



Law and Sustainable Development in Africa

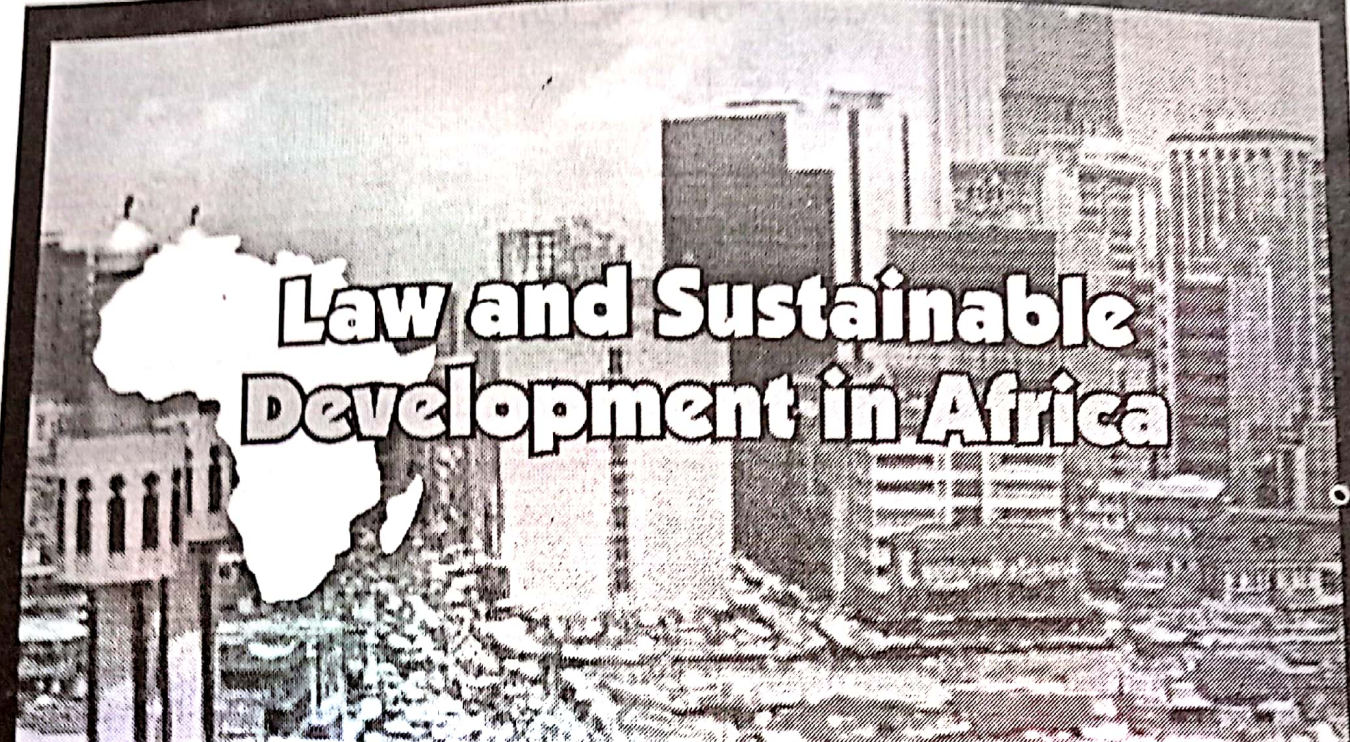


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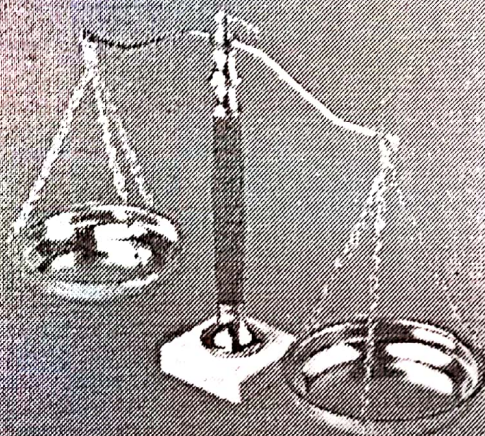
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A Publication of Faculty of Law, University of Ilorin

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FOREWORD

Sustainable development is an emerging concept that is fast gaining grounds and has fundamental and far-reaching effects on the global domain in all its ramifications. Sustainable development has been defined by the Brundtland Commission as the development that "meets the needs of the present without compromising the ability of future generations to meet their own needs." The Commission further states that the field of sustainable development can be conceptually broken into three constituent parts: environmental sustainability, economic sustainability and socio-political sustainability.

These are issues discussed in this book which is a result of a conference organized by the Faculty of Law, University of Ilorin between 6th and 8th December, 2011 as a follow up to the 2010 Workshop on Law and Climate Change which received positive supports from different quarters in and outside Nigeria, and which culminated in the book *Law and Climate Change in Nigeria* published in October, 2011.

This book titled **Law and Sustainable Development in Africa** is a collection of contributions from 34 intellectual giants in their own rights drawn from across Africa and Asia. They all take a critical look at this concept from the perspectives of law, good governance, economics, environment, conflict management and peace studies, constitutionalism, taxation to mention a few. The book is structured into three parts of Socio-political sustainability, economic sustainability and environmental sustainability projecting the views of African scholars on this fundamental issue and how it affects global development.

This is a book that must be owned and read by anybody truly interested in the development of our thermo-dynamic world in the light of the fact that "for their tomorrow we must give our today".

