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MAKING SOCIO-ECONOMIC RIGHTS JUSTICIABLE IN NIGERIA THROUGH *PERSONALISING* OF HUMAN RIGHTS

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Abstract
Enforcement of socio-economic rights in Nigeria through the agency of the courts has been very difficult and rare. This is down to a Constitutional provision that apparently bar Nigerian courts from entertaining matters bothering on this genre of rights. A number of methods have proffered to assist litigants, lawyers and the courts overcome this Constitutional barrier. At least one of the methods has received the endorsement of the Nigerian Supreme Court. However, the rarity at which the courts sanction the enforcement of this genre of right indicates that these methods do not mainly constitute a panacea to the Constitutional barrier. We therefore suggest another method anchored on the personalization of human rights with its core the dignity of the human person as a more effective complement to the existing methods in overcoming this Constitutional barrier.
Keywords: Socio-economic rights, Justiciable and Personalising

INTRODUCTION

It is possible for some form of effective limited adjudication of Socio-economic rights[1] in Nigeria within the existing legal framework and beyond current legal perceptions[2]. Socio- economic rights are generally regarded by the international community as only placing obligation on the government to progressively fulfill them as resources to do so are available.[3] This is unlike civil and political rights which only require the government to refrain from encroaching on the exercise of these rights.[4]

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[1] Economic, Social and Cultural rights

[2] Current legal perceptions still think there are ways of enforcing these rights. Some of these perceptions are discussed in this paper.

[3] Article 2 of the International Covenant on Economic, Social and Cultural (ESC) Rights treaty states that "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieveing progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". However, it is argued that although the issue of resources to implement all ESC rights might be of genuine concern; and this however cannot justify State Parties failure to realize these rights progressively. This is because the issue of lack of resources cannot relieve State parties of the minimum core obligations of ESC rights. (Comment 3 of ECOSOC Committee on Economic Social and Cultural Rights set up by ECOSOC 1985/17 of May 1985 cited in C.O. Adekoya, Navigating the Hurdles of Justiciability and Judicial Review of Socio-Economic Rights in Nigeria (2011) (1) (1) Journal of Public Law 10.

[4] It is however argued that this is a simplistic approach which overlooks the increasing recognition that all human rights impose a complex multilayered structure of obligations on States which legal scholars define to include the obligation to respect the right, the obligation to protect it, the obligation to promote the right and the obligation to fulfill it or ensure its observance (Van Hoof "The Legal Nature of Economic, Social and Cultural Rights: A Rebuttal of Some Traditional View (1984) Alson and Tomasevski (ed) The Right to Food 97 cited in Isabella Okagbue, Women's Rights are Human Rights (1996) Nigerian Institute for Advanced Legal Studies 19

The trend is some countries[5] is to include socio-economic rights in their written constitution and make them non-justiciable[6]. These rights form the substantial contents of Chapter 2[7] of the Nigerian Constitution which is also rendered non-justiciable by the same Constitution[8]. There are several reasons proffered for including economic, social and cultural rights in the constitution despite the apparent ouster of courts from entertaining any matter brought before it bothering on item in Chapter 2. One reason is that many countries in the world still consider the appropriate function of a constitution to be "a political charter of government, a manifesto, a confession of faith, a statement of ideals and a charter of the land and a constitution of such people consists largely of declarations of objectives or directive principles of government, and a description of the organs of government in terms that import no enforceable legal restrains"[9] Further, it is also argued that the successful implementation of the constitution and the orderliness of the defunct Soviet society lend credence to the position that constitutional provisions need not be legally justiciable to command respect and obedience.[10] In response, proponents for the exclusion of non-justiciable provisions from constitutions argue that if the constitution is to be effective in limiting the powers of government to prevent arbitrariness, despotism and a government of will instead of law, then the provisions of a constitution must be justiciable.[11] Secondly, although a constitution may be modified or even be nullified by usages, customs and conventions, such usages, customs and conventions should be left unwritten to moral nuances and sensibilities of a particular society but where they are embodied in the constitution, then they must be justiciable.[12] Moreover, a constitution is first and foremost a legal document whose provisions must *ipso facto* be justiciable and legally enforceable otherwise it will be reduced to empty platitudes and hollow admonitions which should have no place in a constitution.[13] Consequently it is contended that a document as sacred as the constitution loses its seriousness and invites public cynicism and odium when it degenerates to the level of making pious declarations which are unenforceable.[14]

