

THE SIGNIFICANCE OF CHAPTER II OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999: A LEGAL INTERROGATION*

Abstract

Ever since Nigeria attained independence in 1960, she has been challenged with so many irregularities and anomalies and even till date she remains a third world country, yet it is axiomatic that Nigeria is very much endowed with natural resources. Sadly, while those who occupy the seats and corridors of power in Nigeria [continue to] mismanage, loot, embezzle, and or misappropriate the public treasury to satisfy their selfish desires, the masses are there on the streets and at the grassroots suffering and sorrowing with tears. There are only a few good roads, no stable or regular power supply, no adequate or quality health and housing facilities. Poverty and corruption are at all times high, and for the common man in sight there seems to be no hope for a better tomorrow. The grand outcome of these is that there is little national development, bountiful feeling of insecurity, intolerance, crises, crimes, banditry, insurgency, terrors and terrorism in Nigeria. This research is a legal survey on the significance of Chapter II of the Constitution of the Federal Republic of Nigeria 1999. There seems to be a large consensus *ad idem* among jurists and scholars that Chapter II of the Constitution of Nigeria 1999 is the constitutional abode of socio-economic rights in Nigeria and this paper finds that only a sincere and progressive enforcement of socio-economic rights by the Nigerian State can provide enduring solution to the aforementioned societal ills and the likes. This Paper concludes that Chapter II of the Constitution of the Federal Republic of Nigeria 1999 contains certain provisions, which have the legal potentials to promote conditions necessary for the people's welfare, security, prosperity and for the enjoyment of life and it is recommended *inter alia* that these provisions should not be glossed over since they are incorporated in the supreme law of Nigeria.

Keywords: Socio-economic, Principles, Rights, Directive, Fundamental, Objectives, State Policy

1. Introduction

From the perspective of international human rights law, the bulk of the provisions and or constitutional benefits contained in Chapter II of the Constitution of the Federal Republic of Nigeria 1999 belong to the category of Economic, Social and Cultural Rights (ESCR) as can be gleaned from the International Covenant on Economic Social and Cultural Rights (ICESCR) 1966. It is perceived that the provisions contained in Chapter II of the Constitution of the Federal Republic of Nigeria 1999 if not the most significant, are very significant especially as the Constitution appears to promote a people-oriented government and/or a constitutional democracy. This is so even as governments in developing countries have tended to be preoccupied with power and its material prerequisites with scanty regard for political ideals as to how society can be organized and ruled to the best advantage of the people. Though socio-economic rights occupy some prominent place or space in the Chapter II of the Constitution of Nigeria 1999, the Chapter goes further to make some foundational or fundamental provisions on sovereignty, the basic obligations of the government, the basic principles of governmental policy, and the duties of the citizen; all these put together are constitutionally captioned 'Fundamental Objectives and Directive Principles of State Policy'. In the context of alarming rate of unemployment, abject poverty, homelessness, hunger, frustrations, accompanied by unprecedented high levels of crimes of all shades, including bloodletting, kidnapping, banditry, terrorisms, tribal agitations, mass murder, it is herein opined that only a sincere and massive investment in the enforcement of socio-economic rights by the Nigerian State can provide enduring solution to the aforementioned societal ills and the likes. In a state of deepening poverty and non-satisfaction of, and lack of unimpeded constitutional framework for, socio-economic rights, national resources would inevitably be diverted from attending to the physiological needs to satisfying the avarice of the ruling class.

2. Natural Law, Human Rights, and Socio-Economic Rights: The Legal Nexus

There seems to be a large consensus *ad idem* among jurists and scholars that Chapter II of the Constitution of Nigeria 1999 is the constitutional abode of socio-economic rights in Nigeria. Our bid in this part of this Paper is neither to interrogate nor disturb the said consensus, rather it is for us to highlight the nexus or correlations between socio-economic rights, human rights, and natural law.

