**THE JURISPRUDENCE OF THE RIGHT OF MINORITIES TO A HEALTHY ENVIRONMENT IN NIGERIA: THE QUESTION OF JUSTICIABILITY**

**Benjamin Ogwo, Esq., Ph.D**

**LL.B (Hon), ABU, Zaria, B.L (Lagos), LL.M & Ph.D (BSU), Ag.**

**H.O.D Public Law & Dean, Students Affair, Kogi State University, Anyigba**

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**Sampson Shaba, Esq.**

**LL.B (Hons) KSU, Anyigba, B.L, LL.M (OAU, Ife),**

**Lecturer I, Department of Commercial & Industrial Law, K.S.U. Anyigba**

***Abstract***

This paper examines the relationship between health and the environment with particular focus on the right of minorities to healthy environment. The paper reveals that minorities, like other human beings, are entitled to enjoy safety environment under international and domestic human rights regimes. The paper points out that despite the plethora of legal regimes, the location of this right has been banished to a mere wishful expectation on the part of the citizens and a leeway for the government to abdicate her responsibility. The paper comparatively analyses the constitutional provisions of some countries and decisions of courts on the right to safety environment, with a view to showing that despite the non-justiciability of the right to safety environment, the right can be meaningful through judicial activism and strong political will on the part of government in fulfilling its obligations under international human rights regime and the Constitution of Nigeria.

1. **Introduction**

The issue of right of man is as old as man if not older than man. It seems that even before man came into being his right was settled by its creator. Hence, it has been contended in various quarters both at the international plane and domestic level that right of man is inherent, inalienable, indivisible and universal. That it cannot be taken away by any law, whether such a human being is aware of it or not is of no consequence to its existence and availability to that person. By reason of the universality of the right of man, minorities are not left out.

Generally, once the term right is mentioned, it presupposes to mean human rights which include fundamental rights, fundamental freedoms, civil liberties and civil rights, individual and collective human rights as well as peoples’ rights.[[1]](#footnote-2)

Human rights, irrespective of political blocks, is viewed in its transcendent nature. The reason cannot be farfetched. Philosophically, human rights are seen as forming an integral part of the human person simply because he is a part of mankind. Human rights are traditionally divided into first, second and third generations. Civil and political rights belong to the first generation group, the second generation of rights are known as economic, social and cultural rights, while group or collective rights are identified as third generation rights.

The bifurcation of rights into generations cannot correctly be seen as human rights entrenchment in their hierarchical order. The demarcation of human rights should not be seen in terms of their emergence since it is believed that these rights attaches to humans simply because they belong to mankind. They should rather be seen as periods of their recognition. It would, however, amount to self deceit if one pretends to ignore the fact, civil and political rights are still hallowed over and above other rights[[2]](#footnote-3) in some jurisdictions of the globe not because they are found or guaranteed in a more important document than others but because of lack of will on the part of governments.

In Nigeria for instance, all these rights are found in the Constitution[[3]](#footnote-4) from which all legalities must flow.[[4]](#footnote-5) Civil and political rights are found in Chapter IV and are titled: “Fundamental Rights”. Chapter II comprises of both the second and third generations of rights where the right to a healthy environment is unfortunately located. While citizens can freely access, enjoy and, where necessary, enforce rights guaranteed in Chapter IV, this is not the case for rights guaranteed in Chapter II for some reasons. Firstly, a majority of writers and our courts attribute this discrimination to the non-justiciableness of Chapter II. The reason for this is the contention that Chapter II is simply a directive of principles on how to realize the fundamental objectives of the Nigeria State. Secondly, that the provisions of Chapter II are nebulous, lacking in precision and as such unenforceable. Thirdly, that the realization of whatever Chapter II provides is dependent on the availability (and prudent use) of state resources. However, in the course of this work it is established that the above traditional position is no longer tenable internationally and domestically.

It is yet to be established how the right to life and human dignity, for instance, is superior to the right to a healthy environment when viewed against the backdrop that the composites of the former and even the object (mankind) are subjects of the environment. The minorities groups, mostly found in areas considered environmentally volatile have almost always lost out in their quest for socio-economic justice and equality, not because they are not entitled but because of constitutional constraints. It is difficult to really appreciate the reasons for the bias against the enforcement of the provisions of Chapter II in the law courts.