The Faculty of Law, University of Ilorin is also blazing the trail by making this effort available for a greater readership by publishing it with Grosvenor House Publishing in the United Kingdom to ensure international standard as well as make it available in first class libraries in the world so that it will serve the purpose for which it was originally designed.

I commend all the contributors for airing their views on this subject and hope that other researchers will pick up the challenge from where they stopped in order to enlarge the scope of research in this field of study.

DR WAHAB O EGBEWOLE
ILORIN, NIGERIA
FEBRUARY 2012

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- Bonn Declaration, 1978
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CHAPTER TEN

SOCIO-ECONOMIC RIGHTS FOR SUSTAINABLE DEVELOPMENT IN NIGERIA: PROSPECT AND CHALLENGES

ABDULFATAI O. SAMBO*
ABDULKADIR B. ABDULKADIR**

Introduction

Socio-economic rights are rights involving the meeting of basic needs that are essential for human welfare.¹ It seeks to avoid of severe scarcity of things needed for human welfare. They incorporate a safeguard against poverty, not the provision of a life in luxury. They do not guarantee access to the goods that we might desire to possess, so as to live a fulfilling life; they are preconditions for the pursuance of a good life. It includes but not limited to right to housing; a right to basic nutrition, including a right to water; right to safe and healthy environment; a right to basic healthcare, because ill-health can lead to severe human suffering; a right to education; a right to social security and social assistance; a right to work and decent working conditions; a right to form and join a trade union, including a right to collective bargaining and a right to strike.

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¹ Michelman F, 'On Protecting the Poor Through the Fourteenth Amendment' (1969-1970) 83 *Harv. L. Rev.*, at 7.

In view of this, the Nigeria 1999 Constitution provides for a number of socio-economic rights which serve as blue-print for the government which is built on equality, social justice and egalitarianism.² This is done in form of fundamental objectives and directive principles of state policies which include political objectives,³ economic objectives,⁴ social objectives,⁵ educational objectives,⁶ foreign policy objectives,⁷ and environmental objectives.⁸ The Constitution further requires all persons exercising executive, legislative and judicial powers to conform to, observe and apply these fundamental objectives and directive principles.⁹ These are in addition to fundamental rights

² See generally section 13-24 of the Constitution of the Federal Republic of Nigeria 1999. Although this is not with the title as socio-economic rights, these rights are titled as fundamental objectives and directive principles of state policies. These provisions are political, economic and social blueprints to be observed by government. By fundamental objectives, it means the identification of the ultimate objectives of the nation while directive principles of state policy indicates the path which lead to those objectives which represents the ideals which the nation is expected to pursue in the effort of the nation towards to realized national ideals. See generally Adele L. Jinadu, 'Commenting on the fundamental objectives and directive principles of state policy, The Great Debate', Daily Times Publications, 1.; Report of the Constitutional Drafting Committee, vol.1 PV; Malemi E., *The Nigerian Constitutional Law*, (Princeton Publishing Co., Lagos, 2006) 204; *Adamu v Attorney General, Borno State* (1996) 8 NWLR (pt 465) 203; *Dele Giwa v Inspector General of Police* Unrep. Suit no /44/83 of 30/07/84.

³ See section 15, Constitution of the Federal Republic of Nigeria 1999, as amended {hereinafter referred to as the 1999 Constitution}

⁴ Ibid. See section 16.

⁵ Id. See section 17.

⁶ Id. See section 18.

⁷ Id. See section 19.

⁸ Id. See section 20.

guaranteed under the Constitution.¹⁰ However, while the fundamental objectives and directive principles are not justiciable, fundamental rights are justiciable.¹¹ Also, many international legal instruments having provisions on socio-economic rights have been put in place in order to ensure socio-economic development of a nation and the sustainability of the development.

The paper therefore attempts historical, Constitutional, judicial, extra-judicial and international issues relating to the protection of socio-economic rights in Nigeria in order to discuss its prospect and challenges. It should be acknowledged that many academic works have been done in the enforcement of socio-economic rights.¹² However, these works have ignored the prospect and

⁹ *Id.* See section 13 of the Constitution of the Federal Republic of Nigeria, 1999.

¹⁰ *Id.* See chapter IV.

¹¹ See section 6(6) (c) limiting the power of the court in thin regard stating that judicial powers shall not except as otherwise provided by the Constitution extend to any question or issue as whether any act or omission of any person or authority is in compliance with Fundamental Objectives and Directive Principles of State Policy contained in chapter II of the 1999 Constitution. See also B.O. Nwabueze, *The Presidential Constitution of Nigeria*, (C. Hurst & Company in association with Nwamife Publishers, Enugu and Lagos, Nigeria, 1982) at 534.

¹² See for instance Brand D. and Heyns C. (eds), *Socio-economic Rights in South Africa* (2005) {hereinafter called D. Brand and C. Heyns (eds)}; Mubangizi J.C., *The Protection of Human Rights in South Africa: A Legal and Political Guide* (2004) {hereinafter called J.C. Mubangizi}; De Waal J., Currie I. and Erasmus G., *The Bill of Rights Handbook* (2001) {hereinafter referred to as J De Waal, I Currie and G Erasmus}; Devenish G., *A Commentary on the South African Bill of Rights* (1999) {hereinafter called G. Devenish}; De Villiers B., 'Socio-economic Rights' in D.H. Van Wyk, J. Dugard, B. De Villiers & D. Davis et al (eds) *Rights and Constitutionalism: The New South African Legal Order* (1994); Liebenberg S. & Pillar K. (eds) *Socio-economic Rights in South Africa: A Resource Book* (2000), etc.

challenges as it affects Nigeria.¹³ The paper hypothesizes that where the challenges are overcome, it will lead to sustainable development in Nigeria.