The term 'natural law' is used in two senses; that is, the descriptive and prescriptive senses. Natural law in the descriptive or scientific sense is simply a formulation of the regularity with which certain things happen uniformly

* **By Odinakachukwu E. OKEKE, LLB, BL, LLM, PhD**, Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University Awka, Anambra State, Nigeria. Email: oe.okeke@unizik.edu.ng. Tel: 08066740136.

** **Nneka UMEJIAKU, LLB, BL, LLM, PhD**, Senior Lecturer and Head, Department, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University Awka, Anambra State, Nigeria. Email: nnekaumejiaku@gmail.com. Tel: 08033809219. and

*** **Rose A. ENEMCHUKWU, LLB, BL, LLM, PhD**, Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University Awka, Anambra State, Nigeria. Email: ada.enen@yahoo.com. Tel: 08037411752.

all over the world, all things being equal. All the laws such as the law of plenary motion, the law of gravitation, the law of osmosis, the law of relativity which describe the regularity and uniformity with which things happen under certain conditions in the world constitute natural law in the descriptive sense of the term. On the other hand, in its prescriptive sense, natural law is a universal precept or command intended by nature to regulate human behaviour.¹ It is the law of reason, rightness and truth.² It is not created by any man; it is rather dictated by nature and, is discoverable by right reason. The natural law philosophers looked to right reasoning as a guide for discerning the most perfect form of laws from which every other law must derive validity. It is in the prescriptive sense that this Paper discusses natural law. On natural law theory, a learned author submitted that:

It is the belief of natural law protagonists that man is endowed with reason. This reasoning faculty in man helps him to admit and adopt rules acceptable to reason as law. Unreasonable rules are therefore adjudged as containing no element of law and, in fact, illegal...Unjust laws are unreasonable and wicked laws. Unreasonable laws are not fit to attract obedience. Disobedience to unjust laws also forms the basis on which the protagonists of the natural law, of which Cicero was one, build their propositions.³

Human rights are rights, which inheres in every human person by virtue of the human nature. In this connection, human rights are both natural and universal. This assertion receives better clarification when we draw a distinction between human rights and legal rights.⁴ Therefore, human rights have their source in natural law and therefore, they are not the creation of human authority or government though the rights may be confirmed or affirmed by positive law or legal instruments.⁵ In the view of natural law, nature ascribes to the individual a status, a dignity and certain inalienable rights. These rights antedate the government, and as such, serve as morally valid limitations on the power of government, which primarily exist to safeguard those rights.⁶ These rights were not created by the Constitutions of nations *per se*; they antedate Constitutions, they came into *esse* by virtue of the nature of man. Put differently, human rights are natural rights inherent in man and discoverable by reason. In the case of *Kuti v A.-G., Federation*⁷, the Court gave judicial credence and blessing to this proposition. In that case, Kayode Eso, JSC (of blessed memory) said, *inter alia*, that: 'It is a right which stands above the ordinary laws of the land and is antecedent to the political society itself. It is a primary condition for civilized existence.' Even the universal declaration of human rights, other international bills of right and human rights instruments, and the fundamental and socio-economic rights in Constitutions of modern nations are part of the indelible footprint of natural law. For the avoidance of doubt, let us quickly observe and remark that the term 'human rights' is not restricted to any particular brand of rights but represent a common household or an amalgamation of both civil and political rights on the one hand and social, economic and cultural rights on the other hand.⁸ In fact, socio-economic rights have been defined as those 'human rights that aim to secure for all members of a particular society a basic quality of life in terms of food, water, shelter, education, health care and housing'.⁹ Put *simpliciter*, socio-economic rights form part of human rights. Socio-economic rights aim to ensure that everyone has access to resources, opportunities and services essential for an adequate standard of living. Typical examples of social, economic and cultural rights include the rights to education, work, social security, food, and an adequate standard of living.¹⁰ A perusal of the provisions of Chapter II of the Constitution of the Federal Republic of Nigeria 1999 will reveal that it largely draws inspiration from, but is not limited to, the spirit of socio-economic rights, and let us continue to remember that socio-economic rights form part of human rights even as we shall keep in view that human rights are inherent in the natural order of life. Human rights are therefore established by the laws of nature and they encompass socio-economic rights.¹¹ The said particular or key provisions of Chapter II of the Constitution of the

¹ JI Omoregbe, *Philosophy of Law: An Introduction to Philosophical Jurisprudence* (Lagos: Joja Educational Research and Publishers, 1997) pp. x – xi.