Nigeria Constitution is not alone with this seeming constraint. India,[[5]](#footnote-6) Philippine,[[6]](#footnote-7) Pakistan[[7]](#footnote-8) and Bangladesh[[8]](#footnote-9) among others are examples of some countries with similar constitutional constraints. The difference however, is that these countries have been more pragmatic and dynamic in their approach as they interpret the contents of their own fundamental objectives and directive principles. This paper posits that the Nigerian judiciary should shove itself of the cloak of conservatism and be progressive in its approach. It is further advocated by this paper that, in order to make these socio-economic rights meaningful and realizable, our judiciary must adopt a progressive and all embracing approach in its interpretation of Chapter II and, equally that, the government should demonstrate good political will towards the realization of these rights.

1. **Conceptual Clarification**
2. **Minority:** The concept of minority can be diverse in connotation and, therefore capable of confusing the reader. In the sense it is used here, it relates to a group of people. In this context, the word minority is defined as “a small group of people or/things within which larger group”.[[9]](#footnote-10) Bryan on the other hand, defines the word minority as “a group that is different in some respect...from the majority and that is sometimes treated differently as a result...”[[10]](#footnote-11) Similarly, another author sees minority as a group of people or things that is a small part of a much larger group.[[11]](#footnote-12) The common base line in the above definitions is that minorities belongs to the small part of a larger whole, which as a result are in most cases treated negatively different, socially discriminated and as a result suffer social inequality.
3. **Environment:** The problem of definition of concepts in the legal parlance has not abated. This is so largely because legal authors define concepts as they personally see them and atimes as they affect them. The Federal Environmental Protection Agency[[12]](#footnote-13) defines, environment to include “water, air, land and all plants and human beings or animals living therein and the interrelationship which exists among these or any of them”. *Longman Dictionary[[13]](#footnote-14)* similarly define environment to mean “the air, water and land on earth, which can be harmed by man’s activities”. It went further to say that, it refers to the people and things that are around you in your life for example, the buildings you use, and the general situation you are in. The environment is also seen as “the natural world, within which people, animals and plants live...all the external factors influencing the life of organism, such as light or food supply”.[[14]](#footnote-15) It includes all the external conditions and surroundings especially those that affect the quality of life of plants, animals and human beings. The foregoing definitions agree with Einstein’s definition of the environment when he says environment means everything that is not me. Clearly, therefore, the concept of environment, whether natural or artificial refers to that space where there is the interplay of both biotic and abiotic within a given habitat. Minority groups are equally components of the environment.
4. **Health:** For the purpose of this article it is necessary to examine the term health in its ordinary and technical context as well as the right to health in brief and healthy environment. Ordinarily, health means “the general condition of your body, and how healthy you are”.[[15]](#footnote-16)

It is interesting to note also that health means “how successful an economic system or organization is: the health of the economy”.[[16]](#footnote-17) This extends the meaning of health beyond well being of an individual or human being as a person but extends to the well being of a corporate body or a legal personality like a limited liability company or a state. It also means “the state of being physically and mentally healthy, the condition of a person’s body or mind”.[[17]](#footnote-18) Health is also defined as “the state of being sound or whole in body, mind or soul, freedom from pain or sickness”.[[18]](#footnote-19) The term health is wide enough to cover both the visible, that is physical body and invisible, that is mind or soul. It is in realization of this wider context of health that the World Health Organization (WHO) defines health as “a state of complete physical, mental and social well being and not merely the absence of disease or infirmity”.[[19]](#footnote-20) Finally, it is worth noting that the word health assumes a wider dimension to the extent that even the holy book[[20]](#footnote-21) expresses the desires of God for man to enjoy the right to health when it asserts “Beloved, I wish above all things that thou mayest prosper and be in health even as thy soul prospereth”.[[21]](#footnote-22) The implications of the above discourse on the meaning of health both in its traditional, modern or technical sense is the fact that living or being in health is a right. Hence, the World Health Organization (WHO) Constitution attest to this “the enjoyment of the highest attainable standard of health is one of the fundamental right of every human being without distinction of race, religion, and political belief, economic or social condition”.[[22]](#footnote-23) By extension, right to healthy environment becomes inevitable as a result of industrialization and development wherein the subject of health transcends beyond individual concern to public concern with the promulgation of the Moral Apprentice Act 1802 and Public Health Act 1848 which were adopted in the United Kingdom as a means of curtailing social pressure arising from poor labour conditions. Consequently, just as it is the duty as an individual to ensure that his right to health is maintained, sustained and not trampled upon by internal or external invaders; so also, it becomes incumbent upon the state to ensure that the right to a healthy environment is protected from violations.