Historical Overview of Socio-Economic Rights in Nigeria

By way of background, a detailed discussion on the Nigerian Constitutional history falls beyond the scope of this paper. Suffice it to say that in all, Nigeria has had eight Constitutions so

¹³ Sambo O.A. and Abdulkadir B.A., 'Socio-Economic Rights for Sustainable Development in Malaysia: Lessons From Selected African Countries' Constitutions,' (2011) 2(9), *OIDA International Journal of Sustainable Development*, 11-22, Stewart R., 'Adjudicating Socio-economic Rights Under a Transformative Constitution' (2010) vol.28:3, *Penn State International Law Review*, 488-512.; Virginia M., 'The Case for Social Rights', in Conor G. and Virginia M., *Debating Social Rights* (Hart Publishing, Oxford, 2010) 1-32; Mariette Brennan, 'To Adjudicate and Enforce Socio-economic Rights: South Africa Proves That Domestic Courts Are A Viable Option' (2009) 9 (1) *QUTLJJ*, 64-84; Amechi E.P., 'Enhancing Environmental Protection and Socio-economic Development in Africa: A Fresh Look at the Right to general Satisfactory Environment Under the African Charter on Human and Peoples' Right' (2009) 1(5) *LEAD*, 60-71; Monty J. Roodt M.J., 'Impediments to the Delivery of Socio-economic Rights in South Africa' (Paper delivered as SASA Conference, Stellenbosch, 2008); Neff E.C., 'From Equal Protection to the Right to Health: Social and Economic Rights, Public law Litigation, and How an Old Framework Informs a New Generation Advocacy' (2009) 43, *Columbia Journal of Law and Social Problems*, 151- 181; Hestermeyer H. P., 'Access to Medication as Human Rights', (2004) 8 *Max Planck UNYB* 102-180; Wayne M. and Natasha K., 'Adding Social Condition to Canadian Human Rights Act', (2009), Canadian Human Rights Commission; Lehmann K., 'In Defence of Constitutional Court: Litigating Socio-economic Rights and the Myth of Minimum,' (2006) *Am. U. Int'l L. Rev.*, 163-196; Oliver M., 'Constitutional perspectives on the Enforcement of Socio-economic Rights: Recent South African Experiences' (2002) 33 *VUWLR* 117-156; Gwen B. and Shelagh D., 'Beyond the Social and Economic Rights Debate' (2002) 14 *CJWL/RFD* 184-219; Gomez M., 'Socio-economic Rights and Human Rights Commissions,' 17 (1) *Human Rights Quarterly*, 1995.

far; the recent being the 1999 Constitution as amended.¹⁴ In Nigeria, socio-economic rights came up for the first time in the 1979 Constitution.¹⁵ The objective was perhaps to prevent the Military from further incursion into the politics of the country as Nigeria at that time suffered long Military intervention into her politics.¹⁶ Although these rights appear to have been fashioned out of the Irish Constitution of 1937, the aim perhaps was that if these rights were enshrined in the Constitution, it would serve as blue-prints for good governance and social justice for all, thereby preventing further Military incursions into politics in the country. These objectives were however not realized as the Military seized political power again in 1984 and ruled till 29th May, 1999.

The Committee set up in 1979 headed by Professor B.O. Nwabueze recommended that while fundamental objectives are to be made justiciable, directive principles are to be made non-justiciable. However, in the final draft of the 1979 Constitution, the two concepts were lumped together and made non-

¹⁴ These Constitutions include the Clifford's Constitution of 1922, the Richard's Constitution of 1946; the Macpherson's Constitution of 1951; the Littleton Constitution of 1954; the 1960 Constitution; the republican Constitution of 1963; the Constitution of the Federal Republic of Nigeria, 1979; and the Constitution of the Federal Republic of Nigeria, 1999 as amended. The 1989 Constitution is not counted because it did not see the light of the day.

¹⁵ See chapter II of the Constitution of the Federal Republic of Nigeria, 1979. See also Yakubu J.A., *Constitutional Law in Nigeria*, (Demyax Law Books, 2003) at 347.

¹⁶ The Military rule in Nigeria at that time lasted at that time from 1966-1979.

justiciable.¹⁷ The same has been repeated in the 1999 Constitution.¹⁸

The Constitution and Socio-economic Rights in Nigeria

The Nigerian 1999 Constitution provides for socio-economic rights in form of fundamental objectives and directive principles of state policy. From the perspective of socio-economic rights, sections 16, 17, 18 and 20 appear to be most relevant. This, it is submitted, guarantees socio-economic rights in Nigeria notwithstanding the way it was couched.¹⁹ It provides for social objectives by stating that the state social order is founded on the ideals of freedom, equality and social justice²⁰ and that every citizen of Nigeria has equal rights and opportunity before the law;²¹ and that sanctity and dignity of human persons shall be recognized;²² the governmental actions shall be humane;²³ exploitation of natural resources shall be for common good²⁴ and

¹⁷ See section 6(6) (c) of the Constitution of the Federal Republic of Nigeria, 1979

¹⁸ Ibid, 1999

¹⁹ See Agbakoba O. & Emelonge U., 'Test of Progressive Realization of Social, Economic and Cultural Rights in Nigeria (1990-1999 Budget Analysis)' (2001) *HurriLaws*, Lagos, 1-2; Ibe S., 'Beyond Justiciability: Realizing the Promise of Socio-economic Rights in Nigeria' (2007) *African Human Rights Law Journal*, 225; Akande J.O., *Introduction to the Constitution of the Federal Republic of Nigeria, 1999*, (M.J. Professional Publishers, 2000) at 52.