² AA Owoade, 'Rule of Law & Justice System in Nigeria: The Common Law & Islamic Jurisprudential Approach' (2009) 2 *CJJIL*, 41.

³ GN Okeke, *Introduction to Consular Immunities & Privileges, Jurisprudence and Constitutional Law* (Enugu: Nolix Educational Publications, 2010) p. 134 – 135.

⁴ J Hausermann, 'The Realization and Implementation of Economic, Social and Cultural Rights' in R Beddard & DM Hill (eds.), *Economic, Social and Cultural Rights: Progress and Achievement* (London: Macmillan Academic and Professional Ltd., 1992) p. 47 cited in SI Nwatu, 'Legal Framework for the Protection of Socio-Economic Rights in Nigeria' (2011 – 2012) 10 *Nig. J. R.*, 23.

⁵ *Ibid.*

⁶ ON Ogbu, *Modern Nigerian Legal System* (2nd edn, Enugu: CIDJAP Press, 2007) pp. 13 – 14.

⁷ [1985] 8 *NWLR* 623.

⁸ SI Nwatu, 'Legal Framework for the Protection of Socio-Economic Rights in Nigeria' (2011 – 2012) 10 *The Nigerian Juridical Review*, 24.

⁹ G Erasmus, 'Socio-Economic Rights and Their Implementation: The Impact of Domestic and International Instruments' (2004) 32 *International Journal of Legal Information*, 243, 252.

¹⁰ SI Nwatu, *op cit.*

¹¹ J DeMint, 'You Have No Rights without Natural Law' <<https://hal.science/hal-02516333/document>> accessed on 5 September 2022.

Federal Republic of Nigeria 1999 that are perceived to represent, or have the colouration of, socio-economic rights are sifted and cited as follows:

Right to General welfare and security: the security and welfare of the people shall be the primary purpose of government;¹²

Right to participatory governance system: participation by the people in their government shall be ensured in accordance with the provisions of this Constitution;¹³

Provision of Transportation: adequate facilities for movement of people, goods and services throughout the Federation;¹⁴

Provision of physiological needs: suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens;¹⁵

Right to employment: all citizens, without discrimination on any group whatsoever, [shall] have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;¹⁶

Conditions of work: it shall be ensured that conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life.¹⁷ Also, the state is to put in place policies to ensure that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;¹⁸

Right to health: adequate medical and health facilities for all persons;¹⁹

Gender sensitive rights - Right to equal pay: for equal work without discrimination on account of sex, or on any other ground whatsoever;²⁰

Right of the child: children, young persons and the aged are [entitled to be] protected against any exploitation whatsoever, and against moral and material neglect;²¹

Right to public assistance in conditions of need;²²

Right to education, from cradle to grave: free, compulsory and universal primary education; free secondary, university education and adult literacy programme;²³

Right to a safe environment: The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria;²⁴

Cultural rights: the state shall protect, preserve and promote the Nigerian cultures which enhance human dignity.²⁵

Perhaps, in order to ensure that the State has the capacity to fund the socio-economic rights that require budgetary provision to execute, Section 16 of Constitution of the Federal Republic of Nigeria 1999 provides essentially for *state ownership and control of the major sectors of the economy*. That the state shall:

- ‘manage and operate the major sectors of the economy, without prejudice to equally operating or participating in other sectors of the economy;²⁶
- protect the right of every citizen to engage in any economic activities outside the major sectors of the economy, even though any person may still participate in the major sectors of the economy;²⁷
- not operate the economic system in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group;²⁸
- ensure that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;²⁹
- control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.³⁰

¹² Constitution of the Federal Republic of Nigeria 1999, s. 14(2)(b).

¹³ *Ibid.*, s. 14(2)(c).

¹⁴ *Ibid.*, s. 15(3)(a).

