
**THE PROSPECT OF JUSTICIABILITY OF SUSTAINABLE DEVELOPMENT IN NIGERIA AS
A PATHWAY TO ACCOUNTABILITY IN GOVERNANCE***

Abstract

The concept of sustainable development has become a mantra for development but also accountability given the global challenges facing the world. Although, it is believed that most countries have incorporated its principles into legislation, the question of its operationalization still remains to be seen in different quarters. In Nigeria, the socio-economic and environmental objective principles are reflected in chapter two of its constitution, yet these are non-justiciable. Hence the calls for the justiciability of these so-called second generation rights. Despite these calls, there are serious concerns relating to over litigation by the citizenry and interfering with the principle of separation of powers. Consequently, the need to examine these issues with a view to proffer an alternative perspective in attempting to address the issues associated with justiciability. This article therefore suggests that through the application of the standard of reasonableness by the courts, the actions of the Executive arm of government can be subjected to judicial scrutiny in an objective manner and promote greater accountability in governance.

Keywords: Justiciability, Sustainable development, Fundamental objectives, socio-economic rights, Nigeria, Niger Delta, accountability

1. Introduction

The evolution of the concept of sustainable development (SD) reflects the quest for a new paradigm of development and accountability in the face of the ecological pollution and damage that brought losses to socio-economic development and threatened human survival.¹ In developing countries, the level of environmental pollution is significant particularly in countries whose economies are heavily dependent on the extractive industry. This is due to the industry's notoriety as a major contribution to climate change and greenhouse gas emissions. In Nigeria, the activities of the oil and gas industry amount to significant environmental degradation in Sub-Saharan Africa. This accounts for Nigeria's position as the major contribution to gas flares in Africa.² Much of this degradation occurs in the Niger Delta region of Nigeria where most of the oil exploration activities are carried out. The significance of the Niger Delta is of local and international dimensions. Apart from providing the natural resources that form about 90% of the Nigeria's foreign exchange earnings,³ in 2017, it contributed about 70% of overall government revenue. It is Africa's largest Delta covering about 75,000 square kilometers, making up 7.5% of Nigeria's total land mass with a coastline of 560km, two-thirds of the entire coastline of Nigeria.⁴ One-third of this area is wetland, characterised by lagoons, creeks, marshlands and rivers.⁵ Its swamp forests are the second largest in Africa after the Congolian swamp forest.⁶ It has one of the largest wetlands in the world and the third largest Mangrove in the world and the largest in Africa, with 60% in the Niger Delta.⁷ The mangrove is particularly vulnerable to oil spill due to the oil soaked in the soil that is released during rainy seasons, thereby causing further damage to the wider areas.⁸ Consequently, the region is prone to different vulnerabilities in terms of environmental pollution relating to degradation of the natural environment through oil spills and gas flares amidst a delicate ecosystem.⁹

Yet the region is suffering from massive underdevelopment, poverty and dearth of infrastructure as identified by the Willink Commission report. This report identified the region as "poor, backward and neglected",

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¹H Liu, 'Recycling Economy and Sustainable Development' (2009) 2 *Journal of Sustainable Development* 209.

²Nigeria ranks first in Sub-Saharan Africa and 2nd in Africa between 2013 and 2016 – NOAA/ GGFR global gas flaring reduction top 30 gas flaring countries.

³N Pepple, Good governance and Poverty alleviation in Nigeria' Seminar paper presented at the EU/NGO Interim Steering Group on Nigeria, Brussels, January 1999

⁴Niger Delta Development Commission (2001) "Sustainable Livelihoods and Job Creation", Technical Committee on international conference on development of the Niger Delta, Port Harcourt, Nigeria, December, 2001; NPP, 2017. See also National Petroleum Policy, Approved by Federal Executive Council 19 July 2017

⁵B.P. Okoh, 'Environmental Degradation, Conflicts and Peaceful Resolution in Nigeria and between Nigeria and Neighbouring in Gunther Bachtter and Kurt R. Spillman (eds.), *Environmental Degradation as a Cause of War, 11*, (Ruegger Verlag 1996) 183-245. See also M. McGinley, 'Niger Delta Swamp Forests', (2008) 16 *Environmental and Planning Law Review* 49.

⁶ M. McGinley, 'Niger Delta Swamp Forests', (2008) 16 *Environmental and Planning Law Review* 49.

⁷ Ibid 49; Human Rights Watch, 'The Price of Corporate Responsibility and Human Rights violations in Nigeria' Oil Producing Communities' (1999) Available at hrw.org.

⁸ IA Ojefia, 'The Nigerian State and the Niger Delta Question' (2008) 16 *Environmental and Planning Law Review* 1.

⁹ McGinley, (n 6) 49.

giving it special status that required attention in order to allay the fear of being marginalised by minorities.¹⁰ Hence the Fundamental Objective and Directive Principles of State Policy (FODP) in chapter two of Nigeria's 1999 constitution, as the 'conscience and soul of the Constitution'¹¹ are intended to achieve the national ideals¹² stated therein. First introduced in Nigeria's 1979 constitution,¹³ they sought to reduce ethnic tensions by affirming the differences among the various ethnic groups in Nigeria through a robust federal structure, the federal character concept, and FODP.¹⁴ As such, they were retained in the 1999 constitution¹⁵ to clearly set the parameters of government and inform its policies and actions in order to generate a spirit of cooperation, unity and progress.¹⁶ Accordingly, De Villiers asserts that the rationale for the provision of socio-economic rights is 'to place the state under a legal obligation to utilise its available resources maximally to correct the social and economic inequalities and imbalances'.¹⁷

Due to local agitations, there has been an abundance of policy articulation and programmes that are aimed at alleviating poverty, livelihood insecurity, the dearth of infrastructure and the failing economy.¹⁸ At the national level, these include the socio-economic policies such as National Economic Empowerment and Development Strategy (NEEDS)¹⁹ set up to 'mobilize the resources of Nigeria to make a fundamental break with the failures of the past and bequeath a united and prosperous nation. Also employed were legal strategies²⁰ aimed at addressing environmental problems through the establishment of river basin authorities²¹ and the establishment of different government agencies²² and commissions such as the Oil Mineral Producing Areas Development Commission (OMPADEC)²³ and the Niger Delta Development Commission (NDDC).²⁴ On the NDDC, despite the level of responsibility and strategic role it plays in the Niger Delta in liaising between the people, federal and state governments and multinationals, there is no

¹⁰ IM Aprioku Oil-spill disasters and the rural hazards-cape of Eastern Nigeria (2003) 34 *Geoforum* 99

¹¹ B De Villiers, 'The Socio-Economic Consequences of Directive Principles of State Policy; Limitations on Fundamental Rights' (1992) 8 S.Afr. J. on Hum. Rts. 197, referring to the directive principles in the Indian Constitution.

