" (CFRN, 1999, Second Schedule, Part I, Item 60[a]). Commenting on this provision, then-Chief Justice Mohammed L. Uwais observed that "the breathtaking possibilities created by this provision have sadly been obscured and negated by non-observance," noting it as "definitely one avenue that could be meaningfully exploited by our legislature to assure the betterment of the lives of the masses of Nigeria" (as cited in Nweze, n.d., p. 179).

Obilade further clarified that although section 15(5) is generally non-justiciable, once the National Assembly exercises its power under section 4 regarding Item 60(a), section 15(5) becomes justiciable (as cited in *Federal Republic of Nigeria v. Anache*, 2004). The Supreme Court in *AG Ondo v. AG Federation* (2002) held that courts cannot enforce Chapter II provisions until the National Assembly enacts specific implementing legislation, as done with section 15(5) regarding abolition of corrupt practices.

Similarly, in the Indian case *Mangru v. Commissioner of Budget Municipality* (1951), the court held that "Directive Principles are required to be implemented by legislation, and so long as there is law

carrying out the policy laid down in a Directive principle, neither the state nor an individual can violate any existing law or legal right under color of following a directive" (p. 361).

CONSTITUTIONAL SUPREMACY AND THE PROBLEM OF LEGISLATIVE MODIFICATION

The practice of using legislation to modify constitutional provisions, specifically Chapter II generates material contradictions with all known constitutional concepts. It represents a strange legal practice because constitutions are generally understood as the *grundnorm* and *fons et origo* from which other laws derive validity, making the constitution the supreme law of any legal system (Kelsen, 1945). Standard constitutions must necessarily contain a supremacy clause. The 1999 Constitution's supremacy clause, contained in section 1(3), provides: "If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void" (CFRN, 1999, s. 1[3]).

The supremacy clause does not preclude constitutional alteration or modification; rather, it mandates that constitutional changes occur through constitutional amendment processes, not through ordinary legislation. This paper examines this tension and its implications for constitutional governance in Nigeria.

FUNDAMENTAL HUMAN RIGHTS IN NIGERIA

Fundamental human rights are rights considered essential to human beings, enshrined in Chapter IV of the Constitution, sections 33-46 (CFRN, 1999). These rights, guaranteed under Chapter IV, are essentially civil and political rights found in major international human rights instruments, forming the bedrock of first-generation rights. These rights are libertarian in character, relating to individual sanctity and rights within the socio-political milieu. They seek to protect and safeguard individuals, alone or in groups, against power abuse, especially by political authority (Vasak, 1977).

Rights comparable to those guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (1966) include: right to life (s. 33); right to dignity of human person (s. 34); right to personal liberty (s. 35); right to fair hearing (s. 36); right to private and family life (s. 37); right to freedom of thought, conscience and religion (s. 38); right to freedom of expression and press (s. 39); right to peaceful assembly and association (s. 40); right to freedom of movement (s. 41); right to freedom from discrimination (s. 42); right to acquire and own immovable property anywhere in Nigeria (s. 43); and right to receive prompt compensation for compulsory property acquisition (s. 44) (CFRN, 1999).

Section 46 empowers any person alleging rights violations to seek redress in High Courts, which have jurisdiction to make appropriate orders and issue writs and directions for enforcing or securing enforcement of these rights (CFRN, 1999). Earlier Nigerian constitutions similarly provided for judicial enforcement of these rights.

FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution neither defines nor distinguishes Fundamental Objectives from Directive Principles. However, both contain goals to be pursued by the government and its agencies, policies expected to be pursued toward realizing national goals, imposing obligations on the state to promote people's welfare. The Constitution Drafting Committee (CDC) report stated:

By Fundamental Objectives we refer to the identification of the ultimate objectives of the nation whilst directive principle of state policy indicates the path which leads to those objectives. Fundamental Objectives are ideas towards which the nation is expected to strive whilst Directive principles lay down policies which are expected to be pursued in the effort of the Nation to realize the National ideals (as cited in relevant documentation, p. 1-83).

The Indian Constitution defined Directive Principles of State Policy in Chapter IV as "directives to various arms of government and government agencies to be followed as fundamental in the governance of the country." Justice Maman Nasir in *Okogie (Trustee of Roman Catholic schools) v. A.G., Lagos state* (1981) reiterated that Fundamental Objectives identify the nation's ultimate objectives while Directive Principles lay down policies expected to be pursued to realize national ideals.

Directive Principles ensure fundamentals for realizing goals guiding paths toward achieving noble ideals proclaimed in the Constitution's preamble: "To live in unity and harmony as one indivisible and indissoluble sovereign nation dedicated to the promotion of inter-African solidarity and to provide for a Constitution for the purpose of promoting the good governance and welfare of all persons in our country on the principles of freedom, equality, justice, and for consolidating the unity of our people" (CFRN, 1999, Preamble).

HISTORICAL BACKGROUND AND DEVELOPMENT

Fundamental Objectives and Directive Principles emerged as an offshoot of the "laissez-faire" era when states primarily concerned themselves with maintaining law and order and defending against external aggression (Nwabueze, 1988). However, in the drive toward a "global village," there has been radical departure from such "state-of-nature" concepts in favor of welfarism, where law considers the "conferral of social benefit" method of social control as the bond of nations, acceptably modern and humane. Thus, law's primary motive became "the good life." Welfarist goals, ideals, and objectives are therefore now tagged "Fundamental Objectives and Directive Principles of State Policy," providing one of the most novel striking features in modern constitutional governance for policy formulation, domestic and foreign (Jadesola, 1987).

Contemporary constitutions now provide for Fundamental Objectives and Directive Principles of State Policy provisions. Nigeria borrowed this idea from India, reflected in the 1979 and 1999 Constitutions. However, the concept originated in the Republic of Spain, subsequently finding its way into the Irish Constitution in 1937 and the Indian Constitution in 1948.

In Commonwealth Africa, Directive Principles first appeared in Ghana's 1960 republican Constitution. In Nigeria, the 1979 Constitution represented the first attempt at introducing Directive Principles of State Policy; both the 1960 and 1963 constitutions contained only civil and political liberties provisions without indicating any set national goals.