²⁰ See section 17(1) Constitution of the Federal Republic of Nigeria, 1999.

²¹ Ibid See section 17(2) (a)

²² *Id.* See section 17(2) (b)

²³ *Id.* See section 17(2) (c)

²⁴ *Id.* See section 17(2) (d)

that the independence and impartiality of the courts shall be secured and maintained.²⁵ The state is also enjoined to shun all forms of discrimination, cater for peoples' health and welfare.²⁶ The State is also required to provide a self-reliant economy²⁷ and control the national economy in such a way as to secure maximum welfare, freedom and happiness of the citizen²⁸ and direct its policy towards promotion of balanced and planned economy.²⁹ The security and welfare of the people shall be the primary purpose of governance.³⁰ The State is to strive where applicable to eradicate illiteracy by providing free and compulsory education.³¹ The State is also to protect its environment and safeguard water, air, land, forest and wild life in Nigeria.³² The Constitution further requires the three organs of government namely executive; legislature and judiciary to conform to, observe and apply these rights.³³ These are in addition to fundamental rights guaranteed under the Constitution.³⁴ However, while the fundamental objectives and directive principles are not justiciable, fundamental rights are

²⁵ *Id.* See section 17(2) (e)

²⁶ *Id.* See section 17(3) (a)

²⁷ *Id.* See section 16(1) (a)

²⁸ *Id.* See section 16(1) (b)

²⁹ *Id.* See section 16(2) (a)

³⁰ *Id.* See section 14(2) (b)

³¹ *Id.* See section 18(3) (a)

³² *Id.* See section 20

³³ *Id.* See section 13

³⁴ *Id.* See chapter IV

justiciable.³⁵ The government is also enjoined to establish and regulate authorities to promote and enforce these rights.³⁶

Judicial Attitude to Socio-economic Rights in Nigeria

There are a number of cases in Nigeria where courts have rendered opinions on socio-economic rights. In the School Seizure Cases, suits were filed to challenge the abolition of private primary education by the Lagos State Government. The Courts in those cases upheld the non-justiciability of these socio-economic rights. Thus, the Court in *Okogie v AG Lagos State*,³⁷ *Adewole v Jakande*³⁸, *Ehinmare v Governor, Lagos State*³⁹ held

³⁵ See section 6(6) (c) limiting the power of the court in this regard stating that judicial powers shall not extend to any question or issue as to whether any act or omission of any person or authority is in compliance with Fundamental Objectives and Directive Principles of State Policy contained in chapter II of the Constitution. See also Nwabueze B.O., *The Presidential Constitution of Nigeria*, (C. Hurst & Company in association with Nwamife Publishers, Enugu and Lagos, Nigeria, 1982) at 534.

³⁶ See Item 60 of the Exclusive legislative List contained in second schedule, part 1 of the Constitution of the Federal Republic of Nigeria, 1999.

³⁷ (1981) 2 NCLR 337. The Court in this case observed that the arbiter of, and guardian of fundamental objectives and directive principles of state policy is the legislature itself of the electorates. However, the court also added that directive principles must run subsidiary to fundamental rights provision of the Constitution, and that therefore any social function of legislation implementing these fundamental objectives shall not be declared void unless the rights of individual or any other provision of the Constitution is infringed. In coming to this conclusion, the Court of Appeal in *Okogie's* case relied on the Indian case of *State of Madras v Champakan* (1951) SCR 252 for further reading, see Okere B.O., 'Fundamental Objectives and Directive Principles of State Policy Under the Nigerian Constitution,' (1983) 32 *ICLQ*, 214.

³⁸ (1981) 1 NCLR 262.

³⁹ (1981) NCLR 166. See also the case of *Okaegbu v AG Imo State* SC/83/1983 of 30/03/83. SC.

that the courts did not have the judicial power to make any declaration as to any organ of government which has acted in conformity with the directive principles which are the socio-economic rights.

This shows that the Nigerian courts have bowed to section 6 (6) (c) of the Constitution which precludes the court from entertaining matters in this regard. However, the Court in *Anache v FRN*⁴⁰ has come up with a bold decision that the provisions of chapter II is not sacrosanct. By this, where the provisions are found in any other provisions of the Constitution or under an international treaty which has been ratified and domesticated in Nigeria, it becomes enforceable.

Extra-judicial Protection of Socio-economic Rights in Nigeria

The Nigerian Constitution makes it a duty on the three organs of government namely the legislature, executive and judiciary to observe, conform to and apply these socio-economic rights.⁴¹ There appears to be no body overwhelmingly empowered for the purpose of enforcing these socio-economic rights.⁴² In the absence of anybody or authorities saddled with the responsibility of enforcing these socio-economic rights, this constitutes a lacuna in the Nigerian Constitution. Although Nigeria has Human Rights Commission, it appears the commission is not empowered to enforce socio-economic rights in Nigeria.

⁴⁰ (2004) WRN

⁴¹ See section 13 of the Constitution of the Federal Republic of Nigeria, 1999.