¹² JO Akande, 'Fundamental Objectives and Directive Principles of State Policy Within the Framework of a Liberal Economy' (2000) 4 *The Advocate: A Journal of Contemporary Legal Issues* 69.

¹³ BO Okere, 'Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution' (1983) 32 *ICLQ* 214.

¹⁴ CJD Dakas and IA Ayua, 'Federal Republic of Nigeria' in J Kincaid, and GA Tarr, *Constitutional Origins, Structure, and Change in Federal Countries*, (McGill-Queen University Press, 2005) 245.

¹⁵ JO Akande (n 12) 69.

¹⁶ BO Okere (n 13) 214.

¹⁷ B de Villiers, 'The Protection of Social and Economic Rights: International Perspectives' Occasional Paper 9, Centre for Human Rights (1996) 2.

¹⁸ O Stephen and E Lenihan, 'Policies, Programmes and Sustainable Development: A Critique' (2007) 1 *Africana* 56 (hereinafter Stephen and Lenihan 'Policies, Programmes').

¹⁹ IMF Nigeria: Poverty Reduction Strategy Paper- National Economic Empowerment and Development Strategy; IMF Country Report No.05/433 (2004) iii

²⁰ K Ebeku, 'Appraising Nigeria's Niger Delta Development Commission Act 2000' (2004) 24 *Statute Law Review* 85.

²¹ About 11 river basin authorities were created in 1976 including Niger River Basin Development Authority, Niger Delta Basin Development Authority in 1976 with very little impact as politicians as board members drained the nation's finances. (see UNDP Report (n 54) 12). Other legislations such as National Environmental Standard Regulatory Enforcement Agency, Oil in Navigable Waters Act 2004, Oil Pipelines Act 2004 emphasized preservation of the environment and application of best production procedures that will not lead to irreversibly harming to the environment of the host communities.

²² For example some include Directorate of Food, Roads, and Rural Infrastructure (DFRRI) responsible for financing construction and rehabilitation of rural infrastructure e.g. roads, water supply and rural electrification with the principal objective to raise agricultural productivity and living standards of the rural etc. See United Nations Development Programme (UNDP) and Nigeria Niger Delta Human Development Report 2006. <<http://web.ng.undp.org/publications/nigeria-delta-hdr.pdf>> accessed 15 April 2021. However, these initiatives have not made a significant impact in addressing the needs of the Niger Delta. See O Stephen and E Lenihan (n 18) 50.

²³ The OMPADEC Decree was established in 1992 to receive and administer from the monthly sums to the Federation Account, a 'special account' maintained by the Federation into which is paid all revenues collected by the Government of the Federation in accordance with See s.162 (1) CFRN 1999, towards the rehabilitation and development of oil mineral producing areas and to tackle ecological problems occasioned by oil exploration and exploitation. (See UNDP Report (n 54) 12.)

²⁴ The Niger Delta Development Commission (NDDC) was established in 2000. Its board identified areas of focus including development of social and physical infrastructures, technology, economic/ environmental remediation and stability, human development, pursuit of a peaceful environment that allows tourism to thrive and supports a buoyant culture and later completed and launched a Niger Delta Regional Development Master Plan (NDRDMP) (Available at <<http://www.nddc.gov.ng/NDRMP%20TOC%20and%20ExecSummary.pdf>> accessed 20 July 2010) in 2006 in order to find solutions to the social and environmental problems of the Niger Delta region. (See NDDC 2001 (n 4); see also: Ayasina Ayanlade and Ulrike Proske, 'Assessing wetland degradation and loss of ecosystem services in the Niger Delta, Nigeria' (2015) *Marine and Freshwater Research* G). However, it is also considered a failed project due to its ineffective performance in almost two decades of operation and is suffering from the similar challenges that led to the failure of the OMPADEC. (See K Ebeku, (n 20).

enforcement mechanism provided for in the Act to enable it carry out its functions effectively especially with regard to the contribution by the stakeholders to its funding and the implementation of the Niger Delta Regional Development Master Plan (NDRDMP). These unsuccessful attempts have failed to address these challenges largely due to mismanagement of public funds, poor execution, profligacy and corruption.²⁵

Yet these failed attempts cannot be challenged in court on the grounds that the government has failed to deliver on the FODP or so-called socio-economic rights as provided in the Chapter II of the 1999 constitution on the basis of the outer clause in section 6(6)(c) of the constitution. Consequently, proponents of justiciability have rightly argued that Chapter II²⁶ should therefore be justiciable. This will be further explored in the section on SD under the 1999 Constitution. Justiciability referring to a 'combination of judicial power and duty bestowed constitutionally on the courts to adjudicate violations of the law'.²⁷ So it presupposes the existence of a review mechanism in order to determine non-compliance with the terms of a legal regime.²⁸ This is to ensure the accountability of the government and its agencies. Given that the combination of the social, economic and environmental objectives arguably constitute the SD objectives of the state and have the potential to address the needs of the Niger Delta and Nigeria.

However in attempting to hold the executive accountable, the judiciary may be perceived to be violating the principles of separation of powers. In doing so, it can overstep its jurisdiction by addressing questions that should be left to other branches of government who have the mandate and expertise to do so.²⁹ This position is compounded by the fact that the obligation to observe the socio-economic and environmental (SEE) objectives is subject to the limited resources of the State.³⁰ As such it becomes a grave concern that justiciability might lead to a floodgate of litigations. The question then is how should the court respond in this situation in order to distill the real cases and address them appropriately. This paper suggests the application of the reasonableness test in addressing these concerns by the courts.