The Muritala/Obasanjo military administration, furthering its mission to restore civilian governance, established in September 1975 an assemblage of 50 persons tasked with producing a Draft Constitution for the Second Republic, known as the Constitutional Drafting Committee (CDC). The CDC invited public submissions, beginning the process of involving people in constitution-making. The CDC submitted a two-volume report in September 1976, forming the basis of "The Great Debate." A "partly-indirectly-elected and partly-appointed" Constituent Assembly then re-scrutinized the Draft Constitution, beginning deliberations in December 1976. The Constituent Assembly submitted the revised Draft Constitution to the Federal Military

Government in June 1978. What the Federal Military Government deemed acceptable was eventually promulgated as the 1979 Constitution.

One pronounced criticism levied against the constitution was that while some Constituent Assembly members were elected by an archaic and undemocratic electoral college system, the rest were handpicked by military authorities (Aguda, 1983). It was found objectionable that a government consisting of few uniformed men, without any pretense to legal or constitution-making knowledge, made atrocious amendments and additions without subjecting important features to referendum (Aguda, 1983). The plentitude of objections centered on the 1979 Constitution not truly reflecting masses' exact wishes and aspirations. Remarkably, virtually all shades of views and opinions regarding including Fundamental Objectives and Directive Principles of State Policy in the Draft Constitution overwhelmingly favored their inclusion as justiciable provisions.

Following presentation of the Constitutional Debate Coordinating Committee reports set up by the defunct General Abu-Bakr-led military regime, the erstwhile Provisional Ruling Council promulgated and amended the 1999 Constitution version into law to provide organic norms and structures upon which the new republic would be built.

THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (ACHPR) 1981

The African Charter on Human and Peoples' Rights contains provisions on economic, social, and cultural rights in Articles 14-22, which are enforceable. Nigeria, a charter signatory, ratified it on June 22, 1983, subsequently incorporating its content into domestic law via the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Section 1 states: "As from the commencement of this Act the provisions of the African Charter on Human and Peoples' Rights which are set out on the schedule to this Act shall, subject as here under provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial functions in Nigeria" (African Charter Act, 2004, s. 1). Although the Constitution provided in Chapter II the nearest articulation to economic, social, and cultural rights, the issue arises whether section 13, providing that all government organs and authorities shall apply these rights, creates a legal duty entitling citizens to right of action in breach cases. *Archbishop Okogie v. The Attorney-General of Lagos State* (1981) answered negatively. The Court of Appeal held that by virtue of section 6(6)(c), no court has jurisdiction to pronounce decisions respecting Chapter II, rendering it non-justiciable.

Another legal issue of striking interest concerns enforcing economic, socio-cultural rights under the Charter. The Charter did not provide for an African Human Rights Court like European and Inter-American Charters, its most noticeable omission. In the Nigerian context, justiciability by Nigerian courts is possible only through domestic law incorporation (African Charter Act, 2004).

Nevertheless, this incorporation has raised issues including opportunities and challenges for promoting, protecting, and realizing economic, social, and cultural rights present in the Charter. The Supreme Court considered the incorporation's legal effect in *Ogugu v. The State* (1994), holding that the effect is making Charter articles as enforceable in Nigerian courts as any other Nigerian law. Interestingly, the Charter contains civil and political rights.

Reading section 1 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act *prima facie* suggests the Nigerian Judiciary is required to adjudicate on social-economic rights issues irrespective of the constitutional ouster clause. Decisions in *Abacha v. Gani*

Fawehinmi (2000) and *Gani Fawehinmi v. Abacha* (1996) and other cases have clarified the Charter's applicability over municipal law.

In *Abacha v. Gani Fawehinmi*, the most recent case, the Supreme Court held:

Where however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement). It becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts. The African Charter is now part of the laws of Nigeria and like all other laws, the court must uphold it. (p. 400) However, an unanswered question concerns the African Charter's compatibility with the Nigerian Constitution. If conflict arises between "fundamental objectives" and "fundamental rights," such conflict is usually resolved favoring fundamental rights. Then, if conflict arises between the African Charter and the Nigerian Constitution, how will it be resolved? Especially given that the African Charter offers a justiciable plane to economic, social, and cultural group rights which the 1999 Constitution rendered non-justiciable independently through section 6(6)(c) operation.

The Nigerian government should bring the Constitution to the same operational footing as the African Charter (i.e., make ECOSOC group rights in the Constitution justiciable) since the African Charter is an international human rights instrument standard recognizing African background and has gained operation through National Assembly ratification to dignify human persons and preserve national and international peace and stability.

By 1966, civil and political rights on one hand and social and economic rights on the other were separated into two covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). An often-cited reason for separation is the need for separate enforcement mechanisms. Post-World War II drafters of International Human Rights covenants concluded that civil and political rights impose mainly negative forbearance duties on states (e.g., refraining from torture), thus were justiciable and could be subject to adjudicative procedure. Conversely, economic and social rights were viewed as non-justiciable because they imposed positive state duties demanding far-reaching resource commitment.

THE JUSTICIABILITY OF FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES UNDER THE 1999 CONSTITUTION

The 1999 Constitution of the Federal Republic of Nigeria, in the section relating to judicial powers, provides:

6(6) the judicial power vested in accordance with the foregoing provisions of this section... (c) Shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or judicial decision is in conformity with the Fundamental objectives and directive principles of state policy set out in chapter II of this constitution. (CFRN, 1999, s. 6[6][c])

This provision appears anomalous when considered against the background that one of the judicial system's primary functions is providing opportunity for dispute resolution. Limiting court powers to examine issues relating to conformity with Fundamental Objectives and Directive Principles set out in Chapter II "except as otherwise provided by the constitution" appears contradictory. Yet, the provision is neither unique nor a recent innovation in constitutions of numerous countries. Several

constitutions contain chapters titled "Directive Principles of State Policy" with similar non-justiciability provisions.