The importance of socio-economic rights as a genre of human rights has been poignantly underscored in a number of ways. For instance, high poverty rate in country, the high unemployment level in the Nigeria and frequent incidents of communal clashes fueled by economic and social deprivations are all said to traceable to the non-justiciability of these rights.[15] Similarly, it is argued that basic needs such as food, fuel, safe water, shelter, education, rudimentary health care, skills acquisition, development and employment opportunities,

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[5] For instance, India, Nigeria and Ghana.

[6] Justiciablity has been defined as the ability to claim a remedy before an independent and impartial body when a violation of a right has occurred or is likely to occur and which implies access to mechanisms that guarantee recognized rights (International Commission of Jurists, Courts and the Legal Enforcement of Economic, Social, Cultural Rights: Comparative Experience of Justiciability (2008) 1 cited in C.O. Adekoya, *Op Cit*, 1

[7] Fundamental Objectives and Directive Principles of State Policy

[8] Section 6 (6) (c) of the 1999 Constitution expressly made such matters in Chapter 2 of the same Constitution "Non-justiciable".

[9] B.O. Nwabueze, Fundamental Objectives and Directive Principles of State Policy: its nature and functions in (1977) The Great Debate (Nigerian View Points on the Draft Constitution) 49 cited in E.I Kachikwu & M.A.A. Ozekhome, Extending the Frontier of Constitutionalism: Should Constitutions Contain Legal Rules Stricto Sensu? (1978-1988) 3 Nig. J.R. 87

[10] Kachikwu & Ozekhome, Op. Cit. p. 90

[11] Ibid, 92

[12] Ibid, 94

[13] Obafemi Awolowo, My Thoughts Great Debate(Nigerian View Points on the Draft Constitution) 44 cited in E.I Kachikwu & M.A.A. Ozekhome, Op. Cit, 97

[14] Ibid

[15] U.U. Chukwumaeze, Socio- Economic and Cultural Rights: The Panacea to Threats on Prospects of Succesful Democracy in Nigeria (2001) In Search of Legal Scholarship (Essays in Honour of Ernest Ojukwu).31, see also C.O. Adekoya, (Fn 2), emphasizing the need for countries like Nigeria with high poverty rate to take the realization of ESC rights seriously

access to credit facilities and so on which can be located within the discourse on economic, social and cultural rights are issues that bother women as majority of the world's poor.[16]

There have been a number of interesting propositions on surmounting the constitutional provision on non-justiciablility in relation to the provisions of Chapter 2 of the 1999 Constitution of Nigeria. First, it is argued that section 6 (6) (c) that made Chapter 2 unjusticiable is in the mode of ouster clauses used by the Military to wade off questions regarding the validity of the laws made by the Military administrators. Based on this, it is admonished that the courts should employ similar dexterity in skirting the issue of non-justiciability of the provisions of Chapter 2 of the 1999 Constitution[17] It is further suggested[18] that, as a way of circumventing the provisions of section 6 (6) (c) is that in place traditional court presided over by professional lawyers a special tribunal be created by the National Assembly to look into such matters. This, it is asserted, will be in line with item 57 (a)[19]. Another position, supported by the Nigerian Supreme Court, is to the effect that the National Assembly can by virtue of item 60 (a) of the Exclusive Legislative List of the Second Schedule to the Constitution legislate on any matter in Chapter 2 of the Constitution and thereby rendering it justiciable.[20] Also, another approach from the Supreme Court in India is to hold that the court should strive to give effect to the fundamental rights as well as directive principles[21] by adopting a harmonious construction.[22] It is also suggested that there should be a separation of sections dealing with socio- economic rights from sections dealing with the philosophy of government or laying foundations for good governance in order that the former will be made justiciable and the latter remain unjusticiable[23].