Before discussing the latter issues, the second section first provides the background for sustainable development by exploring its meaning, components and the sustainable agenda in Nigeria. The third section assesses the Supreme Court decision in Attorney General Ondo versus Attorney General Federation³¹ (AG Ondo's case) in order to deduce the criteria for justiciability. The fourth section applied the set of criteria from the AG Ondo's case to the NDDC Act in order to establish the justiciability of the SEE objectives stated therein. The concluding section explores the challenges to justiciability and suggests the reasonableness test. This article therefore aligns itself with the justiciability proponents but attempts to address the challenges associated with justiciability of the SEE objectives. As such, it examined the prospects of the justiciability of the socio-economic and environmental objectives as contained in the Niger Delta Development Commission (NDDC) Act and demonstrates that SD is justiciable in Nigeria.

2. The Meaning of Sustainable Development

Despite the absence of a universally accepted definition, the quasi-official definition³² of the Brundtland commission is used. SD is defined as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. This definition contains two key concepts relating to the concept of needs which requires the prioritization of the needs of the world's poor and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.³³ The adoption of environmental protection, economic development and social

²⁵ Thus contracts were awarded in anticipation of funds leading to contracts being awarded not eventually backed by cash thereby resulting in abandoned projects in the ND as at the time of the disbandment of the Commission in 1996. K Ebeku, 'Assessing the Performance of the Niger Delta Development Commission (NDDC) 2001-2020: Another Failed Dream', (2020) 3 International Journal of Law and Society 78.

²⁶ For social, economic and environmental objectives, see sections 17, 16 & 20 Constitution of the Federal Republic of Nigeria Act No.24, 5 May 1999. For a general discussion on the historical origin of economic, social and cultural rights, see JK Mapulanga- Hulston, 'Examining the Justiciability of Economic, Social and Cultural Rights' (2002) 6 *Intl.J.Hum.Rts.* 32.

²⁷ Benjamin O. Nwabueze, *Judicialism in Commonwealth Africa: the Role of the Courts in government* (Hurst, 1977) 21.

²⁸ JK Mapulanga- Hulston, (n 22) 32.

²⁹ A Pillay, 'Reviewing Reasonableness: An Appropriate Standard for Evaluating State Action and Inaction' (2005) 122 S. African L.J.429 (hereinafter Pillay 'Reviewing Reasonableness'); Grant 'Enforcing Socio-Economic' (n36) 21.

³⁰ Ibid 430

³¹ [2002] 9 NWLR (pt 772) 222 SC.

³² DB Magraw and LD Hawke, 'Sustainable Development' in D Bodansky, J Brunnée and E Hey (eds) *Oxford Handbook of International Environmental Law* (OUP, 2007) 618.

³³ World Commission on Environment and Development, *Our Common Future* (OUP, 1987) 43.

development as the three interdependent pillars of SD³⁴ has resulted in some considerable consensus on the components. This has provided some level of coherence to the term.³⁵ Consequently, SD refers to a combination of legislations that deal with economic activities, social issues and environmental concerns.

At the international level, in September 2015 the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development that included 17 Sustainable Development Goals (SDGs). In building on the principle of “leaving no one behind”, the new Agenda emphasized a holistic approach to achieving sustainable development for all. Some of the relevant SDGs³⁶ include ending all forms of poverty by ensuring equal rights to economic resources, basic services, and natural resources and reducing the vulnerability and exposure of the poor to climate-related extreme events, shocks and disasters.³⁷ It also advocates for the sustainable management of water and sanitation while protecting and restoring water-related ecosystems such as forests, wetlands, rivers, aquifers and lakes.³⁸ To protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss³⁹ and conserve and reduce marine pollution.⁴⁰ This requires resilient infrastructure, inclusive and sustainable industrialization and innovation to support economic growth, development and human well being.⁴¹

These are in consonance with the principles enunciated in chapter II of the 1999 Constitution, which will be discussed in the next section, and can be viewed as an attempt to give effect to the principles of SD. The sum total of which is the principle of sustainable utilisation and maximization of the resources of the state for the common good – in this case a sustainable economy, sustainable management and use of the natural environment and the wellbeing of the citizens. At the national level, the implementation of international standards is dependent on the underlying monist or dualist⁴² systems in operation. The former regards domestic and international law as one and the same. As such, where a state ratifies an international treaty, its provisions become automatically applicable in the state as part of its domestic law. The latter views international law and domestic laws as two separate systems. Therefore the implementation of international laws is dependent on the domestication of such laws through local legislations. Although Nigeria leans toward dualist systems, the concept of SD has been incorporated into its national policies including policies on environment and petroleum. This should be regarded as an indication of the intention to be guided by the principles of SD.

SD under the 1999 Constitution

In providing for social, economic, and environmental objectives among others, the 1999 Nigeria constitution in chapter two, referred to the Fundamental objectives and directives principles of state policy. The FODP constitute a charter between the governed and the government and places the duty and responsibility on all organs of government, authorities and persons exercising legislative, executive or judicial powers 'to conform to, observe and apply' the provisions of chapter II.⁴³ Given that the primary purpose of government is to provide security and welfare of the people.⁴⁴ These FODP are in tandem with international instruments on socio-economic and cultural rights otherwise known as second and third generation rights⁴⁵ that aim to satisfy basic human needs such as food, health, employment and education.⁴⁶ Consequently, chapter two may be regarded as the housing the SD objectives in Nigeria.

The FODP under chapter two comprise of social, economic, educational and environmental objectives

³⁴ V Barral, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23 *The European Journal of International Law* 377.

³⁵ S Atapattu, 'Sustainable Development, Myth or Reality?: A Survey of Sustainable Development Under International Law

³⁶ All SDGs Available at: <<https://www.un.org/development/desa/disabilities/envision2030.html>> accessed 22 August 2021. and *Sri Lankan Law*, (2001) 14 *Geo. Int'l Entvl. L. Rev.* 268.

³⁷ Goal 1: No poverty.

³⁸ Goal 6: clean water and sanitation.

³⁹ Goal 15: life on land.

⁴⁰ Goal 14: life below water.

⁴¹ Goal 9: industry, innovation and infrastructure and Goal 8: decent work and economic growth.

⁴² E. A. Udu, H. C. Alisigwe & A. Afolabi: *Employing International Standards in Advancing the Enforcement of Economic, Social and Cultural Rights in Domestic Jurisdictions: Nigeria in View*, (2020) 2 *IRLJ* 7.

⁴³ S.13 Constitution of the Federal Republic of Nigeria Act No.24, 5 May 1999.