¹⁵ *Ibid.*, s. 16(2)(d).

¹⁶ *Ibid.*, s. 17(3)(a).

¹⁷ *Ibid.*, s. 17(3)(b).

¹⁸ *Ibid.*, s. 17(3)(c).

¹⁹ *Ibid.*, s. 17(3)(d).

²⁰ *Ibid.*, s. 17(3)(e).

²¹ *Ibid.*, s. 17(3)(f).

²² *Ibid.*, s. 17(3)(g).

²³ *Ibid.*, s. 18(3)(a) to (d).

²⁴ *Ibid.*, s. 20.

²⁵ *Ibid.*, s. 21.

²⁶ *Ibid.*, s. 16(1)(c).

²⁷ *Ibid.*, s.16(1)(d).

²⁸ *Ibid.*, s.16(2)(c).

²⁹ *Ibid.*, s. 16(2)(b).

³⁰ *Ibid.*, s. 16(1)(b).

In the same spirit of ensuring availability of resources to meet socio-economic needs, Chapter II, in Section 15(5) of the Constitution of Federal Republic of Nigeria, 1999 donates power to the State to combat corruption, thus it is therein declared that ‘the State shall abolish all corrupt practices and abuse of power’. Notwithstanding the manner in which they are framed or couched, and the debate surrounding its usefulness, the above pleasant provisions of Chapter II of the Constitution of Federal Republic of Nigeria 1999 represent the constitutional framework for, and guarantee of, economic, social and cultural rights in Nigeria.³¹

3. Chapter II of the Constitution of Federal Republic of Nigeria 1999: The Rationale Principles of Democracy and Social Justice

Democracy has been defined as government by the people, either directly or through representatives. Social justice may be described as the fair and proper administration of laws that conforms to the moral principle or the natural law, such as that all persons, irrespective of ethnic origin, gender, possession, race, religion, et cetera, are to be treated equally and without prejudice. The importance and the hinge of our commitment to research on the provisions of Chapter II of the Constitution of Federal Republic of Nigeria 1999 can be immediately discerned *inter alia* from the unambiguous affirmation in the Chapter that the Constitution is adopted pursuant to the spirit of the principles of democracy and to lay the foundation for promotion of social justice in Nigeria. Thus, the foundation upon which Nigeria stands as a sovereign state is constituted by the principles of democracy and social justice.³² Democracy and social justice in the context of Chapter II of the Constitution of Federal Republic of Nigeria therefore constitute a nation administered with due regard to fairness and value of every person’s freedom of choice. It is submitted for the purposes of emphasis that sovereignty belonging to the people is the hallmark of democracy. This rationale is meant to establish the strength of the people to elect representatives in government and recall such representatives when the people are of the opinion that the falcon is not or is no longer hearing the falconer, that is to say that the representative is not or is no longer acting with due regard to the people’s interest and aspirations. It is now obvious that the ultimate responsibility of the government is to ensure the safety of and wellbeing of the people and their participation in the government.

Responsible and Accountable Government

A responsible and accountable government is necessary for good governance in any country. Over the years several connotations has been ascribed to the term governance. It has been defined as that which ‘comprises the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern.’³³ Also, it has also been seen as: ‘manner in which power is exercised in the management of a country’s economic and social resources for development.’³⁴ It has also simply been put as: ‘the activities or process of managing public affairs.’³⁵

Ability to achieve sustainable development seems to be a mirage in a country where good governance is lacking. Good governance thus relates to the soundness and efficacy of the guiding structure, mechanism, and process, which direct socio-economic and political relationship of a nation. It comprises of the three interrelated spheres of government: administrative, political and economic. It includes quality service and fair, transparent, accountable, participatory and corrupt free society. Acts of the ruler and the ruled should be subject to the dictate of the law before ordinary courts of the land. Human rights and minority right should be taken into consideration. It requires an independent judiciary and good implementation of the law. Effective participation is another cardinal principle of good governance. This shows that participation irrespective of gender, whether male or female is a major foundation of good governance. It could be direct or through the true representatives of the people. There should be free speech and people should be able to freely associate. The societies concern should be put into account before policies are passed and implemented. People need to be informed in an organized manner.