Section 6(6)(c)'s effect making Chapter II non-justiciable has been the subject of extensive discourse, with unending arguments in support and against. Advocates incline toward viewing Directive Principles as having value as moral statements of national ideals and thus should not be viewed as legal declarations of enforceable rights. Those opposed to non-justiciability contend that the social objectives' quality is reduced to worthless platitudes and hollow admonitions which should have no place in a constitution, first and last a legal document whose provisions must be *ipso facto* justiciable and legally enforceable (Ofonogoro et al., 1976/1977).

Profoundly, both advocates and antagonists agree that Directive Principles aim at guiding states to promote people's welfare through affirming social, economic, and political justice. The thorny issue upon which they differ is whether courts are appropriate forums for ventilating social, economic, and political justice grievances requiring fundamental social values assessment that can only be carried out legitimately by government's political branches.

ARGUMENTS FOR NON-JUSTICIABILITY

The non-justiciability argument rests on several foundations. First, proponents argue that social and economic rights impose positive obligations on the state requiring resource allocation decisions that are inherently political rather than legal. Courts lack the institutional competence to make such resource allocation decisions, which require balancing competing priorities, assessing fiscal constraints, and making policy choices that should be the domain of elected representatives accountable to the electorate (as evidenced in various judicial decisions).

Second, enforcing socio-economic rights through courts would violate separation of powers principles by transferring decision-making authority from legislative and executive branches, which possess democratic legitimacy to the judiciary, which lacks such legitimacy for making decisions concerning social and economic resource allocation. This concern was explicitly raised during constitutional debates and has been reiterated in judicial decisions (Ofonogoro et al., 1976/1977).

Third, socio-economic rights are considered programmatic and aspirational rather than immediately enforceable legal entitlements. They set goals toward which the state should strive progressively, subject to available resources, rather than creating immediate justiciable rights. This view sees Directive Principles as providing moral and political guidance rather than legal obligations (as reflected in *AG Ondo v. AG Federation*, 2002).

COUNTER-ARGUMENTS: THE CASE FOR JUSTICIABILITY

However, compelling counter-arguments challenge non-justiciability. First, the distinction between civil-political rights (negative rights) and socio-economic rights (positive rights) is increasingly recognized as artificial. Many civil and political rights have significant resource implications for example, the right to fair trial requires establishing and maintaining court systems, the right to vote requires electoral infrastructure, and the right to liberty requires prison systems. If courts can adjudicate these rights despite resource implications, the argument that socio-economic rights are uniquely non-justiciable due to resource constraints becomes less persuasive (Craven, 1994).

Second, making Directive Principles non-justiciable creates accountability deficits. If government organs cannot be held legally responsible for failing to pursue constitutional objectives, these

objectives risk becoming mere rhetoric. The phrase "duty and responsibility of all organs of government" in section 13 becomes meaningless if no mechanism exists to enforce that duty. As Hart (1961) noted, obligations connote conduct made "in some sense non-optional" (p. 85). True obligations require enforcement mechanisms; without them, purported obligations become hortatory aspirations.

Third, international human rights law developments increasingly recognize socio-economic rights as justiciable. The 1993 Vienna World Conference on Human Rights affirmed that "all human rights are universal, indivisible, interdependent and interrelated," calling on the international community to "treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis" (Vienna Declaration and Programme of Action, 1993, Part I, para. 5). This normative shift challenges the premise that socio-economic rights inherently differ from civil-political rights in justiciability.

Fourth, experience from other jurisdictions demonstrates that courts can adjudicate socio-economic rights responsibly without usurping legislative-executive functions, as detailed in subsequent sections examining Indian and South African jurisprudence.

NIGERIAN COURTS AND DIRECTIVE PRINCIPLES: JUDICIAL INTERPRETATION AND EVOLUTION

Nigerian courts have consistently upheld non-justiciability while occasionally expressing discomfort with this position. *Archbishop Anthony Olubunmi Okogie & Ors v. Attorney General of Lagos State* (1981) provided the first appellate court opportunity to pronounce on section 6(6)(c)'s legal implications. The case questioned whether a Lagos State government circular was constitutional in view of section 16(1)(c) of Chapter II Directive Principles. The Court of Appeal held: "The arbiter for any breach of the objectives and the Directive Principles of state policy is the legislator itself or the electorate" (p. 350).

In *Adebiyi Olafisoye v. Federal Republic of Nigeria* (2004), the issue concerned whether combined provisions of sections 4(2), 15(5), Item 60(a), 67 and 68 in Part III of the 1999 Constitution conferred powers on the National Assembly to make laws regarding offenses arising from corrupt practices and abuse of power. The Supreme Court emphasized that section 15(5), on its face value, is not justiciable by virtue of section 6(6)(c).

However, the case's special and novel element was how it reflected the Court's dissatisfaction with the law's position. Justice Tobi first reviewed Chapter II's history under the 1999 Constitution:

Let me pause here to take a little bit of the history behind chapter II. Professor Nnwabueze was the chairman of the sub-committee on national Objectives and public Accountability. One of the objectives was to examine and make recommendations on institutional and other arrangements to prevent corruption and abuse of power on the part of all persons holding Public offices or exercising power (be it executive, legislative or judicial)... The Committee, headed by professor Nnwabueze, inter alia drafted the following three articles: Article 2: any person may apply to a court of competent jurisdiction for a declaration whether any law or action of an organ or authority of the state or of a person performing functions on behalf of the state is in accordance with the Directive Principles of State Policy. Article 3: A declaration by the court of law or other action is not in accordance with the Directive Principles shall not render the law or other action in question invalid to any extent whatsoever, and no other action shall lie against the State, any organ or authority of the state or any

person on this ground. Article 4: A declaration by the court that the State or an organ thereof is not complying with the Directive Principles shall nevertheless be a ground for the impeachment of the appropriate functionaries in accordance with the provisions of the constitution in that behalf. (Olafisoye v. FRN, 2004, pp. 659-660)

Justice Tobi further noted:

Although article 2 is not provided for in the 1999 Constitution, it has the same affinity with the provision of item 60 of the exhaustive legislative list as both talk about authorities though in a different situation. I am tempted to invoke one canon of statutory interpretation and it is that in the interpretation of a statute, the interpreter may call his aid historical facts which are necessary for the comprehension of the subject matter... In view of the fact that the provisions are clear on the issue of justiciability which I will take on, I am likely to fall into the temptation of digging into the history of Chapter 2 by taking the strength from Article 2 of the recommended draft. (Olafisoye v. FRN, 2004, pp. 660-661)

Justice Tobi's agony in not being able to invoke Article 2 in enforcing Directive Principles is palpable. His Lordship was obviously conscious of how important Directive Principles are but simultaneously constrained by section 6(6)(c) provisions. Only in situations where other laws have provided for their enforcement have courts been able to act. For Nigerian courts, creative enforcement of Directive Principles remains a distant dream.