⁴⁴ *Ibid* S.14(2)(b)

⁴⁵ Dakas and Ayua (n 14) 269

⁴⁶ The African Charter on Human and Peoples Rights (ACHPR) was domesticated by the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 1983 now Chap 10, vol 1 Laws of the Federation of Nigeria (LFN) 1990

among others. The social objectives attempt to address the 'social dimensions of contemporary problems affecting development.'⁴⁷ Thus social policies aim to protect citizens from social contingencies and poverty to enable people strive for their own life goals while promoting universal social protection and equity.⁴⁸ As such the social objectives in the CFRN provide that the human or natural resources be exploited for the good of the community and not for any other reason.⁴⁹ It provides for 'equality of rights, obligations and opportunity' for all citizens before the law⁵⁰ and recognizes the sanctity of the human person and maintenance of human dignity.⁵¹ In the same vein the state's policy is to be directed towards ensuring among other things, a just and humane conditions of work,⁵² providing for all 'adequate medical and health facilities' as well as, the opportunity for securing adequate means of livelihood and suitable employment without discrimination of any group.⁵³

There have been several studies and reports⁵⁴ on the needs of the Niger Delta and these needs include access to clean water, health facilities, roads, education, employment, among others. It is observed that these needs form part of the core minimum rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and therefore it is argued that these needs contribute to the 'sanctity of the human person' and 'maintenance of human dignity' because they constitute the basic needs of the human person. Thus the social objectives of the 1999 constitution have the potential to address these needs in a manner that is agreeable to the Bruntland conceptualisation of SD. This can be achieved where the human or natural resources are judiciously exploited for the good of the community. Given that the "good" of the community includes the sanctity of the natural environment from which the community derive its means of livelihood. Where the environment moderates human needs, the needs of the current generation might be satisfied without preventing the ability of the future generations from meeting their own needs.

The environmental objective under the FODPs is encapsulated in section 20 of the CFRN, 'The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.' The reference to the environment comprises of complex physical, chemical, and biological factors and processes that sustain life.⁵⁵ Given that human activities can have an impact on the 'biological factors and processes' and/or the environmental media including flora and fauna. Thus environmental protection includes reduction, control and elimination of existing causes and additional forms of damage to the environment, preservation and rational use of the environment.⁵⁶ Unfortunately, the objective does not elaborate on what the government policy towards the environment should be as provided in the social objective and is therefore inadequate from a SD perspective.

The economic objectives as contained in section 16 of the 1999 Constitution embodies an attempt by the state to achieve an efficient, dynamic and self-reliant economy or a sustainable economy.⁵⁷ This requires harnessing the resources of the nation to promote national prosperity and to control the economy in a manner that would 'secure the maximum welfare, freedom, and happiness of every citizen on the basis of social justice and equality of status and opportunity'.⁵⁸ As such, the state is to direct its policy towards ensuring that the economic system is not operated in a manner that permits the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group.⁵⁹ Thus it advocates for a reasonable national minimum living wage, suitable and adequate shelter and food etcetera.⁶⁰ In other words, the framers appear to have adopted a utilitarian approach in requiring the sustenance of a majority of its people or doing maximum good for a maximum number of people rather than the concentration of wealth in the hands of a few.

⁴⁷ United Nations Research Institute on Social Development (UNRISD) <<http://www.unrisd.org/>> accessed 23 July 2021.

⁴⁸ Ibid

⁴⁹ CFRN (n 26) S.17(2)(b).

⁵⁰ CFRN (n 26) S.17(2)(a)

⁵¹ CFRN (n 26) S.17(2)(b)

⁵² CFRN (n 26) S.17(3)(b)

⁵³ CFRN (n 26) S.17(3)(a)

⁵⁴ See UNDP Report 2006; NDRDMP; Utigwe, E and Agho, M, Coping with Climate Change and Environmental Degradation in the Niger Delta of Southern Nigeria, (2007) Centre for Community Research and Development Centre at 25; E. Utigwe, & AE Ogbeigbu, Climate Change and Poverty: Sustainable Approach in the Niger Delta Region of Nigeria at 15.

⁵⁵ Margaret T. Okorodudu-Fubara, *Law of Environmental Protection*, (Caltop Publications (Nigeria) Ltd., 1998) 15.

⁵⁶ Martin Dixon and Robert McCorquodale, *Cases and Materials on International Law* (4th edition, OUP, 2003) 454.

⁵⁷ S Atapattu, (n 35) 268

⁵⁸ CFRN (n 26) S.16(1)(a)

⁵⁹ CFRN (n 26) S.16(1)(b)

⁶⁰ CFRN (n 26) S.16(2)(c)

There appears to be some overlap with the economic needs and social needs and this may be justified as social needs relating to infrastructure development such as roads, educational facilities, and modern market, employment among others can enhance the quality of the economic activities and improve the quality of lives of people. It is therefore argued that these constitute reasonable expectations⁶¹ that the government should expend the resources of the state in line with the principles of social justice and SD. This will not only encourage a dynamic and self-reliant economy but also provide for the welfare of the people and equal opportunity to earn a living.

Despite these lofty ideals, the duty and responsibility to conform to, observe and apply the FODP is subject to the provision of s.6(6)(c) of the Constitution. It states that the judicial power of the court shall not '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 FODP. The implication is that the FODP are non-justiciable. As such there is no corresponding entitlement conferred on individuals to demand the amenities provided for in the Constitution and there is no machinery for ensuring such compliance.⁶²

Consequently, the effect is that where government policies run contrary to any of the FODP or where its agencies implement policies in a manner that deprives people of their sources of livelihood or degrades their environment in total disregard of their welfare, the non-justiciability clause cloths the government with immunity from the scrutiny of the court. However, the duty and responsibility on all organs of government is limited to the extent that the judiciary cannot enforce any of the provisions unless and until the legislature has enacted specific laws for their enforcement.⁶³ Thus the justiciability of the FODP hinges on the enactment of legislation relating to any of these objectives. Unless such legislation is enacted the accountability of the government to its people, which is crucial for meaningful progress towards SD, remains in doubt in Nigeria.