⁴² Although Item 60 of the Exclusive Legislative List empowers the National Assembly to make laws that would protect and these rights under chapter II of the Constitution, it is doubtful if this power has till today been used for this purpose.

An overview of International Instruments on Socio-economic Rights

Nigeria is a party to International Covenant on Economic, Social and Cultural Rights which is the major international instrument on socio-economic rights.⁴³ The Convention gives all peoples whose States are parties to the Convention, the right to freely determine their social and economic development.⁴⁴ In no case therefore should a people be deprived of their legal means of subsistence.⁴⁵ However, the Convention allow the developing states to determine with due regard to human rights and national economy to what extent it is to guarantee economic rights.⁴⁶ States are also enjoined to recognize the right to work; to gain one's living by work which one freely chooses and accepts, and state shall take appropriate measures to safeguard this right.⁴⁷ It is also to ensure steady economic and social development.⁴⁸ There is also the right to workers' remuneration with fair wages and equal remuneration for equal work;⁴⁹ safe and healthy working condition;⁵⁰ equal opportunity of promotion;⁵¹ rest,

⁴³ It was adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on the 3rd January, 1976. Nigeria became a party on 29th July, 1993. See United Nations Treaty Collection available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en accessed on 1st January, 2012.

⁴⁴ See article 1(1) of the Convention.

⁴⁵ *Id.* See article 1(2).

⁴⁶ *Id.* See article 2(3).

⁴⁷ *Id.* See article 6(1).

⁴⁸ *Id.* See article 6(2).

⁴⁹ *Id.* See article 7(a).

⁵⁰ *Id.* See article 7(b).

leisure and reasonable working hours and periodic holidays;⁵² right to form and join trade unions of choice;⁵³ social security;⁵⁴ protection of family,⁵⁵ special protection for mothers during and after birth⁵⁶ and children;⁵⁷ adequate standard of living which includes good food, clothing and housing.⁵⁸ The right to accessible and to some extent free education is guaranteed by the Convention.⁵⁹

Apart from ECOSOC, some other international instruments also provide for a number of socio-economic rights, for instance, American Declaration of the Rights and Duties of Man⁶⁰ provides for rights to equality of all persons before the law⁶¹ and inviolability of home.⁶² It further provides for the right to

⁵¹ *Id.* See article 7(c).

⁵² *Id.* See article 7(d).

⁵³ *Id.* See article 8.

⁵⁴ *Id.* See article 9.

⁵⁵ *Id.* See article 10(1)(a).

⁵⁶ *Id.* See article 10(b).

⁵⁷ *Id.* See article 10(c).

⁵⁸ *Id.* See article 11.

⁵⁹ *Id.* See article 13.

⁶⁰ It was adopted by the ninth International Conference of American States (1948) reprinted as basic documents pertaining to human rights in Inter-American system, OEA/Ser. L.V./II.82 doc.6 rev.1 at 17 (1992).

⁶¹ *Ibid.* See article II.

⁶² *Id.* See article IX.

education;⁶³ right to work and for a fair remuneration;⁶⁴ the right to leisure time,⁶⁵ social security⁶⁶ and property.⁶⁷

Another international human rights instrument of which Nigeria is a party that provides for socio-economic rights is the Universal Declaration of Human Rights.⁶⁸ It provides for the rights to recognition and equality of all persons before the law.⁶⁹ It further makes provision for property rights;⁷⁰ social security;⁷¹ right to work and free choice of employment and to just and favourable condition of work and protection against unemployment⁷². It provides for the right to leisure and limitation of work hours.⁷³ A person also has the right to adequate standard of living, health and wellbeing of himself and the family.⁷⁴ The right to education is also guaranteed.⁷⁵

⁶³ *Id.* See article XII.

⁶⁴ *Id.* See article XIV.

⁶⁵ *Id.* See article XV.

⁶⁶ *Id.* See article XVI.

⁶⁷ *Id.* See article XXIII.

⁶⁸ 10th December 1948.

⁶⁹ Universal Declaration of Human Rights, 1948 articles 6 and 7.

⁷⁰ *Ibid.* See article 17.

⁷¹ *Id.* See article 22.

⁷² *Id.* See article 23.

⁷³ *Id.* See article 24.

⁷⁴ *Id.* See article 25.

⁷⁵ *Id.* See article 26.

Universal Islamic Declaration of Human Rights is also worth mentioning as it has a number of provisions relating to socio-economic rights.⁷⁶ It provides for the equality of all persons before the law and right against any form of discrimination.⁷⁷ All persons are entitled in their economic pursuit to the full benefit of nature and its natural resources.⁷⁸ The right to own property is also guaranteed and the poor has the right to a prescribed share of the rich according to law.⁷⁹ The means of production shall be utilized in the interest of the community.⁸⁰ It forbids monopolies and restriction of trade, usury etc in order to promote the development of balanced government and prevent the society from exploitations.⁸¹ It permits economic activities provided that they do not conflict with the interest of the community, Islamic laws and values.⁸² It further provides for right against expropriation of document except for public interest and on payment of fair and adequate compensation;⁸³ status and dignity

⁷⁶ It was made 19th September, 1981. This was a declaration for mankind and a guidance and instruction for those with the fear of God.

⁷⁷ Universal Islamic Declaration of Human Rights, 1981; See article 3

⁷⁸ Ibid. See article 15(a).

⁷⁹ *Id.* See article 15(c).

⁸⁰ *Id.* See article 15(e).