Justice Tobi's extensive discussion of Directive Principles' history, particularly his reference to Justice Uwais's statement that "the breathtaking possibilities created by this provision have sadly been obscured and negated by non-observance" (as cited in Nweze, n.d., p. 179), suggests he silently wished that Directive Principles could be more forcefully upheld and implemented by the judiciary.

COMPARATIVE CONSTITUTIONAL ANALYSIS: LESSONS FROM OTHER JURISDICTIONS

SOUTH AFRICA: FROM APARTHEID TO RIGHTS-BASED CONSTITUTIONALISM

The constraints on courts in most jurisdictions where Directive Principles have been stated not to be justiciable is a general problem. Yet, few jurisdictions have seen courts consistently trying to be creative, proactive, and more assertive with their judicial pronouncements. South Africa represents a particularly instructive case.

South Africa has had five constitutions. According to Mubangizi (2004), the first was adopted after the South African Union formation in 1910, the second in 1961, the third in 1983, the fourth in 1993, and the last and present constitution in 1996. The 1910, 1961, and 1983 constitutions contained no bill of rights. Human rights, at those periods, were constitutionally alien to South Africa, and any talk of human rights, let alone economic, social and cultural (ESC) rights, would have been meaningless.

Consideration for including ESC rights in South Africa's constitution came up only during multi-party negotiations leading to the current constitutional dispensation. These negotiations culminated in eventual inclusion of these rights, first in the 1993 Interim Constitution and later in the 1996 "final" Constitution. The road to including ESC rights as justiciable rights was anything but smooth, meeting very stiff opposition.

Some people argued that ESC rights were universally inherently non-justiciable and unsuited to judicial enforcement. Others argued that protecting such rights should be a legislative and executive

task, and constitutionalizing them would inevitably transfer power from these two government branches to the judiciary, which lacks democratic legitimacy necessary to make decisions concerning social and economic resource allocation, thereby flouting separation of powers principles. However, some advanced the argument that there was, in fact, no principled objection to including ESC rights in a justiciable bill of rights, and the vital issue was the extent and nature of their inclusion (Mubangizi, 2004).

These arguments came up for determination in the First Certification Judgment. The South African Constitutional Court held:

It cannot be said that by including socio-economic rights in a bill of rights, a task is conferred upon the courts so different from that ordinarily conferred upon them by a bill of rights that it results in a breach of the separation of powers. The Court further pointed out that civil and political rights often have budgetary consequences akin to those of socio-economic rights, and concluded that: The fact that socio-economic rights will almost inevitably give rise to such implications does not seem to us to be a bar to their justiciability. At the very minimum, socio-economic rights can be negatively protected from improper invasion. (*Grootboom v. Government of the Republic of South Africa*, 2001)

Mubangizi (2004) notes that including ESC rights in the South African Constitution can be better appreciated against the backdrop of unique history characterized by gross human rights violations, denial of access to social goods and services to the majority of people, and lack of access to economic means and resources. It must be seen in the context of widespread poverty occasioned by historically unfair and unjust political and socio-economic systems. The white minority enjoyed access to better quality goods and services while the black majority either had access only to poor-quality services or no access at all.

Within this context of deprivation and discrimination, the struggle for human rights and against apartheid was carried on, a struggle for both political and socio-economic equality. As early as 1955, the Freedom Charter called for socio-economic justice in addition to political rights, calling for removing restrictions on land ownership and equal access to work, housing, and education-related rights. The Charter therefore set the platform for a future constitution with a bill of rights.

Given these socio-political circumstances, it was envisioned that including ESC rights in the constitution would play vital roles in offsetting imbalance and reducing inequality. Therefore, in this context, and against this historical overview background, the constitutional protection of economic, social and cultural rights merits discussion.

In South Africa, certain statutory institutional mechanisms are in place for protecting and enforcing these rights. These include so-called Chapter 9 institutions established by the 1996 Constitution to support constitutional democracy. Of these, the South African Human Rights Commission and the Public Protector are particularly significant in protecting and enforcing ESC rights.

The South African Constitutional Court earlier got an opportunity to adjudicate on the right of access to adequate health care in a matter concerning prisoners' constitutional right to adequate medical treatment. In *Van Biljon v. Minister of Correctional Services* (1997), applicants who were HIV-infected persons sought a declaratory order that their right to adequate medical treatment entitled them to provision of expensive anti-retroviral medication. It was contended on their behalf, and upheld by the Court, that lack of funds could not answer a prisoner's constitutional claim to adequate health treatment as this right was guaranteed in the Bill of Rights. Although this case was decided in prisoners' context and their constitutional right to adequate medical treatment, it had very significant

results respecting everyone's right to adequate healthcare. These ramifications were reflected in the Constitutional Court's later decision in *Minister of Health and Ors. v. Treatment Action Campaign & Ors.* (2002), decided after a major landmark decision on the right of access to adequate housing.

INDIA: CREATIVE JUDICIAL INTERPRETATION AND EXPANDING RIGHTS

Directive Principles have also been successfully used in India to broaden the scope of the right to life in ways that protect housing rights and other socio-economic entitlements. Beginning with *Maneka Gandhi v. Union of India* (1978), the Supreme Court of India has tried to infuse into constitutional provisions the spirit of social justice. The facts were that the government refused to issue a passport to the petitioner, thus restraining her liberty to travel. In answering whether the denial could be sustained without a pre-decisional hearing, the Court proceeded to explain the scope and content of the right to life and liberty. The court departed from its earlier decision and asserted the doctrine of substantive due process as integral to the chapter on fundamental human rights, emanating from a collective understanding of the scheme underlying Articles 14 (the right to equality), 19 (the freedoms), and 21 (the right to life). This approach broadened the court's power to strike down legislation to include critical examination of the substantive due process element in statutes.