Legal Status and the Implications for the Directive principles

The legal status of SD is a subject of much debate. This is because some characterise SD as part of customary international law by virtue of its 'inescapable logical necessity' and 'wide and general acceptance'⁶⁴ as a principle with normative force.⁶⁵ Others are of the view that SD has not satisfied the tests of custom at international law and is at best an interstitial norm.⁶⁶ Still others regard it as an ideal or value rather than a principle.⁶⁷ It is difficult to assert that SD is now a principle of customary international law creating binding legal obligation based on mere reference to it in international instruments in the light of Lowe's argument in the *Gabcikovo-Nagymaros* case that there was '...no instance of the actual application of the principle of SD in order to reach a binding determination that states have acted unlawfully...' nor was there any 'reliance upon the concept itself as a rule of law binding upon states and constraining their conduct'.⁶⁸ Thus while international law may not require development to be sustainable it requires development decisions to be the outcome of a process that promotes SD⁶⁹ although states still retain substantial discretion in interpreting and giving effect to the principle of SD.⁷⁰

Based on the foregoing, the 'actual application' or 'reliance' of the principle or concept of SD can be regarded as an indication of the intent to be bound by the principle. It is believed that most countries have incorporated the principles of SD into legislations particularly environmental legislations, regulations and standards.⁷¹ For example one of the goals of the National policy on environment is to ensure environmental

⁶¹ BO Nwabueze, *Ideas and Facts in Constitution Making* (Spectrum Books Limited, 1993) 140.

⁶² *Ibid* at 157.

⁶³ Akande (n 12) 69.

⁶⁴ Case Concerning *Gabcikovo-Nagymaros Project* [1997] ICJ Rep 95 available at <http://www.icjci.org/icjwww/idocket/ihs/ihsjudgment/ihs_ijudgment_970925_frame.htm> accessed 20 July 2010.^[1]^[2]

⁶⁵ *Ibid* 88

⁶⁶ V Lowe 'Sustainable Development and Unsustainable Arguments' in A Boyle and D Freestone (eds) *International Law and Sustainable Development: Past Achievements and Future Challenges* 31 (hereinafter Lowe 'Sustainable Development').

⁶⁷ W Scholtz 'The Anthropocentric Approach to Sustainable Development in the National Environmental Management Act and the Constitution of South Africa' (2005) *J.S.Afr.Law* 77.

⁶⁸ Lowe 'Sustainable Development' (n 66) 23.^[1]^[2]

⁶⁹ *Ibid* 17

⁷⁰ *Ibid* 16

⁷¹ T.S Asfaw, V Botes and L.G Mengesha, *The role of NGOs in corporate environmental responsibility practice: evidence from Ethiopia*. (2017) 2 *International Journal of Corporate Social Responsibility* Springer. Available from: <DOI 10.1186/s40991-017-0013-0> <Accessed 12 May 2018>.

protection and conservation of national resources for sustainable development.⁷² Similarly, one of the objectives of the National petroleum policy is to minimize the environmental footprint of oil exploration in Nigeria. This is an indication of the State's desire to be bound by the principles of SD or at the very least, adopt it as an overarching principle in the governance of its people.

As such, the question is whether the non-justiciability of chapter two amounts to failure to be bound by the terms stated therein. It is argued that the non-justiciability of chapter two of the 1999 CFRN is not in itself averse to this intent rather it speaks to a deliberate attempt to forestall the accountability of the government. Thus justiciability goes to the heart of accountability and not to the intent to be bound by the concept of SD.

From a rights perspective, the international human right treaties (including the ICESCR) established some principles for the domestic implementation of international standards as expounded in the Advisory opinion of the Inter-American Court of Human Rights.⁷³ According to the opinion, the object and purpose of human right treaties is the 'protection of the basic rights of individual human beings irrespective of their nationality, both against the state of their nationality and all other contracting states'.⁷⁴ This suggests that individuals can make claims against all contracting member states and not just against their states of origin.

It stated further that the States in concluding these human right treaties 'can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other states, but towards all individuals within their jurisdiction'.⁷⁵ Thus the mere inclusion in the constitution implies an intent to "submit themselves" to the achievement of these objectives for the purpose of the common good of its citizenry.

In line with the Committee on Economic, Social and Cultural Rights, the central obligation in relation to the ICESCR is for state parties to give effect to the rights recognized therein by all appropriate means. However, the covenant adopts a broad and flexible approach that enables the particularities of the legal and administrative systems of each state, as well as other relevant considerations to be taken into account.⁷⁶ In addition, the appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.⁷⁷ Within this context, the issue is whether the provisions of chapter two adequately gives effect to the second-generation rights stated therein. This should be answered in the negative in light of the outer clause, which can be considered a clog in the implementation wheel. However, this clause does not erode the intention to be bound by the principles of SD (obligation to do a thing stipulated in law) but applies to the issue of accountability (what consequences lie for not doing a thing). Still where the latter is the case, further legislation on a matter can prevent the outer clause from being operative as established in the AG Ondo's case as will be demonstrated in the next section.

3. The Justiciability of the FODP: A Case Study of NDDC Act⁷⁸

The justiciability of the FODP is dependent on specific legislation in relation to any of the objectives stated in the constitution. This position is justified on the basis of the Supreme Court decision in the case of Attorney General Ondo versus Attorney General Federation. This case established that the National Assembly (NA) had power to establish and regulate authorities for the Federation or any part thereof in order to promote and enforce the observance of the FODP contained in the Constitution.⁷⁹ Before the NDDC Act will be discussed, a set of criteria will be extrapolated from the AG Ondo's case and applied to the NDDC Act. The AG Ondo's case was to determine, *inter alia*, whether or not the Corrupt Practices and Other Related Offences (CPORO) Act 2000 is valid and in force in every state of Nigeria. The decision was in the affirmative and the court reasoned that the National Assembly is empowered under s.4(2) to make laws for the peace, order and good government of Nigeria with respect to any matter included in the Exclusive

⁷² Revised NPE, 2016

⁷³ E. A. Udu, H. C. Alisigwe & A. Afolabi (n 37) 7.

⁷⁴ See the Effect of Reservations on the Entry into force of the American Convention on Human Rights (Arts.74 and 75), Advisory Opinion Oc-2/82, September 24, 1982, Inter-Am.Ct.H.R. (Ser.A) No.2 (1982) at Para 29.

⁷⁵ Ibid

⁷⁶ See General comment 9 of the Committee on Economic, Social and Cultural Rights, General Comment 9, the Domestic Application of the Covenant (Nineteenth Session, 1998), U.N. Doc. E/C.12/1998/24, Para 1.