Similarly, there is the need for transparency, responsiveness, and consensus oriented. This means that decisions and its implementation should follow the laid down rules and regulations. State should not be conducted as a secret society and everybody especially those affected by government decisions should have required information in the affairs of the state. The press also needs to be free. Good governance requires that institutions and processes

³¹ S Ibe, ‘Beyond justiciability: Realizing the promise of socio-economic rights in Nigeria’ (2007) 1 *African Human Rights Law Journal*, 225.

³² Constitution of Federal Republic of Nigeria, 1999, s. 14(1).

³³ J Graham *et al*, ‘Principles for Good Governance in the 21st Century’ (2003) *Institute On Governance, Policy Brief No.15* cited AO Sambo & AB Abdulkadir, ‘Ouster Clauses, Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia’ (2012) *OIDA International Journal of Sustainable Development*, 97, <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2208523_code1520621.pdf?abstractid=2208523&mirid=1> accessed on 5 September 2022

³⁴ World Bank (1992) *Governance and Development*, Washington D.C. cited in AO Sambo & AB Abdulkadir, *op cit*.

³⁵ A Noor, *Ethics, Religion and Good Governance*, (2008) 3, 2 *JOAAG*, 62-66 <<https://pdf4pro.com/amp/view/ethics-religion-and-good-governance-joaag-5dd0.html>> accessed on 5 September 2022.

try to serve all stakeholders within a reasonable timeframe. Also, the government should do enough consultations before taking decisions in certain national interest. To achieve this, the government needs to understand the culture, history, and values of a given society. In the event of conflicts, steps should be taken to mediate between the people according to law and justice of the matter.

In the same vein, equity and social inclusiveness, effectiveness and efficiency, and accountability are significant aspect of good governance. The society should be built on fairness and egalitarianism. An inclusive government as opposed to winners take all, needs to be promoted. The welfare package of the people by the state should be general and should be the primary concern of the government. This needs to be done irrespective of the group of the people. The government is required by this to use the natural and human resources at her disposal to harness the best interest of the society. The resources should be sustainably made use of so as to cater for the people and not the personal use of the people at the elms of affairs. Government should be accountable to the people. It should also be run in such a situation where the people can hold the government accountable. Responsibility and accountability should be visible in all sectors of the society and it is submitted that *section 13* of the Constitution of Federal of Nigeria, 1999 should be made enforceable.

The Constitution of Federal Republic of Nigeria, 1999 provides that it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of Chapter II of the Constitution.³⁶ It follows from this provisions that the government shall not be aimless. In fact, even the programme as well as the aims and objects of any political party which aspires to sponsor its candidate(s) into government is required to conform with the spirit and principles of Chapter II of the Constitution.³⁷ Hence there is a constitutional compulsion on every political party in Nigeria to show fidelity to the provisions of Chapter II of the Constitution by ensuring that its programme as well as its aims and objectives are in consonance with the those provisions.

The above provisions made it a duty on the part of all persons to observe and apply the Directive Principles and Fundamental Objectives of State Policy. More so, the Supreme Court of Nigeria has interpreted the above provision to apply not only to those exercising legislative, executive or judicial powers but also applied to private individuals.³⁸ In that case, the apex court stated inter alia that:

It has been argued that the Fundamental Objectives and Directive Principles of State Policy are meant for authorities that exercise legislative, executive and judicial power only, and therefore any enactment to enforce their observance can apply only to such persons in authority and should not be extended to private persons, companies or private organizations. This may well be so, if narrow interpretation is to be given to the provisions, but it must be remembered that we are here concerned not with the interpretation of a statute but the constitution which is our organic law or *grundnorm*. Any narrow interpretation of its provision will do violence to it and will fail to achieve the goal set by the Constitution.