⁸¹ *Id.* See article 15(f).

⁸² *Id.* See article 15(g)

⁸³ *Id.* See article 16.

of workers;⁸⁴ the right to social security⁸⁵ and adequate education.⁸⁶

Furthermore, The Cairo Human Rights Declaration in Islam also contains some provisions relating to socio-economic rights.⁸⁷ It provides for the right of every person to live in security for himself, religion and family and the equality of all persons before the law shall be guaranteed without any distinction between the ruler and the ruled.⁸⁸ The right to a clean environment,⁸⁹ medical and social care is guaranteed.⁹⁰ The right to decent living: including food, clothing, shelter, education, medical care and all other basic needs is also guaranteed.⁹¹ It also provides for the right to property acquired in a legitimate way and prohibits expropriation except for public interest and upon immediate and adequate compensation.⁹²

Also, International Convention on the Elimination of all forms of racial Discrimination has provisions relating to socio-economic

⁸⁴ *Id.* See article 17.

⁸⁵ *Id.* See article 18.

⁸⁶ *Id.* See article 21.

⁸⁷ This was adopted and issued at the Nineteenth Islamic Conference of Foreign Ministers in Cairo on 5th of August 1990.

⁸⁸ The Cairo Human Rights Declaration in Islam, 1990, See article 19(a).

⁸⁹ *Ibid.* See article 17(a).

⁹⁰ *Id.* See article 17(b).

⁹¹ *Id.* See article 17(c).

⁹² *Id.* See article 15.

rights.⁹³ It provides for the right to work and free choice of employment.⁹⁴ It further provides for the right to form and join trade unions of one's choice;⁹⁵ the right to housing;⁹⁶ the right to medical care; the right to social security, education and training.⁹⁷

Convention on the Rights of Child is equally relevant as it makes provisions for socio-economic rights.⁹⁸ A child has a right to protection against all forms of discrimination⁹⁹ and attack.¹⁰⁰ He has a right to preventive health care, guidance and family planning.¹⁰¹ He has a right to education¹⁰² and to a protection against sexual exploitation.¹⁰³

⁹³ It was adopted and opened for signature and ratification by the General Assembly Resolution 2106(XX) of 21 December 1965 and entered into force on the 4th of January, 1969 in accordance with article 19.

⁹⁴ International Convention on the Elimination of all forms of racial Discrimination, 1965. See article 5(e) (1).

⁹⁵ Ibid. See article 5(e) (II).

⁹⁶ *Id.* See article 5(e) (III).

⁹⁷ *Id.* See article 5(e) (IV).

⁹⁸ It was adopted and opened for signature, ratification and accession by the General Assembly Resolution 44/25 of 20 November, 1989. It was entered into force on 2nd September 1990 in accordance with article 49.

⁹⁹ Convention on the Rights of Child, 1989; See article 2

¹⁰⁰ Ibid. See article 16(2).

¹⁰¹ *Id.* See article 24(2)(f).

¹⁰² *Id.* See article 28 and 29.

¹⁰³ *Id.* See article 34.

Convention on the Elimination of all forms of Discrimination against Women also has a number of provisions dealing with socio-economic rights.¹⁰⁴ It provides that the state shall take all necessary measures, social and economic, to ensure full development and advancement of women.¹⁰⁵ The state is to eliminate all forms of discrimination against women in employment.¹⁰⁶ It further provides for the right to equality of men and women;¹⁰⁷ right to work;¹⁰⁸ same job opportunities;¹⁰⁹ free choice of profession, right to promotion and job security;¹¹⁰ right to equal remuneration;¹¹¹ social security;¹¹² and health and safety working conditions.¹¹³ It also provides for right to family benefits,¹¹⁴ bank loans and mortgages,¹¹⁵ health care facilities;¹¹⁶

¹⁰⁴ It was adopted on 18 December 1979, entered into force as an international treaty on 3rd September, 1981.

¹⁰⁵ Convention on the Elimination of all forms of Discrimination against Women, 1979; See article 3

¹⁰⁶ Ibid. See article 11(1).

¹⁰⁷ *Id.* see also article 15.

¹⁰⁸ *Id.* See article 11(1)(a).

¹⁰⁹ *Id.* See article 11(1)(b).

¹¹⁰ *Id.* See article 11(1)(c).

¹¹¹ *Id.* See article 11(1)(d).

¹¹² *Id.* See article 11(1)(e).

¹¹³ *Id.* See article 11(1)(f).

¹¹⁴ *Id.* See article 13(a).

¹¹⁵ *Id.* See article 13(b).

¹¹⁶ *Id.* See article 14(2)(b).

social security;¹¹⁷ training and education;¹¹⁸ equal access to economic opportunities¹¹⁹ and adequate living conditions.¹²⁰

Prospects and Challenges of Socio-economic Rights in Nigeria

It is difficult to deny the fact that Nigeria is blessed with abundant natural and human resources. Yet, the country still struggles for development let alone sustainable development. Thus, the availability of resources plays an important role in a state's ability to protect and enforce socio-economic rights. It is in the context that the challenges and prospects have to be seen.

In terms of prospects, future appears bright. This is because Nigeria has been able to sustain its democratic governance for up to 12 years now. This would usher in a renewed commitment to the promotion, protection and enforcement of human and socio-economic rights in the country. This will also translate to new Constitutionalism that appears to be taking roots in Nigeria. In this regard, it is pertinent to note that the country has amended its 1999 Constitution. This is aimed at translating to better lives for Nigerians. However, the challenges are still enormous.