⁷⁷ Ibid para 2

⁷⁸ NDDC (Establishment Etc.) Act No.6 2000 now NDDC (Establishment. Etc.) (Amendment) Act 2017.

⁷⁹ CFRN (n 31) S.4 (2)

Legislative List (ELL)⁸⁰ and the FODP are placed under item 60(a) of the ELL. The court also held that in eradicating corruption and abuse of power the CPORO Act will 'inure to the good government of Nigeria'.⁸¹ The Court per Uwaifo, J.S.C (rtd) in justifying the inclusion of the FODP under the ELL stated that: there may be occasion... when what appears a local problem assumes such a proportion as to become a matter of concern to a federal country as a whole. In such a case it may turn out to be inevitable to regard the matter as affecting the peace, order and good government of the country, which ought to be so addressed by means of a uniform law.⁸²

In examining how the NA could promote and enforce the observance of the FODP in the ELL, the court stated that the NA had the power to make laws for the establishment and regulation of authorities for the Federation or any part to. In exercise of this power to enact laws for matters incidental and supplementary to any matter in the ELL,⁸³ to the exclusion of the Houses of Assembly,⁸⁴ the National Assembly has enacted the CPORO Act. The Act contains provisions with respect to both the establishment and regulation of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), which has the authority to enforce the observance of the objective to abolish corrupt practices and abuse of power under s.15 (5) of the constitution.⁸⁵ As such, the reference to 'enforcing the observance' of FODP suggests that there is a law in place which will inform the citizens of what constitutes corruption and corrupt practices.⁸⁶ This reinforces the ability of the citizenry to hold its government to account on matters relating to any of the FODP so legislated upon, in this case, corruption.

In analyzing the foregoing case, four criteria were deduced and these are: the power to legislate on peace, order and good governance, prevalence of the matter, establishment of authority to implement the objective and a law that informs on the objective it promotes. These will be explained *seriatim* and then applied to the NDDC Act.

In relation to the power to legislate, the National Assembly has the power to legislate for the peace, order and good government of Federation⁸⁷ on matters included in the ELL under which the FODP have been assigned. Though the Constitution does not expressly provide for SD, it does have objectives for the three pillars of SD and some related objectives such as the educational objectives and therefore the combination of these constitute SD objectives. Moreover, SD will promote the peace, order and good government of the Federation because the objectives are capable of meeting the needs of the Niger Delta, restoring faith in government and ensuring that the resources of the nation are being 'harnessed and distributed as best as possible to serve the common good'.⁸⁸ Thus the NA has so exercised its power under s.4 (2) by the enactment of the NDDC Act in 2000, which is a law to promote SD in the Niger Delta.

On the second point, the prevalence of matter refers to the common occurrence or how widespread the issue being legislated has become. In this case, the Niger Delta is regarded as the 'epicentre of oil exploitation and exploration' in Nigeria, and these operations have had an adverse social and environmental impact⁸⁹ in the region and beyond, thereby contributing to the raging global environmental crisis. This has led to clashes between the government, multinationals and the host communities, with various groups agitating for the control of their resources in the region.⁹⁰ Furthermore, this has also led to the disruption of oil exploration

⁸⁰ ELL is set out under Part I of the Second Schedule to the 1999 Constitution

⁸¹ [2002] 9 N.W.L.R. (Pt 772) 417

⁸² Ibid 407

⁸³ ELL Item 68.

⁸⁴ Unless otherwise provided in the Constitution. see s.4(3) of the Constitution, ELL Item 60 (a).

⁸⁵ [2002] 9 N.W.L.R. (Pt 772) 398-400

⁸⁶ Ibid 359

⁸⁷ CFRN (n 31) s.4(2)

⁸⁸ 'Oils of Injustice, Nigeria, UPR and the Niger Delta' 2, available at <http://www.mosop.org/09_Niger_Delta_CSOs_Lobby_Document_For_the_UPR.pdf>

⁸⁹ These include climate change, degradation and deterioration of the ecological environment. See: United Nations Framework Convention on Climate Change (n.d.) <https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf> [Accessed 11 May 2021]; National Coalition on Gas Flaring and Oil Spills in the Niger Delta, (2014) NACGOND Jiv Policy Brief, Vivamark media, ISBN: 978-978-52663-06, pp.1-16.

⁹⁰ C Ifeka, 'Oil, NGOs & Youths: Struggles for Resource Control in the Niger Delta' (2001) 28 *Review of African Political Economy* 99 <<http://www.jstor.org/stable/4006697>> accessed: 21 June 2021.

activities that has resulted in significant loss of revenue for both the nation and these multinationals.⁹¹ Therefore the issue of SD in the Niger Delta has not only become a national issue but an international issue. As such, SD in the Niger Delta has assumed that 'proportion' which in Justice Uwaifo's words, has become a 'matter of concern'⁹² to the Federation, or a matter that 'demands urgent and pressing national attention'⁹³ which affects the peace, order and good governance of Nigeria. On that premise, the National Assembly has by its 'collective wisdom' recognised that it is in the best interest of Nigeria⁹⁴ to be addressed by a uniform law, the NDDC Act.

The Establishment of an authority relates to whether there is established a body, an agency or authority that is responsible for implementing the objectives in line with the law. In other words, the function of the NA is to enact laws that establish and regulate an authority and it is this authority that possesses the power to promote and enforce the observance of the FODP in accordance with the law so enacted.⁹⁵ The NDDC Act also established the Niger Delta Development Commission,⁹⁶ with the objective of promoting the SD of the Niger Delta and in that sense caused the observance of the FODP in the constitution.

The final point is the existence of an Act that informs on the objective. Thus the Act should clearly state the FODP it promotes⁹⁷. In this instance, what the SEE objectives would translate to in the Niger Delta. This can be seen by examining the functions of the NDDC under s.7 of the Act. The Act provides for the Commission to formulate policies and guidelines for the development of the region⁹⁸ and also to conceive, plan and implement projects and programmes for the SD of the Niger Delta. This is in the areas of transportation including roads, jetties and waterways, health, education, employment, industrialization, agriculture, fisheries, housing, water supply, electricity and telecommunications etcetera.⁹⁹

Similarly, it is to tackle ecological and environmental problems that arise from oil exploration activities, advise the government on the prevention and control of oil spillage and gas flaring and environmental pollution.¹⁰⁰ More so, it is also to prepare and estimate the cost of implementing master plans and schemes to promote the physical development of the region.¹⁰¹ As such, the 2006 NDRDMP is quite significant because it further expounds on the provisions of the Act by setting targets and timelines to be met¹⁰² that are peculiar to the region. Consequently, given that the latter has the potential to address the needs of the Niger Delta and aligns with the SDGs, the NDDC is responsible for the implementation of the FODP objectives in the Constitution in order to promote SD in the region.