Accordingly, the debt the government of Nigeria both at federal, state and local government levels which is the vertical axis of governance or the legislative, executive and judiciary, the horizontal axis of governance appear to owe the people of Nigeria is principally to govern with a sense of responsibility which is practically reflected in carrying out people oriented projects, and programmes as set out in Chapter II of the Constitution.³⁹

Effective Tool for Combating Corruption

Under the Fundamental Principles and Fundamental Objectives of State Policy in Nigeria, there is a provision, which donates power to the State to abolish all corrupt practices in Nigeria; we see as a viable anti-corruption tool. Put differently, Chapter II of the Constitution of Federal Republic of Nigeria 1999 contains a provision, which on the face thereof appears to be or ought to be an effective tool for combating corruption. Constitutionally, section 15(5) of the Nigerian Constitution provides that ‘the State shall abolish all corrupt practices and abuse of power’.⁴⁰ However, the Constitution does not define corruption. It is the bid to satisfy the objective of this constitutional provision that successive administrations have enacted laws and established institutions with the view to combating corruption. In the Corrupt Practices and Other Related Offences Act (2000)⁴¹, corruption is specifically explained to ‘include bribery, fraud and other related offences’. However, the Economic and Financial

³⁶ *Ibid*, s. 13.

³⁷ *Ibid*, s. 224.

³⁸ See *Attorney-General of Ondo State v. Attorney-General of the Federation & 35 ors.* (2002) 27 WRN 1 cited in GN Okeke, ‘Fundamental Objectives and Directives Principles of State Policy: A Viable Anti-Corruption Tool in Nigeria’ (2011) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 2, 179.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

⁴¹ Cap. C31, Laws of the Federation of Nigeria, 2004.

Crimes Commission (Establishment) Act 2004⁴² provides a more elaborate definition of corruption. Section 46 provides that:

Economic and Financial Crimes mean the non-violent, criminal and illicit activities committed with the objectives of earning wealth illegally...individually or in a group or in organized manner thereby violating existing legislations governing the economic activities of the government and its administration and it includes any form of fraud, narcotics, drug trafficking, money laundering, embezzlement, bribery, looting....

In view of this power donated by the Constitution to the State to combat and abolish corruption and because the section of the Constitution vide which the power is donated falls under Chapter II of the Constitution, it is our submission that Chapter II of the Constitution of Federal Republic of Nigeria is a viable anti-corruption tool with which to check and test the honesty and integrity of those voted, nominated or appointed into governmental or public offices.

Rule of Law: a Fundamental Principle of State Policy⁴³

Upon a careful interrogation of the purpose for the magnificent provisions, which are contained in Chapter II of the Constitution of Federal Republic of Nigeria 1999, we found that the spirit of rule of law somewhat resides in those Fundamental Objectives and Directive Principles of State Policy set out in the said Chapter II of the Constitution. This is so because:

1. The Fundamental Objectives and Directive Principles of State Policy are against the weight of arbitrary use or application of national wealth/resources and abuse of governmental power.
2. The Fundamental Objectives and Directive Principles of State Policy are against inequality before the law, and promotes unfettered access of the citizenry to justice.
3. The Fundamental Objectives and Directive Principles of State Policy include social, economic, educational and cultural benefits/rights.

It would be recalled that one of the earliest writers on the rule of law is Dicey. We keep in view that Dicey's first meaning recognized the absolute supremacy of the law but condemned arbitrary use of power. In his lectures delivered at the University of Oxford as a Vinerian Professor of English law,⁴⁴ gave three meanings of the concept and it is our finding that the Fundamental Objectives and Directive Principles of State Policy contained in chapter II of the Constitution of Federal Republic of Nigeria 1999 embrace at least two of those meanings of rule of law given by Dicey. Dicey's first meaning recognized the absolute supremacy of the law but condemned arbitrary use of power. He said:

The rule of law means in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government... a man may be punished for a breach of law, but he can be punished for nothing else.⁴⁵

In his second meaning of the concept, Dicey emphasized the principle of equality before the law. He said that every citizen, including the officials must be amenable to the jurisdiction of the ordinary courts of the land. He stated that 'the rule of law means equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law court.'⁴⁶

It is instructive to also note that in 1959, the meaning of the rule of law was further interrogated by the International Congress of Jurists held in Delhi. In the Conference, which was made up of 53 countries represented by 185 judges and lawyers, the concept was given a broader meaning. At the end of the Conference, the rule of law was declared as:

a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized.⁴⁷

⁴² Cap. E1, Laws of the Federation of Nigeria, 2004.