1. **Justiciability:** This is purely a legal term or concept. Garner defines it as “the quality or state of being appropriate or suitable for adjudication by a court”.[[23]](#footnote-24) The *Encarta World English Dictionary[[24]](#footnote-25)* simply describes justiciability as a situation that is able to be settled by applying the principles of law. From the foregoing, it can be gleaned that justiciability is a legal terminology that derives from the word justice. In other words it means any situation capable of determination in the law courts.
2. **The Right to Safety Environment under International Human Right Regime**

At the international plane, the issue of human right has acquired momentum to the extent that what now begs for attention is not the recognition of human right but the nature of sanctions that could easily be meted to the violators of human rights. The right to safety environment has been identified as one of such human rights. On a general note, rights have been classified into three categories,[[25]](#footnote-26) namely, first generation rights, are civil and political rights which includes, right to life, liberty and security of person; right to be free from slavery or servitudes, freedom from torture, cruel, inhuman or degrading treatment, *ex cetera*, the second generation rights are economic and social rights which includes right to social security; right to work under just conditions; right to education, *ex cetera* and the third generation rights are environmental, cultural and developmental rights which includes right to live in decent environment; and right to cultural, political and economic development.[[26]](#footnote-27)

By the above categorization,[[27]](#footnote-28) the right to a healthy environment is a third generation right. However, it must be stretched that this so-called categorization is not water-tight whatsoever in the sense that a particular regime of right could be classified either as second or third generation rights. For instance, either the second or third generation rights could be expressed as right to self-determination or group right or collective right.

At the international level, there are three major documents in the regime of human rights popularly referred to as International Bill of Human Rights, namely, the Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocols. Incidentally to a large extent, the above three major documents acknowledge or recognize right to safety environment. At this juncture, the crucial issue for determination is whether safety environment is a human right?[[28]](#footnote-29) In other words, what is the nexus between human rights and safety environment? It has been examined in this paper before now that health is a right to be protected, defended, nurtured and largely taken care of in all ramifications, hence, right to health. Safety environment simply means that both the individual, the community as well as the state are placed under an obligation to ensure that the environment is conducive enough for the well being of human life inspite the nature of human activities that is being carried on in the environment. In order to answer the poser whether safety environment is a right, it becomes necessary to examine the contents of the said major international human right instruments.

The Universal Declaration of Human Rights (UDHR) instrument was adopted by the General Assembly of the United Nation on the 10th December, 1948[[29]](#footnote-30) which contained a number of rights: the catalogue of rights, right to social security, right to work, right to a decent standard of living amongst others are directly or indirectly relevant to the right to healthy environment. In other words, right to social security,[[30]](#footnote-31) right to work,[[31]](#footnote-32) right to a decent standard of living[[32]](#footnote-33) *ex cetera* would be meaningful and/or useless where there is no right to a healthy or safety environment.

The second document is International Covenant on Civil and Political Rights (ICCPR) which was finally approved by the Third Committee of the General Assembly in December, 1966.[[33]](#footnote-34) Out of the so many rights approved, are the right to self-determination,[[34]](#footnote-35) the right to liberty and security,[[35]](#footnote-36) freedom of movement and choice of residence,[[36]](#footnote-37) right of peaceful assembly,[[37]](#footnote-38) and right of persons belonging to minorities[[38]](#footnote-39) among others. Again it is obvious that the above identified rights *inter alia*, would be meaningless and worthless in absence of the right to a healthy or safety environment.