4. Balancing Accountability and the problem of Separation of Powers

It is often argued that the intention of chapter two is to prevent accountability of the executive, yet it could also be arguable that the absence of an outer clause may present some challenges. In terms of accountability, there are two possible issues for consideration and these may be termed policy accountability and act accountability. Where policy accountability simply refers to whether a policy is in consonance with the standard required in that field. Here whether the constitution, particularly chapter two (FODP), as the legal framework for accountability is in consonance with government policies on SD. For act accountability, whether the government's acts/actions are in consonance with its policies. From the previous discussions, it does appear that *prima facie* the constitutional provisions are in tandem with the principle stipulated as the ICESCR. However, the constitutional provisions on the environmental objectives are inadequate as it failed to expatiate on the policy toward the environment as stated in other objectives. In contrast with its SA Bill of Rights particularly section 24, it does not place any positive

⁹¹ U Udemudia, Corporate Partnership and Community Development in the Nigerian Oil Industry: Strengths and Limitations' UNRISD Markets, Business and Regulation Programme Paper No 2 (2006) 5 available at <[http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/D7737BEE64BC48B0C12572C90045372E/\\$file/Idemudia.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/D7737BEE64BC48B0C12572C90045372E/$file/Idemudia.pdf)>

⁹² [2002] 9 N.W.L.R.(Pt 772) 407.

⁹³ Ibid 385

⁹⁴ Ibid

⁹⁵ [2002] 9 N.W.L.R. (Pt 772) 304 and 361 paras E-G.

⁹⁶ NDDC Act (n) S.1

⁹⁷ Ibid (n 87) 359 paras D-E

⁹⁸ NDDC Act (n 71) s.7(1)(a).

⁹⁹ NDDC Act (n 71) s.7(1)(b).

¹⁰⁰ Ibid NDDC Act (n 71) s.7(1)(h)

¹⁰¹ NDDC Act (n 71) s.7(1)(d)

¹⁰² For instance, health care goals include reduction by two-third the under- five child mortality rate, and by three quarters the maternal mortality rate between 2005 and 2015. Educational goals include that boys and girls are able to complete a full course of schooling 130 by 2015 as well as equipped schools in all areas. NDRDMP (n 3) 33, 34. These are in line with the Millenium Development Goals now Sustainable Development Goals. See sdgfund.org.

obligation on the state for decisions making to ensure environmental protection and to execute this function in a manner that would ensure SD¹⁰³ and as such chapter two failed to adequately outline the principle of SD.

On act accountability, the outer clause deliberately precludes the possibility of evaluating whether the actions of the government are in consonance with its policies. As earlier argued, the proponents of the outer clause are of the view that it is an interference with the principle of separation of powers. This position stems from the belief that the judiciary could overstep its function and address questions that should be left to other branches of government who have the mandate and expertise to do so.¹⁰⁴ This position is justified on the grounds that fulfilling the requisite obligations of the socio-economic rights is limited by the resources of the State.¹⁰⁵ Thus the outer clause then checks the opening up of executive actions to a floodgate of litigations.

So far the debate of the opposing view that it prevents accountability has not adequately addressed the issues mentioned earlier. Thus this paper intends to do so and also provided an alternative perspective that contributes to making a case for review of the chapter two of the 1999 CFRN and harmonizing it with the objects of achieving sustainable development. In this light, the court can play a vital role in balancing the need for accountability and possible interference with the concept of separation of powers. This may be achieved through the adoption of reasonableness test standard, referring to the administrative law standard of judicial review of the exercise of public power¹⁰⁶ on a case-by-case basis. This has the potential to impose a level of accountability on the executive's implementation of socio-economic rights¹⁰⁷ and also introduce a measure of objectivity and predictability to the process of scrutinizing government's policies and programmes.

In applying the reasonableness test standard the role of the court would be to decide on how reasonable the measures adopted by the government are as opposed to whether one measure was more favourable or desirable than another.¹⁰⁸ The concept of reasonableness was adopted by the South African Constitutional Court (SACC) in Grootboom's case where in ruling on a challenge to a government's housing policy, a socio-economic right under s.26 of the SA Constitution, the court held that the state was in breach of its obligation under the section though the section could not be interpreted to support a claim for immediate housing on demand.¹⁰⁹ Given that the state is required to devise and implement within its available resources a comprehensive and coordinated scheme to progressively realise the right of access to adequate housing. Thus it also held that although the state's housing programme was a 'co-ordinated and comprehensive' attempt by the government to address South Africans urgent housing needs, its failure to provide for the immediate amelioration of the circumstances of those in desperate need was unreasonable.¹¹⁰ The court therefore made a declaratory order requiring the state to take action to meet its obligation under s.26 (2). This decision affirms the justiciability of socio-economic rights and is an indication that the court is not only capable of determining the validity of government policies in line the FODP but also scrutinizing the implementation of those policies.

However, the SACC has been criticized for failing to set a minimum core with regard to the right to housing, as provided by the CESCR experts which require states to provide the 'minimum essential requirement' of each of the basic right to their citizens and then work towards progressive realization.¹¹¹ The court was of the opinion that it lacked information to do so.¹¹² Notably, the court has the capacity to determine what is reasonably within its jurisdiction to adjudicate upon taking into cognizance the separation of powers question. Thus in *Minister of Health versus Treatment Action Campaign (2)(TAC)* the SACC relied on separation of powers for the refusal to set the minimum core stating that the judiciary was not:

'institutionally equipped to make the wide-ranging factual and political enquiries necessary for determining what the minimum-core standards...should be, nor for deciding how public revenues should most effectively be spent...'. The Constitution contemplates rather a restrained and focused role for the courts, namely, to require the state to take measures to meet its constitutional obligations and to subject the reasonableness of these measures to evaluation. Such determinations of reasonableness may in fact have budgetary implications, but are not in

¹⁰³Feris, L. (2010) The role of good environmental governance in the sustainable development of South Africa. *Potchefstroom Elec. L. J.*, 13(1), pp.73-99.