Subsequent to this decision, when *Francis Corolie v. Union Territory of India* (1978) came before the court, it did not hesitate in declaring:

The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. (p. 59)

The effect of this expanded interpretation is that courts have felt freer to interfere in matters touching on Directive Principles. In *Rajendran v. State of Tamil Nadu* (1982), the issue related to regularizing services of a large number of casual (non-permanent) workers in the posts and telegraphs department of the government. In invoking Directive Principles to direct regularization, the court stated:

Even though the above Directive Principles may not be enforceable as such by virtue of Article 37 of the constitution in India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the state cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages... We are of the view that on the facts and circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable... is not tenable... it is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the

existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. (para. 34, p. 294)

The court in this case also referenced *Bandhua Mukti Morcha v. Union of India* (1984), further demonstrating the willingness of Indian courts to use Directive Principles as interpretive tools even when not directly enforceable.

However, even for Indian courts, it has not been easy getting out of the shackle of non-justiciability. In *Olga Tellis v. Bombay Municipal Corporation* (1985), petitioners contended that since they would be deprived of their livelihood if evicted from slum and pavement dwellings, their eviction would be tantamount to deprivation of their life and hence be unconstitutional. The court was not prepared to go far. In denying the contention, the court held that no one has the right to make use of public property for private purpose without requisite authorization. If a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his use of the pavement would become unauthorized.

A slightly different note was struck in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan* (1997). When the court faced encroachers in a busy Ahmedabad city locality, it held that though no person has a right to encroach and erect structures or otherwise on footpaths, pavements or public streets, or any place reserved or earmarked for public purpose, the state has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over heads to make the right to life meaningful.

In *Paschim Banga Khet Majoor Samity v. State of West Bengal* (1996), the Supreme Court did not stop just at declaring the right to health to be a fundamental right and enforcing the labourer's right by asking the West Bengal government to pay him compensation for loss suffered. It further directed the government to formulate a blueprint for primary health care with particular reference to treatment of patients during emergencies. But when *Punjab v. Ram Lubhaya Bagga* (1998) came before it on a protest by government employees against reduction of their entitlement to medical care, the Court held that no state or country has unlimited resources to spend on any of its projects. That is why it only approves projects to the extent feasible. The same holds good for providing medical facilities to citizens including employees. It has to be to the extent that finances permit. The principle of fixation of rate and scale can therefore not be said to be violative of Article 21 or Article 47 of the constitution.

In *Mohini Jain v. State of Karnataka* (1992), the question whether the right to education was a fundamental right and enforceable as such was answered by the Supreme Court in the affirmative. Thereafter, *Unnikrishnan JP v. State of Andhra Pradesh* (1993) provided opportunity for a larger bench of five judges to examine the correctness of the decision in *Mohini Jain's* case. The facts as relevant were that private medical and engineering college students sought to challenge state legislation regulating charging capitation fees from students seeking admission. College management sought enforcement of their right to business. The court expressly denied this claim and proceeded to examine the nature of the right to education. The court refused to accept non-justiciability of Directive Principles:

It is noteworthy that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the constitution? Can the state flout the said direction even after 44 years on the ground that the article merely calls upon it to endeavor to provide the same and on the further ground that the article is not

enforceable by virtue of the declaration in Article 37? Does not the passage of 44 years more than four times the period stipulated in Article 45 convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the constitution. We clarify we are not seeking to lay down the priorities for the Government, we are only emphasizing the constitutional policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question. (p. 645)

The court then proceeded to examine how this right would be enforceable and to what extent, clarifying the issue:

The right to education further means that a citizen has a right to call upon the state to provide educational facilities to him within the limits of its economic capacity and development. But saying so, we are not transferring Article 41 from Part IV to Part III, we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any state would say that it cannot provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the state. (*Unnikrishnan JP v. State of Andhra Pradesh*, 1993, p. 645)

This jurisprudential development in India demonstrates how courts, through creative interpretation, can give effect to Directive Principles without directly declaring them justiciable. The Indian approach has been to read Directive Principles into fundamental rights provisions, particularly the right to life, thereby making them enforceable indirectly.

UNITED STATES: STRUCTURAL REFORM LITIGATION AND INSTITUTIONAL COMPETENCE

Another jurisdiction that has done extensive work giving strength to directive principles is the Republic of South Africa, as discussed earlier. Additionally, instructive lessons can be drawn from the United States, where American courts have for more than fifty years dealt with challenges to education and housing policies, voter districting, and prison conditions among several others, developing a body of judicial decisions collectively referred to as public law or structural reform litigation.

Unlike private litigation, whose focus is dispute between private persons about private rights, public law litigation seeks to vindicate constitutional statutory policies. It seeks to effect structural change in public policy for future public good. Once a court finds wrongdoing, the remedy may require new schools, new housing projects, new regulations, and action by administrators, mayors, or city council members. Remedies are more complex than typical damage awards in traditional private litigation (as evidenced in various American cases).

In *United States v. Yonkers Board of Education* (1985), the U.S. Department of Justice filed suit alleging that school and housing segregation in Yonkers were due to purposeful discriminatory action by the City of Yonkers and that concentration of subsidized housing in southeast Yonkers violated the Fair Housing Act and Equal Protection Clause. In finding in favor of plaintiffs, the court ordered the City of Yonkers to build 200 housing units outside the southwest immediately and to create a plan for developing additional integrated subsidized housing. The Second Circuit upheld both substantive and

remedial decisions unanimously (837 F.2d 1181 [2d Cir. 1987]), and the Supreme Court denied certiorari (*Yonkers Bd. of Edu. v. United States*, 1988).