The third major document is the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is the second part of the document approved on the same[[39]](#footnote-40) date with (ICCPR). While the first part (ICCPR) treaties covers primarily the civil and political rights, the second part (ICESCR) on the other hand deals with economic, social and cultural rights. However, as it has been observed in this paper, there are some rights contained in these treaties that overlap, yet, there are substantial differences in the content, nature of obligations and the implementation mechanisms.

It is actually not the intention of this paper to delve into the nitty gritty of the differences between these rights and their superiorities over each other but it suffices to note that these rights as enshrined in these major documents would be an exercise in futility in the absence of the right to a healthy or safety environment.

Having identified the major international instruments acknowledging the exercise and/or recognizing the various human rights, it becomes incumbent to ascertain to what extent the rights to a healthy or safety environment is being recognized. The International Covenant on Economic, Social and Cultural Rights (ICESCR) has made an elaborate provision to wit:

The right to an adequate standard of living including adequate food, clothing and housing, and continuous improvement of living conditions.[[40]](#footnote-41)

The right to safety environment encompasses rights to adequate standard of living, adequate food, clothing, housing and continuous improvement on living conditions. The implication is that it cannot by any stretch of imagination be argued that a man who is hungry, who does not have sufficient clothing to cover his nakedness and who is without a building or a house of residence but may be staying under the trees, bridges or squatting with domestic animals can be said to be enjoying the right to a healthy environment.

There is, of course, an integral link between the right to a healthy environment and other human rights. Indeed, it may often be easier to address environmental concerns through other human rights than through the as yet not well-defined right to a healthy environment. The deterioration of the environment affects the right to life, health, work and education, among other rights. Pollution of lakes and waters in a large number of countries has seriously affected the ability of fisherfolk to earn a decent living from their traditional work. Health problems caused by air and water pollution resulting from effluents of nearby (or distant) factories have been well documented. Poisoning from lead-in paint, gasoline and other sources has been shown to affect children’s ability to learn.[[41]](#footnote-42) Examples abound.

Moreover, environmental degradation caused by economic activities is often accompanied by and related to violations of civil and political rights, including lack of public access to information, citizen participation, freedom of speech and association. In many cases where industrial development and resource extraction (e.g. mining or oil development) impact communities, those who question the negative effects of these development activity are subject to harassment or suppression by government or project authorities. The minorities case of Ogoni people is a case in point to the extent that[[42]](#footnote-43) Mobil, Texaco, Agip, Chevron, Exxon and Royal Dutch/Shell Oil companies have operations in the Niger Delta, one of the largest wetlands in the world. Shell Nigeria, a branch of the Royal Dutch/Shell Oil Company, was the first of these companies to strike oil in Niger Delta region, much of it on or near Ogoniland, when Nigeria was still a British colony in 1958. Since 1958, Shell Nigeria has extracted an estimated $30 billion worth of oil from Ogoniland. The company builds massive oil wells and pipelines that intersect indigenous communities. They take little responsibility for oil spills and air pollution from their operations. Most of the drinking water in Ogoniland is contaminated. Deep layers of oil from leaking wells and pipelines have covered fertile farmland with the result that many Ogoni today are left with no means of livelihood. The company refuses to fully inform the approximately 500,000 people in the Niger Delta about the environmental impact of its operations. Instead, activists charge, it has intentionally turned communities against each other, paid and provided logistical support and arms for the Nigerian military, and bribed witnesses to testify against environmental activists.

For over thirty years, Ken Saro-Wiwa, an environmental and human rights activist, struggled alongside others in the Ogoni community to make the international community more aware of how societies tend to impose the brunt of their ecological damage on the people least able to cope with it, in most cases impoverished minorities such as the Ogoni peoples. In November 1995, the Nigerian military regime executed Saro-Wiwa and eight of his colleagues, ostensibly for murder, but in reality, for seeking ESC rights for the Ogoni people.