¹⁰⁴ A Pillay, 'Reviewing Reasonableness: An Appropriate Standard for Evaluating State Action and Inaction' (2005) 122 *S. African L.J.*429 (hereinafter Pillay 'Reviewing Reasonableness')^[1]_{SEP}

¹⁰⁵ Ibid (n 100) 429; Grant 'Enforcing Socio-Economic' (n) 21

¹⁰⁶ Ibid (n 100) 430

¹⁰⁷ Grant 'Enforcing Socio-Economic' (n) 21

¹⁰⁸ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46,66 para 33 (CC) (hereinafter Grootboom)^[1]_{SEP}

¹⁰⁹ Grootboom (n 108) 51 para C-D

¹¹⁰ Ibid paras 64-69

¹¹¹ See Para 10 General Comment 3 of the UN Committee on Economic, Social and Cultural Rights (5th Session 1990) UN Doc E/1991/23

¹¹² Grootboom (n) para 32

themselves directed at rearranging budgets. In this way the judiciary, legislative and executive functions achieve appropriate constitutional balance.¹¹³

The position of the court is quite apt to the extent that it would be overwhelming for the court to set the minimum core of every right given that the minimum core under the ICESCR was developed by a panel of independent experts over years from examining reports by reporting states.¹¹⁴ In the alternative the minimum core can be set by a committee of experts set up by the government to do so with respect to its social-economic rights and these can then be subjected to reasonableness test under judicial scrutiny when challenged. In Nigeria the reasonableness standard can be adopted by the court as to enable it to determine issues such as whether a government policy is in conformity with a FODP or the constitutional provisions in Chapter two and where it is so adjudged, whether the government has reasonably implemented such a policy. This can be achieved by placing the onus of proof on the government to prove that its implementation is indeed reasonable; given that the government would be in a better position to supply the relevant information. More so, the need to keep proper monitoring and reporting on such activities will be encouraged. This approach can be adopted on a case-by-case basis by the High Court of a State or the Federal High Court as may be appropriate,¹¹⁵ to which such matters can be brought irrespective of the absence of an enforcement procedure for socio-economic rights.¹¹⁶ This is because the Supreme Court in *Ogugu v State* rejected the contention that a void existed in the ACHPR with respect to domestic enforcement of its provisions in Nigeria. Thus the absence of enforcement procedure does not prevent the enforcement of the rights protected under the ACHPR.¹¹⁷ Although this case deals with civil and political rights, Nnamuchi argues that there is no reason barring its application to socio-economic rights.¹¹⁸ This can hardly be disputed since rights under the ACHPR are regarded as indivisible and interdependent;¹¹⁹ and includes socio-economic rights. In the same vein, the SEE objectives in the Constitution combined with the NDDC Act can be enforced in court in accordance with the rules, practice and procedure of each court. On the other hand, the argument of resource constraint as a reason against justiciability is no longer tenable especially in Nigeria given the accounts of corrupt and mismanagement of public funds by the government of Nigeria.¹²⁰ This is an indication of misplacement of priorities of the nation as a whole. Consequently, the justiciability of chapter two of the 1999 constitution provides an avenue to address the need for accountability. And the judiciary can equip itself with the reasonableness test standard as a tool for addressing the problem of separation of powers.

5. Conclusion

The concept of needs is central to achieving sustainable development thus promoting SD should be geared towards addressing the needs of the citizenry. In Nigeria, FODP also known as the socio-economic rights best represent the expectations of the people from their government in accordance with the principles of social justice and democracy on which the constitution is anchored on. Despite the outer clause in section 6(6)(c) the enactment of a specific legislation on any FODP makes that objective justiciable. Thus the enactment of the NDDC Act makes the FODP stated in the constitution justiciable to the extent stated in the Act. This may be justified on the criteria deduced from the SC's decision in AG Ondo's case including the power to legislate, prevalence of the matter, the establishment of an authority, existence of a law informs about the objective. Consequently, the concept of SD has been operationalized in Nigeria. In spite of this, it is recommended that justiciability of the FODP should be a general rule, and non-justiciability an exception to the rule.

¹¹³ 2002 (5) SA 721 (CC) paras 37 and 38

¹¹⁴ Grootboom (n141) para 32

¹¹⁵ See Sections 251 and 272(1) CFRN 1999.

¹¹⁶ O Nnamuchi 'Kleptocracy and Its Many Faces: The Challenges of Justiciability of the Right to Health Care in Nigeria' (2008) 52 *Journal of African Law* 20. (hereinafter Nnamuchi 'Kleptocracy').

¹¹⁷ [1994] 9 NWLR (pt 366) 1 at 26-27. FHC in *Jonah Gbeme & ors v Shell Petroleum Development Company of Nigeria Ltd. & ors*, Suit FHC/CS/B/153/2005, Federal High Court, Benin City, judgement of 14 November 2005 (unreported), available at: <<http://www.climatelaw.org/media/gas.flaring.suit.sep.nov2005>> (last accessed 28 July 2010)

¹¹⁸ Nnamuchi 'Kleptocracy' (n 151) 20.

¹¹⁹ Preamble to the ACHPR

¹²⁰ Nnamuchi 'Kleptocracy' (n151) 9; O Agbakoba and W Mamah Towards a Peoples' Constitution in Nigeria: A Civic Educational Manual for the Legal Community (Human Rights Law Service) 43, where the authors characterize the argument as 'lame' given Nigeria's numerous natural resources and blamed corruption and abuse of power as the culprit. For instance, the combined regime of Babangida, Abacha and Abubakar were said to have been misappropriated a total of \$27.8b to \$33.8b between 1985 and 1999. See I Sagay, 'Legislating for the Common Good: Contemporary Issues and Perspectives' cited in B Michael in 'Nigeria's Lawmakers Earn Highest Pay in the World' available at <<http://www.nigerianmuse.com/20100728082030zg/sections/general-articles/nigeria%e2%80%99s-lawmakers-earn-highest-pay-in-the-world-sagay/>> (accessed 15 August 2010).