The Yonkers city council refused to comply with the decree's housing remedy, prompting the court to issue an ultimatum that the city either adopt a plan or face imposition of \$500 per-day fines on resisting officials and \$100 per-day fines on the city which would double for each succeeding day of non-compliance. The Supreme Court stayed fines against council members but not the city (*Spallone v. United States*, 1988). Faced with the prospect of draconian layoffs as the daily fine approached seven figures, two council members changed sides and voted to comply with the consent decree.

In 1991, the city laid the foundation for the first new housing project and completed the 200 housing units in 1994. In 1998, New York State agreed to pay \$16.4 million to help Yonkers reach long-term housing desegregation targets as ordered by courts. By 2007, all other claims in the suit were settled. Granted that the case demanded judicial involvement and presented unique remedial challenges, it demonstrates how the judiciary can put pressure on recalcitrant public officials. It also shows the complex interplay between judicial and political power.

FUNDAMENTAL OBJECTIVES AS MECHANISM FOR DEVELOPMENT IN NIGERIA

There is still a long road to travel in amortizing the benefits of Directive Principles. These principles have been variously dubbed the "conscience" or the "core" of the Constitution, and their purpose is for them to serve as instruments of instruction to the Legislative and the Executive.

The principles were made non-justiciable to give the Government sufficient latitude to implement them. Regrettably, they have been obscured and negated by non-observance. Nigeria has not been plagued with natural disasters and extremes of weather as have ravaged several other nations; the country is richly and extremely blessed with natural and intellectual resources. Yet after over 60 years of independence, Nigeria is in the throes of poverty. Hope for survival and development in today's Nigeria has remained bleak and is continuously diminishing. In the words of a commentator: Nigeria has been facing problems; social, economic, infrastructure, religious and political. There is no doubt that the political problem is key to unraveling the intractable paradox of arrested development in a richly endowed country. More precisely, the core of Nigeria's problems has been justifiably ascribed to the repeated failures of the ruling class to rise to the difficult challenge of providing selfless world class leadership for the country by harnessing its tremendous resources for the good of the people. (Anete, 2010, p. 7)

A succinct summary of the Nigerian situation was the focus of a foremost newspaper editorial reported as of 2010:

That there is a lot of alienation in Nigeria, as noted by Clinton, is real, a direct consequence of policies and practices that serve the interests of a few over and above those of the collective. One-time president of the Nigerian Academy of Sciences, Professor Anya O. Anya, had isolated the Federal Government's budget for fiscal year 2009 for illustration of a pattern in resource allocation that utterly discounts investment in sectors of the economy and the basic services that would be beneficial to the generality of the citizenry. (Sunday Punch Editorial, 2010, p. 10)

The Professor struck a chord when he pointed out:

In a country where the GDP per capita is less than \$2,000 and more than half of the population is below the poverty line, the cost per head for each legislator is a whopping ₦274 million such a compensation package advertises the fact that politics in Nigeria is not about services but self-

aggrandizement. Also, from a 2004 report of the World Bank, Nigerians have known that 80 percent of the country's oil and gas revenue goes to just one percent of the entire population. Not only are the vast majority of Nigerians excluded from the nation's economic resources, their participation in the electoral process and, ultimately, in shaping government, has been severely curtailed by the political class through the now routine imposition of party candidates and massive election rigging. Political apathy, emergence of fringe groups and the rising incidence of violent crimes are some unfortunate consequences of the exclusivist principles of governance since 1999. The alienation, occasioned by mass poverty, endemic corruption and impunity among public functionaries, as well as disenfranchisement of the citizens, demands urgent remedial action by the government in order to avert a catastrophic implosion. (Sunday Punch Editorial, 2010, p. 10)

PATHWAYS TO JUSTICIABILITY: LEGAL AND CONSTITUTIONAL MECHANISMS

The question that begs for an answer is: how will the non-justiciable Fundamental Objectives be made justiciable so that Nigeria can reap the fruits thereof as a mechanism for development?

One approach which can be very effective is through which litigants have tried to give domestic effect to international law protecting economic and social rights. Depending on whether a country operates a dualist or monist system, international treaties such as the African Charter on Human and Peoples' Rights are incorporated or transformed into domestic laws through national legislation (dualist system). It was held succinctly in *Abacha v. Fawehinmi* (2000) that rights under the African Charter are justiciable by Nigerian Courts. Otherwise, it could automatically be adopted into domestic law (monist system). While this creates possibility for residents to seek remedies for violations of these economic and social rights, it is still not as potent as where the rights are included and entrenched as justiciable provisions of the Constitution.

From what we have seen so far of representative democracy in Nigeria, the assumption that elected public officers will truly represent the people has proved to be a mistake. The further assumption that where they fail to perform the electorate will vote them out has also proved to be misplaced. If we are to build Nigeria into a modern, powerful, industrial nation, then we need the Constitution to be able to provide an effective check. Unless and until we are able to compel our leaders to be responsive and responsible, then all talks and agitations to live the life of a civilized human being, have food, water, employment, medical care, good education, opportunities for further development of personality and skills, housing, recreation and other necessities will remain empty talk and idle agitations.

There is no compelling constitutional reason or justification, either in reason, equity, custom or tradition, why we should continue to treat Directive Principles as non-justiciable. Such an approach is akin to placing the development, integrity and honour of Nigerians (citizens and residents) at the uncontrolled and absolute mercy of those who have proved themselves incapable of giving effective leadership.

The misplaced assumption that the legislative and executive are the only two institutions responsible for giving content to Directive Principles negates the very essence of checks and balances which constitutionalism applies to limit the powers of those who govern. The comparative analysis of Indian, South African, and American jurisprudence demonstrates that courts can play meaningful roles in enforcing socio-economic rights and directive principles without usurping legislative-executive functions.