Shortly afterwards, members of the Commonwealth revoked Nigeria’s membership. In addition, several members of the Commonwealth and G-7 nations imposed economic sanctions on the country. In 1998, Nigeria regained its Commonwealth status after General Abubakar replaced General Sani Abacha as head of the government. Today, the economic sanctions have been lifted; the government of Nigeria is once again dependent on oil for 80 percent of its revenues. This was further demonstrated in the recent visit of the President of the Federal Republic of Nigeria, General Muhammadu Buhari and the ensuing interactions between him (President Buhari) and the leadership of G7[[43]](#footnote-44) where it was reported to wit: “President Muhammadu Buhari yesterday arrived Munich, Germany, armed with the ‘wish list’ of Nigeria in line with the demand of the Group of Seven (G.7) industrialised countries. These development issues many and varied as they are, touch on the economy, combating corruption, increased Foreign Direct Investment, FDI; power and energy, infrastructure, environment, enhanced transparency in elections and good governance”.[[44]](#footnote-45) Human rights organizations report that Shell Nigeria and other companies continue to fund security agencies that unleash violence on communities who oppose the oil industry.

Environmental degradation has also in various contexts been related to issues of ethnic identity, with the result that concerns about equality and non-discrimination are related in a close and complex manner to concerns about environmental rights.

Furthermore, a man who is under insecurity every minute of his life, for instance, since 2010, residents in the North East and North West of this country who are not sure of their safety on daily basis, cannot be said to be enjoying the right to safety environment. To this extent, the right to healthy environment encompasses the right to liberty and security of person.[[45]](#footnote-46) The environment must be safe for habitation without fear of any sort whatsoever.

In the same vein, the right to a safety environment encompasses right to a decent standard of living.[[46]](#footnote-47) And on a general note, it is a notorious fact that most Nigerians are living below minimum decent standard of living. This seems to be justified when the term environment is examined in its broad context which takes into account of all those factors which directly or indirectly have bearing upon the natural surroundings of human beings.[[47]](#footnote-48) It indeed encapsulates all that must be provided for right to life to have meaning in one’s entire life. Some jurisdiction have consistently taken the bull by the horn by ensuring that the right to life cannot be divulged from all other rights to the extent that where all other rights such as right to health, right to clothing, right to adequate nutrition, *et cetera* are missing right to life is meaningless. For instance, in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi[[48]](#footnote-49)* the Supreme Court declared:

The right to life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.[[49]](#footnote-50)

Cumulatively, the right to safety environment has been largely recognized, acknowledged, and accepted under International Human Rights Regime and the nation of Nigeria has been signatory to all these major international human rights instruments, that is the Bill of Rights hitherto identified. Therefore, the question of right to a decent environment is not a new one. Thirty-five years ago at the United Nations Conference on the Human Environment held in Stockholm the international community declared that ‘Man has the fundamental right to freedom, equality and adequate conditions of life, *in an environment of a quality that permits a life of dignity and well-being,* and he bears a solemn responsibility to protect and improve the environment for present and future generations’.[[50]](#footnote-51)

1. **An Appraisal of Chapter II of the Nigerian Constitution in Relation to the Environment**

Chapter II of the Constitution[[51]](#footnote-52), which is titled: “Fundamental Objectives and Directive Principles of State Policy” embodies both the second and third generation rights. The third generation rights are otherwise called group or collective rights, which are commonly referred to as Socio-Economic rights that is economic, social and cultural rights. They form an essential part of the normative international code of human rights.[[52]](#footnote-53) This being the case, and like other human rights, they accrue to man because he is a human person. The Universal Declaration of Human Rights[[53]](#footnote-54) and the International Covenant on Economic, Social and Cultural Rights[[54]](#footnote-55) are the most relevant sources of these rights at the international level.[[55]](#footnote-56) It is pertinent to emphasize that the UDHR does not give or confer economic, social and cultural rights but simply that it was the first to recognize them. As the principal legal source of economic, social and cultural rights, the ICESCR further distilled these rights in the form most regional and national human rights instruments have them today.