Our position, in this paper, on the issue of non-justiciability of the Constitution is that issues of human rights are better understood and appreciated when viewed from perspective of right to the dignity of the human person. Dignity of the human person formed the historical basis for the agreement between the proponents of Civil and Political Rights and Economic, Social and Cultural and at the core of the agreement is the issue of *personalization* of human rights rather than *individualization* of human rights. It is felt the *personalization* of human rights is more in tandem with human dignity or right to the dignity of the human person. Consequently, we argue that the narrative of *personalization* of human rights through right to dignity of human person can be tapped into by litigants to make Chapter 2 justiciable despite section 6 (6) (c) of the 1999 Constitution.[24]

We shall be now examine in closer details the various arguments that proffer possible ways of circumventing the apparent issue created by non-justiciability of the provisions of Chapter 2, our response to these arguments and also our position on the issue. We also, at the onset, responded to the contention that the rights contained in the

[16] See Isabella Okagbue, Op Cit, 18.

[17] Azinge, E " Living Oracle of the Law and Fallacy of Human" (2008) Sixth Justice Chike Idigbe Memorial Lecture cited in M. Zechariah and L.P. Dauda, Institutional and Constitutional Constraints to the Realisation of Economic, Social and Cultural Rights in Nigeria: Lessons to Learn from International Law, NIALS Journal of Constitutional Law, 236 at 270.

[18] B.O. Okere, "Fundamental Objectives and Directive Principles of State Policy under Nigerian Constitution" (1978-1988) 3 Nig. J.R. 74 at 80.

[19] Now item 60 (a) of the 1999 Constitution.

[20] See Olafisoye v. FRN (2004) 4 N.W.L.R (Pt. 864) 580.

[21] As in Chapter 2 of the 1999 Constitution of Nigeria.

[22] Kachikwu & Ozekhome, Op. Cit, 103. B. O. Okere also broached this idea (B. O. Okere, fn 16, 23.)

[23] Osita Nnamani Ogbu, Human Rights Law and Practice in Nigeria (2nd Edition) (Part 1) (Snaap Press Limited, 2013) 120.

[24] We elaborated more on this in Part 2.1 of this work.

African Charter on Human and Peoples Rights remains enforceable despite the non-justiciability of the provisions of Chapter 2 of Nigerian Constitution.[25]

IS THERE ANY HURDLE TO ENFORCEMENT OF SOCIO-ECONOMIC RIGHTS IN NIGERIA?

It has been contended, as we noted[26], that African Charter on Human and Peoples Rights[27] remains enforceable despite the non-justiciability of the provisions of Chapter 2 of Nigerian Constitution.[28] This contention is anchored on the decision of the Supreme Court in **Abacha & 3 Ors v. Fawehinmi**.[29] In other words, there is no hurdle to enforcement of social, economic and cultural rights in Nigeria.

This assertion and the basis for it may be faulted on a number of grounds. First, the implication of the provisions of Chapter 2 was never considered in the **Abacha** case.[30] Secondly, although parts of judgment in **Abacha** case appear to suggest that the rights and obligations under the Charter have become fully and legally enforceable in Nigeria as any other municipal or domestic law in Nigeria[31] it is argued that socio-economic rights provided in the Charter are also provided for in Chapter 2 of the Nigerian Constitution.[32] The implication of this is that based on the supremacy of the Constitution[33], the provisions of Charter in conflict with the provisions of the Constitution will, to the extent of its inconsistency be void[34]. This, we contend, renders the enforceability of socio-economic rights in the Charter practically unenforceable.

SUGGESTIONS AND RESPONSES ON SURMOUNTING THE HURDLES TO LITIGATING SOCIO-ECONOMIC RIGHTS IN NIGERIA

SUGGESTIONS:

One view on surmounting the apparent hurdle posed by the non- justiciability of Chapter 2 of the Nigerian Constitution, it is suggested[35] is for the Nigerian National Assembly, acting on the powers vested on them in item 57 (a)[36] of the Constitution a special tribunal, which may be designated Constitutional Court or Constitutional Council to look into matters that fall within the precincts of Chapter 2. It is argued that will be consistent with the powers vested in the National Assembly in item 57 (a) of the Constitution which empowers the Assembly to make laws with respect to the establishment and regulation of authorities to promote and enforce the observance of the fundamental objectives principles contained in the Constitution. Instance was given of the provision in French Constitution for the establishment of *Conseil Constitutionnel* (Constitutional Council) which has very wide powers as regards the Constitutionality of legislations and an interesting composition including the former Presidents of French Republic. This French model, in terms of composition and powers was consequently recommended for Nigerian Constitution.[37]