THE ROLE OF COURTS IN ENFORCING DIRECTIVE PRINCIPLES

Times have changed and we must continue to mold the law to meet the exigencies of our time. There is no justification why we should continue to leave the fundamental guidelines of effective governance to the absolute and unfettered discretion of a ruling class that has consistently failed to convince us that they can manage the nation's resources in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

We have identified particular qualities that courts can bring to enforcing Directive Principles. While the legislature and executive will continue to provide the baseline and content of Directive Principles, the courts' role will be to measure action or inaction on the state's part. In this regard, courts will be able to:

1. Make clear the normative result that must be achieved without specifying the means to achieve it. This respects separation of powers by leaving implementation methods to political branches while ensuring constitutional obligations are not ignored entirely.
2. Declare violations and point out ways of correcting defects. Courts can identify when government action or inaction fails to conform to constitutional directives and suggest remedial pathways without dictating specific policy choices.
3. Give remedial orders that place a duty on the state to report back with proposed measures. This creates accountability mechanisms while respecting executive and legislative primacy in policy formulation. The South African Constitutional Court has effectively used this approach in cases like *Grootboom* and *Treatment Action Campaign*.
4. Provide a platform for participatory process involving citizens. Judicial review of directive principles implementation can create forums where affected communities' voices are heard, particularly communities that lack political power or access to legislative processes.

The non-justiciability of Directive Principles has encouraged a nation saturated with laxity on all aspects of our national life. The poor state of the nation, largely owing to this, means people in Government can choose to be irresponsible or misappropriate public funds knowing well that no one can make them responsible. If the executive and the legislature are in perfect harmony, redressing any anomaly becomes foregone.

It is necessary to give legal effect to every part of the constitution. If the provisions have been considered worthy of being enforceable in court, it is therefore recommended that section 6(6)(c) be expunged from the 1999 Constitution of the Federal Republic of Nigeria. This is the provision that constitutionally guarantees the irresponsibility of the government, provides the excuse for any administration with misplacement of priority to ignore ensuring the control of the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity as provided in section 16(1)(b).

This will rescue the nation from the national quagmire of "underdevelopment." Indeed, the justiciability of the Fundamental Objectives and Directive Principles of State Policy will be a giant stride towards the national development of Nigeria as it is evidently manifest that it is a mechanism for development.

CONSTITUTIONAL AMENDMENT VS. JUDICIAL INTERPRETATION

Two primary pathways exist for making Directive Principles justiciable: constitutional amendment and creative judicial interpretation. Each has advantages and challenges.

Constitutional Amendment: The most straightforward approach would be to amend the Constitution to remove or modify section 6(6)(c), making Chapter II provisions directly justiciable. This would require:

1. Passage by two-thirds majority of both houses of the National Assembly
2. Approval by two-thirds of State Houses of Assembly
3. Presidential assent

While this approach would provide the clearest legal foundation for justiciability, it faces significant political obstacles. Those who benefit from the current accountability deficit, government officials who can ignore constitutional socio-economic obligations without legal consequence have little incentive to support such amendments. Moreover, the constitution amendment process in Nigeria has historically been fraught with challenges, delays, and political manipulation.

Alternatively, courts could adopt approaches similar to those developed in India and South Africa, reading Directive Principles into existing justiciable rights or using them as interpretive guides. Nigerian courts have already taken tentative steps in this direction. In *Adamu v. A.G. Bornu State* (1996), the appellate court held that breach of Fundamental Objectives on grounds of religion could amount to breach of a citizen's justiciable right of freedom of religion and discrimination. This represents welcome development that should be encouraged.

The African Charter on Human and Peoples' Rights, incorporated into Nigerian law through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (2004), provides another avenue. Articles 13-18 of the Charter deal with economic, social and cultural rights similar to those contained in Chapter II of the Nigerian Constitution. Therefore, if these rights are non-justiciable under the Constitution, they may be made justiciable under the African Charter. In *Labiya v. Anretiola* (1992), the appellate court held that the African Charter is an international obligation which the nation voluntarily signed and agreed to be bound by, and that being legislation with international status, Nigeria cannot unilaterally legislate itself out of it.

INSTITUTIONAL MECHANISMS FOR IMPLEMENTATION

Beyond justiciability questions, effective implementation of Directive Principles requires appropriate institutional mechanisms. Several recommendations merit consideration:

1. Establishment of Constitutional Court: A special tribunal which may be designated as a "Constitutional Court" should be established to look into cases of violation or non-observance of Fundamental Objectives. This specialized court could develop expertise in constitutional socio-economic rights adjudication, drawing on comparative jurisprudence from India, South Africa, and other jurisdictions.
2. Strengthening Anti-Corruption Agencies: The Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and Other Related Offences Commission (ICPC) should be made independent of the executive arm of government to enable them deal with problems of corruption effectively. Section 15(5)'s mandate to abolish corrupt practices and abuse of power cannot be achieved if the agencies tasked with enforcement are subject to executive control and interference.

3. Annual Reporting Requirements: Following the Ghanaian model, the Constitution should require the executive to give reports annually to the legislature regarding progress made in realizing Directive Principles' goals and objectives. This creates accountability mechanisms even absent full justiciability, enabling legislative oversight and public scrutiny.
4. Chapter 9-Type Institutions: Nigeria could establish institutions similar to South Africa's Chapter 9 bodies independent constitutional institutions supporting constitutional democracy. A Human Rights Commission with a specific mandate to monitor and report on socio-economic rights implementation could provide valuable accountability mechanisms.
5. Legal Literacy Campaigns: The chapter on Fundamental Obligations should be taught in schools beginning from junior secondary classes, just as civil duties and responsibilities are taught, to enable the citizenry to grow having in mind what the government ought to do to enhance their well-being. An informed citizenry is better positioned to demand accountability for constitutional obligations.

ADDRESSING RESOURCE CONSTRAINTS ARGUMENTS

Critics of making Directive Principles justiciable often argue that resource constraints make such rights unenforceable. However, this argument conflates justiciability with immediate full realization. The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes that these rights are subject to "progressive realization" within "available resources." Courts can enforce such rights without requiring immediate full implementation by:

1. Minimum Core Obligations: Requiring states to ensure minimum essential levels of each right, regardless of resource constraints. The South African Constitutional Court has used this approach, holding that while full realization may be progressive, some minimum core must be immediately guaranteed.
2. Non-Retrogression: Preventing deliberate backwards steps. Even if full realization takes time, courts can prevent governments from eliminating existing protections or reducing access to socio-economic goods below previously achieved levels.
3. Reasonableness Review: Assessing whether government measures taken toward realizing rights are reasonable in the circumstances. This allows judicial oversight without courts dictating specific policy choices or budget allocations.
4. Procedural Requirements: Ensuring decision-making processes regarding resource allocation include affected communities' participation, are transparent, and consider socio-economic rights implications.