⁴³ N Tobi, 'The Rule of Law And Anti-Corruption Crusade in Nigeria', A Lecture delivered at the 9th Justice Idigbe Memorial Lecture, at University of Benin, Benin City, Nigeria on 6th August, 2008, pp. 3 – 9 <<https://www.nigerianlawguru.com/articles/constitutional%20law/THE%20RULE%20OF%20LAW%20AND%20THE%20ANTI%20CORRUPTION%20CRUSADE%20IN%20NIGERIA.pdf>> accessed on 5 September 2022.

⁴⁴ AV Dicey.

⁴⁵ AV Dicey, *Introduction to the Study of Law of the Constitution* (London: Macmillan, 1959) p.202.

⁴⁶ AV Dicey, *op cit.*, pp. 202 – 203.

⁴⁷ 'Rule of Law in a Free Society', International Commission of Jurists (1959) African Conference on the Rule of Law (1961), p. 3. <<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf>> accessed on 5 September 2022.

This definition is important in the sense that it did not stop at the traditional meaning of the concept in the context of civil and political rights but also included social, economic, educational and cultural rights. This re-enactment of the rule of law, which is more akin to the socialist philosophy, was materially entrenched in Chapter II of the 1979 Constitution as Fundamental Objectives and Directive Principles of State Policy. It is remarkable that for the first time in the constitutional history of Nigeria, the economic and social duties or obligations of Government were clearly entrenched in the said 1979 Constitution. This same spirit of the rule of law has now been transferred to Chapter II of the Constitution of Federal Republic of Nigeria 1999 which is the subject matter of this present inquiry; that is, our inquiry into the justiciability of this very important chapter (Chapter II) of the said Constitution of Federal Republic of Nigeria 1999.

4. Conclusion and Recommendations

Socio-economic rights when incorporated into a Constitution in the form of directive principles may not be binding on the state in a legal-juridical sense as in the case of Nigeria but can be binding in a political and moral sense. The legislative and executive branches are expected to take steps to realize these directive principles, and to give effect to the socio-economic rights derived therefrom, in the enactment and implementation of laws. Directive principles typically make elected politicians, rather than judges, responsible for dealing with socio-economic issues, thereby avoiding some of the potential problems of legitimacy and competence associated (as discussed above) with judicial rulings in this area. Today, a majority of national Constitutions include a wide range of socio-economic rights, either as directly enforceable provisions or as aspirational statements, objectives and or obligations of the government, or directive principles. Inclusion of socio-economic rights in the form of directive principles is relatively common in countries whose constitutional tradition derives from English common law, including Ghana, India, Ireland, Malta, Nigeria and Papua New Guinea. Typical provisions defining directive principles include the following:

Constitution of Ireland: ‘The principles of social policy set forth in this Article are intended for the general guidance of the Parliament. The application of those principles in the making of laws shall be the care of the Parliament exclusively, and shall not be cognizable by any Court under any of the provisions of this Constitution.’⁴⁸

Constitution of Malta: ‘The provisions of this Chapter shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws.’⁴⁹

Constitution of India: ‘The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.’⁵⁰

Lack of judicial enforcement does not necessarily mean that directive principles command no significance. In helping to define the context in which politics takes place, they could have political significance that at least partially compensates for their lack of judicial enforceability. For example, direct principles may make it easier for civil society to mobilize support in the name of social and economic justice by invoking the populist rhetoric of a constitutional violation. Further, legislators can invoke directive principles to promote or ease the passage of legislation that may promote socio-economic rights, invoking the directive principles in parliamentary debates and public forums in support of their legislative initiatives. Accordingly, it has been propounded by the Indian Court in *Minerva Mills Ltd & Ors v. Union of India & Ors*,⁵¹ that: ‘...merely because the Directive Principles are not enforceable in a court of law, it does not mean that they cannot create obligations or duties binding on the State...In fact, non-compliance with the Directive Principles would be unconstitutional’.⁵²