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[25] Fn 22.
[26] Section 1.0
[27] Including the Socio, economic and cultural rights part of the Charter.
[28] Fn 22.
[29] (2000) 6 NWLR (Pt. 660) 1, [2001] 51 WRN 29.
[30] Most of the issues ultimately centered on the status of the Charter viz –a –viz the unsuspended part of Nigerian Constitution during the Military regime.
[31] 2001] 51 WRN 29 at 166.
[32] U.O. Umozuruike, The African Charter and National Laws: The issue of Supremacy in C.C. Nweze & Oby Nwankwo (Ed.) Current Themes in The Domestication of Human Rights Norms (Fourth Dimensions Publishing Co., Ltd, 2003)25 at 48. It is however aptly suggested that sections on socio- economic rights should be separated from the sections dealing with the philosophy of government or laying foundation for good governamce.
[33] Section 1 of the Nigerian Constitution.
[34] As provided in section 1 (3) of the Nigerian Constitution.
[35] Fn 17
[36] Section 60 (a) to the second schedule to the 1999 Consitution.
[37] B.O. Okere, O*p cit*, 81.

Another suggestion, which has been applied by the Nigerian Supreme Court, on surmounting the hurdle posed by the issue of justiciability of Chapter 2 is the idea that the National Assembly can by virtue of item 60 (a) of the Exclusive Legislative List of the Second Schedule to the Constitution legislate on any matter in Chapter 2 of the Constitution and thereby rendering it justiciable. The argument is that the phrase "except as otherwise provided by the Constitution" is sufficient to deflate the non-justiciability mould which presumably section 6 (6) (c) of the Nigerian Constitution has been has been cast on in respect of the provisions in Chapter 2 of the Constitution. The outcome of this being that the court will interpret Chapter 2 as justiciable if the Constitution otherwise provides in another section[38]. Based on this, the Supreme Court felt that a |"community reading" of section 6 (6) (c) of the Constitution, section 15 (5) of Chapter 2 of the Constitution and item 60 (a) of the Second Schedule to the Nigerian Constitution makes the provisions of Chapter 2 justiciable once the National Assembly makes a law on its provisions.[39] In the **Olafisoye[40]** case, the appellant[41] at the Supreme Court had objected to the charge against him at the High Court of Federal Capital Territory for infringing some offence under the Corrupt Practices and Other Related Offences Act 2000. In response, the appellant raised an objection challenging the constitutionality of Act. His objection was overruled by the High Court and he consequently appealed to the Court of Appeal and requested for a reference[42] to the Supreme Court. The main question referenced to the Supreme Court was whether the combined effect of the provisions of sections 4 (2), 15 (5), item 60 (a), 67 and 68 of Part III of the Second Schedule of the Constitution of Nigeria confer powers on the National Assembly to make laws for the peace, order and good government of Nigeria with respect to offences arising from, connected with or pertaining to corrupt practices and abuse of power.[43] The Supreme Court therefore affirmed this main question and validated as constitutional sections[44] of Corrupt Practices and Other Related Offences Act which the appellant had put in issue. In other words the Court found that the National Assembly can, under the Constitution, legislate matters in Chapter 2 of the Constitution into existence and therefore render such matters justiciable despite the Constitutional provision suggesting that they cannot do so.[45]

Another suggestion to this problem is the "harmonious construction" approach said to adopted by the Indian Supreme Court[46] This approach is apparently based on the premise that although the fundamental objective principles in the Constitution are not justiciable the courts could make use of them in interpreting certain governmental actions which infringe the rights of private individuals[47] In other word, the suggestion of the courts here is that the best way to animate the provisions of equivalent of Chapter 2 in our Constitution is Nigeria is to adopt a position of complementing it with the interpretation of fundamental right provisions.
It is also suggested that since most Constitutional provisions on fundamental objectives[48] go beyond socio-economic rights and since the contents of the Chapter containing these rights to include mere statements on basic principles of a democratic government which makes it is unenforceable. Based on this, it is suggested that the socio-economic rights of the section be separated from sections dealing with the philosophy of government or

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[38] Olafisoye v. F.R.N (Supra) at 659
[39] Ibid, 661-662, 664.