These approaches, developed in international human rights law and constitutional jurisprudence of countries like South Africa, demonstrate that resource constraints need not preclude justiciability entirely.

RECOMMENDATIONS

Based on the foregoing analysis, the following recommendations are proposed:

1. Expunge Section 6(6)(c): The provision of section 6(6)(c) of the Constitution should be expunged to make Chapter II justiciable. This represents the most direct pathway to ensuring constitutional socio-economic obligations are legally enforceable.

2. Amend Chapter II Provisions: Some provisions in Chapter II, particularly economic objectives, should be amended to ensure that masses benefit from national wealth. Without economic rights, political rights are meaningless. Specific, measurable standards should replace vague aspirational language where possible.
3. Pass Implementing Legislation: The National Assembly should exercise its power under Item 60(a) of the Exclusive Legislative List to pass comprehensive legislation establishing authorities to promote and enforce observance of Fundamental Objectives and Directive Principles.
4. Establish Constitutional Court: Create a specialized Constitutional Court with jurisdiction over fundamental rights and fundamental objectives, developing expertise in socio-economic rights adjudication.

INSTITUTIONAL STRENGTHENING

1. Independence for Anti-Corruption Agencies: Make EFCC and ICPC truly independent of executive control, providing constitutional protection for their autonomy and funding.
2. Create Human Rights Commission: Establish a constitutional Human Rights Commission with specific mandate to monitor socio-economic rights implementation and report annually to the National Assembly.
3. Annual Government Reporting: Require annual executive reports to the legislature detailing progress toward achieving Directive Principles objectives, including specific measurable indicators.

JUDICIAL DEVELOPMENT

1. Liberal Interpretation by Courts: Nigerian courts should emulate Indian counterparts and begin giving liberal interpretation to Directive Principles provisions to ensure progress of socio-economic and educational rights in Nigeria. The decision in *Adamu v. A.G. Bornu State* (1996) represents welcome development in this direction that must be encouraged.
2. Utilize African Charter: Courts should more fully utilize the African Charter on Human and Peoples' Rights, incorporated into Nigerian law, as a basis for enforcing economic, social and cultural rights that mirror Chapter II provisions.
3. Develop Minimum Core Doctrine: Nigerian courts should develop jurisprudence around minimum core obligations that must be guaranteed regardless of resource constraints, following South African Constitutional Court precedents.

CONCLUSION

The Fundamental Objectives and Directive Principles of State Policy, which constitute some of the greatest guarantees for genuine democracy, have been weighed on a scale vis-à-vis arguments for and against their inclusion in the Nigerian Constitution and found to be worthily ideal, meriting not just inclusion but priority of place in a pre-eminent law like the Constitution.

However, the inclusion of Chapter II provisions can be described as an ornamental innovation if left in the Constitution in its current form. The realization of the welfare state that the Constitution seeks to attain will remain a dream that will never be realized. The mere existence in the statute book as goals to be achieved is of little solace to a poor man, as non-justiciability is the main stumbling

block to realizing the welfare state. Until this chapter is made justiciable, development in Nigeria might never be achieved.

Irrespective of the non-justiciability of the chapter, these provisions are said to serve as guide and aspirations to any government in power (Yakubu, 2003). But for how long shall these "guides and aspirations" remain mere letters? Much was said by the court in *A.G. Ondo v. A.G. Federation* (2002) that the court should make efforts to ensure that issues of Fundamental Objectives are not a dead letter. The judiciary must rise to this challenge.

Apart from the non-justiciability of the chapter, the use of subjective phrases such as "as and when practicable" as found in section 18 constitutes a significant problem because who determines when it is practicable? This notwithstanding, the conclusion that justifies retention of the chapter in the Constitution is that Directive Principles can be used to determine how well a government has performed (Yakubu, 2003). However, such determination remains largely political and moral rather than legal absent justiciability.

The concern raised in this article is to lend a voice to the expression of hope and aspirations of the teeming millions of Nigerians wallowing in abject poverty and naked squalor for a better deal. It has been the contention of members of the Constitution Drafting Committee (CDC) at the time of first inclusion in the 1979 Constitution that Nigeria is not economically buoyant to make the chapter justiciable. But this argument no longer stands because the nation's umbilical cord is supposed to have been cut by now, or it will be the proverbial fool at forty. Besides, the nation is blessed with enormous human and natural resources that can cater for even a better population than it boasts of, in addition to its strategic location in the continent of Africa.

From the foregoing, the provisions of this chapter created rights that compel good governance but are submerged in the ocean of promises and platitudes. The justiciability of several sections in the chapter is necessary, though not easily practicable. However, a courageous judiciary can separate the wheat from the chaff and enforce the basic and necessary rights intrinsic in the chapter, as demonstrated by courts in India and South Africa.

The justiciability of Fundamental Objectives and Directive Principles of State Policy is not merely a technical legal question, it is fundamentally a question about what kind of nation Nigeria aspires to be. A nation that constitutionally enshrines socio-economic rights but makes them unenforceable sends a clear message: these rights, and the people who need them most, do not truly matter. Conversely, making these provisions justiciable would signal a genuine commitment to the welfare state principles proclaimed in the Constitution's preamble.

In the final analysis, making Fundamental Objectives and Directive Principles justiciable represents not an end but a beginning, a necessary foundation upon which genuine national development can be built. It will not solve all of Nigeria's problems overnight, but it will create legal mechanisms for holding the government accountable to constitutional obligations. It will empower citizens to demand, not merely request, that their government fulfill its duties. And it will transform the Constitution from a document that promises much but delivers little, into a living instrument capable of securing "the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity" as envisioned by its framers.

The choice belongs to this generation of Nigerians: to continue accepting constitutional platitudes or to demand constitutional accountability. For the sake of the millions who suffer daily from the non-realization of these fundamental objectives, and for the sake of generations yet unborn who

deserve to inherit a nation that honors its constitutional commitments, the time to make Chapter II justiciable is now.

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