In that *Minerva Mills Ltd & Ors v. Union of India & Ors*, the Indian Court also identified the significance of Directive Principles, as follows: ‘They project the high ideal, which the Constitution aims to achieve. They are so fundamental in the governance of any country. In fact, there is no sphere of public life where delay can defeat justice with more telling effect than in the non-implementation of the Directive Principle’. In a scholarly bid to show the significance of national laws (including Constitutions) for the realization of socio-economic rights, Viljoen has contended that ‘as a relatively accessible source of possible redress or a remedy, domestic legislation

⁴⁸ See Article 45 of the Constitution of Ireland, 1937 <https://en.wikisource.org/wiki/Constitution_of_Ireland_%28original_text%29#DIRECTIVE_PRINCIPLES_OF_SOCIAL_POLICY> accessed on 5 September 2022.

⁴⁹ See Chapter II and particularly Article 21 of the Constitution of Malta, 1964 <<http://www.wipo.int/edocs/lexdocs/laws/en/mt/mt010en.pdf>> accessed on 5 September 2022.

⁵⁰ See Part IV and particularly Article 37 of the Constitution of India < <https://www.mea.gov.in/Images/pdf1/Part4.pdf>> accessed on 5 September 2022

⁵¹[1980] 3 SCC 625.

⁵² *Minerva Mills Ltd. v. Union of India* (supra)

provides an important first port of call for the realization of socio-economic and cultural rights'.⁵³ By Nigeria's constitutional culture, the Nigerian Constitution is recognized as the supreme law and is at the apex of the domestic legal system.⁵⁴ Accordingly, rights guaranteed under the Constitution enjoy a considerable measure of primacy, supremacy and constitutional efficacy.

Borrowing a leaf from the Indian constitutional practice, Chapter II of the Constitution of the Federal Republic of Nigeria 1999 contains certain provisions, which have the legal potentials to promote conditions necessary for the people's welfare, security, prosperity and for the enjoyment of culture. These provisions should not be glossed over since they are incorporated in the *fons et origo* of the Nigerian Legal System. The provisions of Chapter II of the Constitution of the Federal Republic of Nigeria 1999 command great constitutional significance and should command practical fidelity from all the arms of the government of Nigeria. Accordingly, it shall be the duty of all the arms of government at all levels of government in Nigeria to conform to, observe and apply the provisions of Chapter II of the Constitution. The aforesaid recommended fidelity, conformity, observance and application of the provisions of Chapter II of the Constitution shall be in tandem with the spirit of sections 1(1) &(3) and 13 of the provisions of Chapter II of the Constitution.

The provisions of Chapter II of the Constitution should be interpreted by the Courts as to give effect to the significance and spirit of the Chapter especially when the government fails to take reasonable measures toward a progressive implementation of the provisions. The courts should say nay to any interpretation or attitude, which would render the Chapter a toothless bulldog or mere window dressing. The constitutional disparity in Nigeria need be resisted and or cast out by the courts. This has become particularly important and urgent because the civil and political rights cannot be meaningfully enjoyed in a state of economic, social and cultural benefits' deprivation. For example, where there is resources to provide employment, food, water, housing, quality health facilities/services, healthy environment but the government wickedly fails to provide these, it could lead to crimes, agitations for secession or independence, wild conflicts, revolutions, death of the poor masses which in true light will *inter alia* likely amount to breach of the right to life.

⁵³ F Viljoen, 'The justiciability of socio-economic and cultural rights: Experience and problems' (2006) Unpublished paper presented at the Good Governance Programme at the University of Pretoria cited in ST Ebobrah, 'The Future of Economic, Social and Cultural Rights Litigation in Nigeria' (2007) 1 (2) *CALS Review of Nigerian Law and Practice*, 115.

⁵⁴ *A.G Ondo State v A.G Federation*, [2002] 9 NWLR (Pt. 772) 222.