[40] Olafisoye v. F.R.N (Supra)
[41] Chief Adebiyi Olafisoye
[42] In line with section 295 (3) of the 1999 Constitution.
[43] Olafisoye v. F.R.N. (Supra) 585.
[44] Mainly sections 9 and 26.
[45] Section 6 (6) (c) of the Constitution.
[46] In a string of cases (State of Bombay v. FN. Balsane (1951) S.C.R 682; Biiay Cotton Mills Ltd v. State of Ajmer (1955) 1 S.C.R 752 and Molid Hamif Quareshi v. State of Bihar (1969) SCR 629) known as Zamindari Abolition cases cited in Kaichukwu & Ozekhome Fn 20.
[47] Kachikwu & Ozekhome, fn 20. Okere gives a variant of this idea to mean that all laws are intended to implement the directive principles. Therefore the courts are to evaluate the constitutionality of legislations, whenever it is raised, based on the directive principles.
[48] For instance Nigeria, India and Ghana.

laying foundation for good governance in order that socio-economic rights will be made enforceable while the ones dealing with the philosophy of government or laying foundation for good governance remain non-justiciable.[49]
It is further suggested that section 6 (6) (c) of the Constitution is an ouster clause placed by the Constitution on courts typical of military decrees in Nigeria. Based on this, it is admonished the judiciary exhibit similar activism which they exhibited during the era of military regimes in Nigeria, when they circumvented series of ouster clauses, to circumvent the provision of section 6 (6) (c) of the Constitution.[50]

RESPONSES:
On the view that the Nigerian National Assembly, acting on the powers vested on them in item 57 (a)[51] of the Second Schedule to the Constitution establish a special tribunal, which may be designated Constitutional Court or Constitutional Council to look into matters that fall within the precincts of Chapter 2,[52] our view that it is not the intention of the makers of the constitution that the power in item 60 (a) of the second schedule to the 1999 Constitution conferred by the National Assembly be used to establish a court- like body with judicial powers to hear and determine matter that question falling within the precincts of Chapter 2. If this were to be the position, then it would be creating confusion as any court-like body created by the National Assembly[53] exercising such power would be in conflict with the provisions of section 6 (6) (c) of the Constitution and therefore infringe the provisions of section 1 (3)[54] of the 1999 Constitution.

In response to the suggestion that the issue of non-justiciability of the provisions of Chapter 2 and invariably, socio-economic rights, can be surmounted by legislating on the items[55] in Chapter 2, we maintain that this may not be an effective panacea to this issue. In the first place, this will be a rather tortuous approach to the issue. Legislations take a painful long time to process in Nigeria.[56] The obvious implication is that persons living in Nigeria will have to endure a piece meal legislation of the provisions of socio-economic rights before they can compel their enforcement.[57] Another problem is what may become of legislations essentially built on the provisions of Chapter 2 of the Constitution. The constitutionality of such legislations can be challenged on the ground that it is contrary to the similar provisions in Chapter 2 and therefore a violation of section 6 (6) (c) of the Constitution. This will be similar to the issue we had already raised on the status of African Charter on Human and Peoples Rights as it concerns Nigerian Constitution.[58] Our position remains that such a law will still be held unconstitutional based on the provision in section 6 (6) (c) of the Constitution. The issue of the likely outcome of any post-legislative confrontation with section 6 (6) (c) of the Constitution, with regards to laws legislated into existence essentially on the provisions of Chapter 2 of the Constitution, was not considered in the **Olufisioye** case.[59] Rather the Supreme Court appears to limit itself to the intrinsic constitutional validity[60] of the legislations based on the provisions of Chapter 2 of the Constitution[61] as well as the powers of the National Assembly to

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49 Ogbu, fn 22
50 Fn 15.
51 Now section 60 (a) to second schedule to the 1999 Constitution. Formerly section 57 (a) to the section schedule to the 1979 Constitution.
52 Fn 37
53 In purported exercise of power under item 60 (a) of the second schedule to the 1999 Constitution.
54 The provision making it unconstitutional for any law to go contrary to the provisions of the Constitution.
55 Especially those bothering on Social, Economic and cultural rights.
56 It takes an average of more than a year to process a bill in the Nigerian parliament with the exception of the Appropriation Bill which, due to its nature, is usually processed expeditiously.
57 Through commencement of legal actions in court to affirm the rights inuring to them in these legislations.
58 Section 2.0 of this paper
59 Fn 18.
60 And invariably, the enforceability
61 In this case section 15 (5) of the Constitution.

make legislations in that respect.[62] Apart from this, the need to legislate socio- economic rights[63] in Nigeria appears not to be an issue that is of utmost necessity. This is because the African Charter on Human Peoples Rights, which is applicable in Nigeria, already contains most of the right categorized as socio, economic and cultural rights.