One major challenge is that the Constitution itself has rendered the provisions non-justiciable. In other words, they are provisions that are not capable of being enforced by courts action. The reason for its non-justiciability in the present day Nigeria is very difficult to justify. This is because Nigeria has all it takes to develop and sustain its development. She has material and human resources, yet the majority of the population still suffers. She has

¹¹⁷ *Id.* See article 14(2) (c).

¹¹⁸ *Id.* See article 14(2) (d).

¹¹⁹ *Id.* See article 14(2) (e).

¹²⁰ *Id.* See article 14(2) (h).

so many security operatives; yet, the high level of insecurity in the country is no more news. Human welfare is not encouraging. Yet, the Constitution still places issue of welfare and security of the people as a non-justiciable provision. This is despite the fact that the Constitution itself recognizes the security and welfare of the people as the primary purpose of government. However, there is now an authority for the view that chapter II of the Constitution is not sacrosanct. This is when it is amalgamated or married with other provisions of the Constitution or it is contained under an international legal instrument which Nigeria is a party and has so domesticated. In such a case, it will be made justiciable.

Another challenge is the absence of an institutionalized body saddled with the responsibility of enforcing the provisions of chapter II of the Constitution. Although the Constitution requires the National Assembly to establish authorities for the Federation or any part thereof in order to promote and enforce chapter II of the Constitution, this is not yet in place.¹²¹ This shows lack of political will to enforce the provisions or absence of knowledge about this provision of the Constitution. It is further submitted that even the human rights commission is not empowered to enforce the provisions of chapter II of the Constitution as it were. This is therefore a great challenge to the realization of sustainable development through chapter II of the Constitution.

One challenge of the protection and enforcement of socio-economic rights in Nigeria is ignorance resulting from illiteracy and lack of education. According to United Nations as at June, 2010, Nigeria is among the nine most illiterate countries in the world.¹²² This forms the reason why Nigeria is a member of E-9

¹²¹ See second schedule, part 1, item 60 of the Exclusive Legislative Lists of the 1999 Constitution

¹²² The need to scale up efforts towards eradicating pervading illiteracy among the E-9 group of countries formed the fulcrum of discussions at the on-going Ministerial Review Meeting of member-countries in Abuja. According to

group.¹²³ This has serious implications for the protection and enforcement of socio-economic rights. There is no doubt that education is essential in the fight for, and the exercise for human right. In that regard, people require a certain minimum level of education in order to know their rights and how to reinforce them. One cannot enjoy or enforce rights that one is not aware of. This is particularly crucial with respect to the enjoyment and enforcement of socio-economic rights.

One of the main challenges to the protection and enforcement of socio-economic rights in Nigeria is prevalent poverty. As of October, 2011, according to CIA World fact book, 70% of

official records, Nigeria remains the only E-9 countries in Sub-Saharan Africa (SSA) facing serious challenges of turning around the illiteracy rate among its youths and adults by the 2015 timeline set to achieve education for all (EFA) and the Millennium Development Goals (MDGs). In her welcome remarks, Nigeria's Education Minister, Prof. Ruqayyatu Ahmed Rufai, acknowledged the challenges when she said: "We recognise the fact that EFA goals will not be achieved globally if they are not achieved in the E-9 countries, because some countries may face greater challenges than others in meeting the EFA goals by the 2015 target date. "We also recognise that meeting the 2015 timeline is of greater urgency now more than ever before. From all available evidence, the outcomes of the mid-term review of the progress of EFA published in 2008 EFA Global Monitoring Report is not too encouraging despite the increased political will of member-countries." See Mohammed Abubakar, Abuja News - National "Nigeria Among Nine most Illiterate Country in the World" retrieved from <http://www.nairaland.com/nigeria/topic-467526.0.html>: Accessed on 1st January, 2012.

¹²³ Countries in the E-9 group are those with a very high number of illiterates who cannot read, write or communicate in any way. They include Nigeria, Bangladesh, Indonesia, India, Egypt, Brazil China and Pakistan. Coming barely two years after a similar forum took place in Bali, Indonesia, the Abuja meeting, according to Director-General, United Nations Educational Scientific and Cultural Organisation, (UNESCO), Ms. Irina Bokova, is aimed at giving the E-9 countries the opportunity of assessing the successes recorded and the challenges they currently face. Nigeria assumed the Presidency of the E-9 group at the three-day summit, taking over from Indonesia. The Nigerian Presidency of the group would last for two years. Ibid.

Nigerian population leaves below poverty line.¹²⁴ According to United Nations, poverty rates rose by 76 percent in the year 2009.¹²⁵ This has to be seen in the context of the earlier submission that many socio-economic rights reflect specific areas of basic needs or delivery of particular goods and services. In that regard, it has been argued elsewhere that of all the social phenomena that have a significant impact on human rights, poverty probably ranks highest.¹²⁶ Some have actually argued that poverty is in itself a violation of human rights.¹²⁷ This is true in Nigeria where the government could not pay N18,000 as minimum wages despite huge resources at our disposal. Huge percentage of our population survives on less than 1 dollar per day. Many suffer from malnutrition, 50% have no access to hospitals or doctors and the average life expectancy is about 48 years.¹²⁸

The issue of poverty particularly in Africa is regrettably compounded by other issues. These include low levels of education, wide spread unemployment, poor political and economic policies, natural disasters and quiet significantly

¹²⁴ See <http://www.indexmundi.com/g/g.aspx?c=ni&v=69> accessed on 1st January, 2011.