It has also been suggested[64] that "harmonious" interpretation of socio-economic rights in Chapter 2, by the court infusing them into their interpretation of civil and political rights[65] can act as a panacea to the issue of non-justiciability of socio-economic rights in Nigeria. This view seem to be in line with prevailing view in United Nations international documents that socio-economic rights are necessarily complementary, the situating of the task of achieving the process of harmony in the courts renders the desire to achieve the desired nuance solely on courts[66] who may be ill- equipped for the task.

A case has also been made for the separation of purely socio-economic rights from sections dealing with the philosophy of government or laying foundation for good governance.[67] This process of this separation will surely involve an amendment of the Nigeria constitution. The process of amending the Nigerian constitution, from the Constitution itself, is an arduous one.[68] Although there has been three alterations[69] to the 1999 Constitution, however they do not, in the main, deal with matters in the magnitude as delineating and rendering enforceable a separate genre of rights previously unenforceable in Nigeria. Moreover, the manner the provisions of Chapter 2 was couched[70] makes it imperative that any attempt at separating socio- economic rights from philosophy of government or foundation of good governance be done with a superior level of legal dexterity so as to succinctly entangle socio- economic rights from the imperatives for good governance.

OUR POSITION:

In order to better appreciate our position, we deem it appropriate to back track to the events that transpired in the United Nations leading up to the Universal Declaration of Human Rights in 1948. One of the issues raised at the events leading up to the adoption of the UDHR was to determine how opposing ideologies agree on common principles on the question of the supremacy of individual or the state.[71] One side of argument were those claimed to be defending the individual[72] while on the other side defeated National Socialists and the triumphant international Socialists (or Communists), who marched under the banner of community, the collective and especially the state.[73] A similar confrontation also arose on the issue of finding a way to breach the gap between

62 Olafisoye v. F.R.N (Supra) 584-585 containing the issues raised before the Supreme Court for determination.

63 As largely contained in Chapter 2 of the Constitution.

64 Fn 21

65 Chapter 4 of the Nigerian Constitution.

66 For instance, what happens where a judge is unable to appreciate a link between right to life and adequate health facility? In this situation, the desire to actualize socio- economic rights may suffer some retard. For further elaborations on the dimensions of this problem see Kaase Tony Fyanka, "The Jusciability of Social Rights: Myth or Reality?"Human Rights Review: An International Human Rights Journal, Vol. 1, No. 1, October 2010, p. 443 at 445-458.

67 Fn 22

68 Section 9 of the Constitution provided a dual layer procedure which entail obtaining the approval of the States in the Federation.

69 Mainly bothering on clarifying existing provisions and also creating a new court, National Industrial Court.

70 The sections are couched in form directives to the Nigerian State as well as restating the basis of the Nigerian Federation.

71 Michael Novak, Human Dignity, Human Rights, http://www.leaderu.com/ftissues/ft9911/articles/mnovak.html (accessed)

72 The United States and allies

73 The Soviet Union and allies.

the Anglo- American zeal for the term individual and the Soviet Union insistence on the state[74] In response to these posers, Charles Malik[75] made the term "person" far more attractive to those who feared the radical separatism and potential lawlessness suggested by the term "individual".[76] For Malik, a cat or a dog, even a tree can be an "individual", but only human beings (or God and the angels) can be a "person". "Person" is far more specific to human race. What makes a person a person, rather more than merely an individual, is a spiritual capacity: the capacity to reflect and choose, to be imaginative and creative, to be an originating source of action.[77] Having established this Malik sought to establish a link between the person and the state. For him, persons are reared over long years in families, and it is in families that their identities, habits, and character are established. Families further participate in whole network of kin, neighborhood, religious tradition, and other intermediate associations, natural and civil, and in and through those relations live out a thick social identity. In that sense, he concludes societies take shape long before states do.[78] Therefore, he reasoned that, "persons" are social beings before they are aware of having their own distinctive personalities. "Persons" come to fulfillment only in community, and communities have as their end and purpose the raising of persons worthy of their inherent dignity. On this premise, he argues that dignity inheres in persons because they are destined to be free to reflect and to choose, and thus to be provident over the course of their own lives, responsible for their actions. A person is capable of insight, love, and long-term commitment. *Such creatures are deserving of respect from other rational creatures*.[79]

Malik, was eminently qualified to make this assertion. He was a Harvard – educated philosophy professor who studied under notable philosophy professors like Alfred North Whitehead and the German, Martin Heidegger.[80] Malik also lectured in the American University of Beirut before he was appointed to lead the delegation of his country to the United Nations to sign the Charter and later at the UN's Commission on Human Rights where led the drafting of the UDHR.[81]

From Malik's exposé, inherent dignity lies at the core of human rights discourse. Apparently, the position adopted by Malik was entrenched in the UDHR[82] and other subsequent UN backed documents on human rights.[83] . Our position is that at the heart of every right that constitute genre of rights known as human rights lies a *soul*, inherent dignity of the person[84].

Although a section on human dignity is embedded in Nigerian Constitution[85] as a separate right, it our view that the importance of human dignity is obfuscated if we confine our understanding of human dignity to this rather restricted provision. Respect for right to human dignity goes more than abstinence from torture or inhuman and degrading treatment, holding any person in slavery or servitude or requiring a person to perform forced or compulsory labour. Nigerian courts[86] seem to have been erroneously[87] restricted in their perception of human dignity hence their contained interpretation of human dignity to matters revolving round the provision. A number of cases illustrate this position. In **Mogaji v. Board of Custom & Excise**[88], the court was only ready to

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74 Michael Novak (fn 71)
75 Head of the Commission that wrote the Declaration of Human Rights.
76 Michael Novak (fn 71)
77 Ibid
78 Ibid
79 Ibid. Italics supplied.
80 Lebanonism.com/lebwp/?p=1314 (accessed)
81 Ibid.
82 Preamble and Article 1.
83 For instance, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.
84 *Person* as opposed to *individual*
85 Section 34 in Chapter IV of the 1999 Constitution.
86 And legal practitioners
87 In our view.
88 (1982) 3 NCLR 552

accept that right to human dignity had been impugned due to the use of horse whips and untoward force by the soldiers in carting away alleged contraband goods from the appellants who were market women.[89] In **Wabali v. COP**[90], the court was ready to expand the understanding of inhuman and degrading treatment as it relates to human dignity to include confinement in a squalid prison without trial and conviction although this was not canvassed before it in that case. We believe our courts can do more to expand our horizon in the understanding of respect for dignity of human person. It our contention that human dignity should be a key factor in considering violations of any right. This consideration also holds the potentials of blurring the glaring division in the enforcement of civil and political rights in contrast to the apparent unenforceable[91]socio- economic rights. Our position is also that the concept of dignity of the human person lies at the heart of human existence. The implication of this is that there may not be need after all to seek for justiciability of the provision of Chapter 2[92] of the Constitution since its provisions can be accommodated, from our proposition, by any litigation based on the provisions in Section 35 of the Constitution.[93] All the litigant need to show, for instance, is that the denial of his right to free, or at least subsidized medical treatment, in government managed institutions infringes on his right to live a dignified life[94]. The success of this provision depends on the willingness of the courts to expand the scope of the section beyond issues of torture and forced labour.