¹²⁵ Onyebuchi Ezigbo: Nigeria-MDGs Poverty Rates rises by 76 percent-UN, This Day, February, 27, 2009 retrieved from <http://allafrica.com/stories/200902270161.html> accessed on 1st January, 2012.

¹²⁶ See Mubangizi J.C., 'Know Your Rights: Exploring the Connection Between Human Right and Poverty Reduction with Specific Reference to South Africa' (2005) 21 *SAJHR* 32.

¹²⁷ Ibid.

¹²⁸ See Unicef: Nigeria at a Glance: available at http://www.unicef.org/infobycountry/nigeria_statistics.html accessed on 1st January, 2012. See UNDP 'Facts on Poverty in Africa' at http://africa2015.org/facts_poverty.pdf for more information on poverty in Africa.

pandemics such as HIV/AIDS. In the particular context of socio-economic rights, the inevitable link between poverty and HIV/AIDS is glaring. Although HIV/AIDS has reached pandemic proportions in many parts of the world, the situation is also bad in Nigeria.¹²⁹ The impact and effects of HIV/AIDS are of course not only in terms of human toll and suffering, but also in terms of human rights and health care. As such, socio-economic rights norms such as the right to health, access to housing, food, water and social security becomes very relevant.¹³⁰

Another challenge to the promotion and enforcement of socio-economic rights, particularly in African countries is corruption. Monies stolen from government coffers, bribery in the public and private sectors, corruption in the judiciary and embezzlement of public funds are good examples of practices that lead to violations of socio-economic rights. It could therefore be argued that the struggle to enforce and protect socio-economic rights and the campaign against corruption share a great deal of common grounds as the public funds meant for the provision of economic and social services is misappropriated, embezzled and misused. It is little wonder therefore that in countries where corruption is rampant, human right violations are also abound. In such countries, any talk of the protection and enforcement of socio-economic rights is rather meaningless.

Lastly, one important issue that affects the realization of socio-economic rights in Nigeria is the high level of internal conflict and political strife. In the last two or three decades, there have been armed conflict in many parts of the country. A number of states of emergencies have been declared. Presently, some local governments in four states of Nigeria i.e. Borno, Plateau, Niger, Yobe are under the emergency declarations. There is no doubt

¹²⁹ Study reveals that 3.6 of the population as at 2009 have the disease. Ibid.

¹³⁰ Ibid

that such conflicts lead to wide spread human rights violations, economic decay and poverty. Inescapably, this results to economic disintegration as economic activities are abandoned, infrastructure is destroyed and social services are disrupted or neglected. Moreover, conflicts lead to death, disability and poor health. The implications for the protection and enforcement of socio-economic rights are quite obvious. Also, in Nigeria, a lot of crisis such as the Niger Delta crisis, the Boko Haram crisis in the north, the Jos crisis, etc also in one way or the other affects the protection and enforcement of socio-economic rights in Nigeria.

Conclusion

From the foregoing, there is inescapable link between the adequate protection of socio-economic rights and sustainable development. Thus, it is very difficult to imagine sustainable development without an adequate protection and enforcement of socio-economic rights. Nigeria has a history of long military rule resulting into several human rights abuses and severe deprivation of basic necessities of life needed for sustainable development. An attempt to provide better lives for the citizens led to the inclusion of socio-economic rights, couched in the form of fundamental objectives and directive principles of state policy in the nation's Constitution. The paper examined the historical, Constitutional, judicial, extra-judicial and international dimensions to socio-economic rights as it affects Nigeria.

It is thus revealed that in terms of prospect, the future of socio-economic rights in Nigeria appears bright. This is because Nigeria has survived more than a decade of democratic government. This has ushered in many calls for Constitutionalism, respect for human rights and rule of law. However, the paper noted that the challenges are enormous. First, the Constitution itself has constructed a toll gate in the express way of judicial activity in matters of socio-economic rights. This is because this is a constitutional ouster clause in this regard.

Since this ousts the courts' jurisdiction with regards to enforcement, it is very difficult for the court to force itself in it. The only lee way for the courts is to find whether those rights are repeated in other provisions of the Constitution or any international legal instrument ratified and domesticated in Nigeria such as the African Charter on Human and Peoples' Rights.

In the same token, there is no institutionalized body overwhelmingly empowered to enforce this rights. This is despite the high level of socio-economic underdevelopment of the country. It is on this basis the paper suggests fully equipped constitutional court for the purpose of enforcing these provisions of chapter II of the Constitution and the Constitution should be amended in such a way as to make it enforceable. Also, the socio-economic rights should be couched in clear terms and made as justiciable human rights. This is because violation of socio-economic rights may lead to violation of human rights in many cases.¹³¹

The paper also reveals the challenges of poverty, illiteracy, corruption, internal conflict and political strife, lack of political as well as retarding socio-economic development and sustainable development of the country. This, it is contended, affects the growth of socio-economic rights for sustainable development in Nigeria. These challenges are no doubt, enormous, they are not insurmountable. Where these suggestions are carried out, it will lead to adequate protection of socio-economic rights thereby leading to sustainable development in Nigeria.

¹³¹ For more on this proposition, see Quadri K. and Sambo A.O., 'The Relevance of the Right to Environmental Education to Sustainable Development' (2011) 2(8) *OIDA International Journal of Sustainable Development*, 77-83.