This suggested approach may be beset by a number of problems. First, the traditional defence for non-justiciability of socio-economic rights being the thought that since socio-economic rights involves commitment of resources in other to fully realize it[95] and therefore there realization is hinged on availability of resources.[96] On this premise, how do we expect the resources of government to be sufficient to meet the expected torrent of demands for, for instance, payment of school fees that may trail the expansion of our understanding of the right to human dignity to encompass issues bothering on socio-economic rights? Our approach to this potential pitfall is to suggest that the court consider not only the issue of *personalizing*[97] socio-economic rights but also *personalizing* their decisions. By this we suggest a case *qua* case considerations of the applications before them. Under this suggested method, there may not be any reason for the court to order that the school fees of Y, for instance, be paid because it had already ordered so in the case of X. This is because for the courts[98], from our position, to order the government to pay school fees of any applicant in line with section 35 of the Constitution, the applicant should be able to convince the court that he lacked the financial resources to pay the fees, that he has no willing dependent to undertake the task and that the school fees is in respect of a government managed tertiary institution.[99]

Our suggestion should be distinguished from the practice in some jurisdictions[100]and strongly commended by some scholars[101]which is anchored on the phrase that human rights are "universal, indivisible and

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89 Ibid, 562
90 (1985) 6 NCLR 424
91 Based on the interpretation of section 6 (6) (c) of the 1999 Constitution.
92 Socio- economic rights
93 On right to human dignity
94 Which infringes on his right to dignity of human person.
95 In contrast to Civil and Political rights
96 See generally fn 2.
97 Which makes it applicable to a *person*, a human being with dignity in contrast to i*ndividuals* which include non-human beings.
98 Through our suggested method.
99 Indeed it is suggested that the court may be even require the applicant efforts he has made earn money through dignified labour to financially assist his education. The courts in these cases may, as the circumstances demand, even demand for evidence of payment of taxes. A person, for instance, expecting a free or subsidized treatment from a government managed hospital, should in addition to factors, such as his ability or otherwise to pay the hospital bill, also show that he pays his tax to government.
100 Such as India

interdependent" found in many United Nations documents on human rights[102] which seeks to promote an integrated approach to interpretations of human right issues.[103] Our position is solely founded on right to the dignity of the human person.

CONCLUSION AND RECOMMENDATIONS

CONCLUSION:

Socio-economic rights hold an attraction for achievement of several dreams and aspirations of persons living in Nigeria but the route towards this appear to be restricted by a legal road block, essentially based on the provisions of the Constitution. Several suggestions have been proffered for tackling this problem[104] but we have seen that these suggestions have their drawbacks some of which have been discussed here[105]. We have therefore put up a possible solution to this issue.

RECOMMENDATION/SUMMARY OF OUR POSITION:

Our position finds philosophical foundation in the issue of respect of right to human dignity which is "personal" to the human race. This proposition being an off shoot of Charles Malik's position aimed at resolving the philosophical imbroglio between the "Western" and "Eastern" blocks that beset the draft of the Universal Declaration of Human Rights shortly after it was conceived.

Our thrust is that right to human dignity is a pivotal right and that the idea of human dignity can be successfully employed to ensure that socio-economic rights are enforceable in Nigeria. To this end we suggested an expansive interpretation of incidents bothering on infringement of human dignity away from the rather restrictive interpretations by Nigerian court based on civil and political rights considerations.[106] We have pointed out[107]that right to dignity can be ingeniously interpreted to accommodate socio-economic rights. We acknowledge our suggestion may open a deluge of demands which state[108]resources may not be able to accommodate but we suggest that each matter be handled on a person to person basis. On this ground, we feel, the court will be able to sort out "genuine" cases where denial of socio-economic rights will amount to infringement of the right to dignity of the human person.[109]

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101 See for instance, Azinge, Op Cit,fn 16., Iyabode Oguniran, Enforceability of Socio-Economic Rights: Seeing Nigeria Through the Eyes of Other Jurisdictions (2010) 1 UNIZIK J.I.L.J. 73 at 86.

102 See for instance the fifth paragraph of the *Vienna Declaration and Programme of Action* drafted at the World Conference on Human Rights in 1993, and adopted unanimously by 171 nations present cited in "Indivisibility of Human Rights: A Theoretical Critique" https://uts.edu.au/sites/default/files/law-form-dorothea-anthony.pdf (accessed 26/2/2019)

103 Under this approach, socio-economic and cultural rights are interpreted in the context of civil and political rights so that right to life is viewed, for instance, as meaningless without right to adequate health care.

104 Part 3.1 of this paper

105 Part 3.2 of this paper.

106 Part 4.0 of this paper

107 Ibid

108 The chief enforcer of socio-economic rights.

109 Section 35 of Chapter Iv of the 1999 Constitution and essentially a right classified under Civil and Political rights in Nigeria and made justiciable under the same Constitution.