The Constitution provides for the right to a healthy environment and for healthy, safety and welfare of all.[[56]](#footnote-57) In this discourse, these rights shall be referred to as the ‘right to a healthy environment’. It provides that:

The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.[[57]](#footnote-58) On the other hand it equally provides that, the state shall direct its policy towards ensuring that: The health, safety and welfare of all person in employment are safeguarded and not endangered or abused.[[58]](#footnote-59)

Jurisprudentially, and by our constitutional culture, the Constitution is at the apex of our legal system, and therefore, supreme.[[59]](#footnote-60) As a natural consequence, therefore, all rights enshrined therein should necessarily enjoy constitutional protections and realizable via the Constitution itself. Unfortunately, however, the same Constitution that supposed to be the platform for the ventilation of these rights via the law courts, made itself a huge stumbling block when it ousts the courts’ jurisdiction over matters contained in Chapter II.[[60]](#footnote-61)

Most literatures on this have argued that because the Constitution ousts courts’ jurisdiction in respect of these rights, no action for their enforcement can be sustained. Some have further argued that these rights lack precision in content and for the fact also that they require the positive action of government for their realization.[[61]](#footnote-62) Closely related to this is the argument that since the realization of these rights is dependent on the availability of resources, it will amount to unwarranted disturbance if these rights are made justiciable. These arguments, it is submitted fall short of good reasoning however viewed to deny these rights the statutory efficacy they deserve. The words of Ebobrah is very instructive in this regard when he said that, “notwithstanding the manner in which it is couched and the debate surrounding its usefulness, Chapter II represent the constitutional guarantee of economic, social and cultural rights in Nigeria”.[[62]](#footnote-63) We venture to add that if they are constitutionally guaranteed, they should necessarily be enforceable using the same Constitution because it did not provide any alternative means for their enforcement.

In the jurisprudence of law and sanction, opinions seem to differ. While some jurists are of the opinions that a law and its sanction are interwoven, some others posit that a sanction is not an essential element of the law and its function. So continues the argument as to whether or not a law needs legal sanction to retain its basic features of a law.[[63]](#footnote-64) Those who argue that Chapter II is not enforceable by the law courts draw inspiration from the proposition that it is possible to have a law that is bereft of sanction. Sanctions no doubt, are intrinsic part of legislation. It elicits the obedience of the citizens. Therefore, any legislation that is devoid of this essential intrinsic element does not deserve to be seen as one. It smacks of statutory caricature to say that Chapter II of the Constitution does not have the necessary sanction to make it enforceable.

A close look at the Constitution[[64]](#footnote-65) clearly shows the obligations of the three arms of government, namely, the legislature, the executive and the judiciary are saddled with certain duties and responsibilities to wit:

It shall be the duty and responsibility of all organs of government, and all authorities and persons, exercising legislative, executive and judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.[[65]](#footnote-66)

Flowing from the foregoing provision is the point that the argument for nonjusticiability of Chapter II on the ground that it only impose duties to realize in contrast with civil and political rights which impose negative duties is not tenable.[[66]](#footnote-67) The use of the word *shall* imports some level of mandatriness and how compelling is the obligation on the three arms of government to observe Chapter II. They are to respect, protect and fulfil the provisions of Chapter II. Formulation and execution of government policies and programmes towards this three levels of obligations is the responsibility of the executive while that of the legislature lies in enacting relevant legislations to facilitate the realization of economic, social and cultural rights.[[67]](#footnote-68) How else is the judiciary to play its role if not by enforcing the provisions of Chapter II through its interpretative role? Viljoen contends further that the argument that economic, social and cultural rights are not enforceable simply because they impose positive and not negative obligations, as he posits:

Miss the point as it is an ‘all or nothing approach’, which does not take cognizance of the nuanced obligations of states along the three level taxonomy of “respect”, “protect” and “fulfilment” because all rights of whatever nature, may give rise to at least some aspect of these obligations.[[68]](#footnote-69)

Back in 1977 at Maastricht University, the levels of obligations to respect, protect and to fulfil economic, social and cultural rights were identified. Uwais contends that the failure to perform any of the three obligations amount to violation.[[69]](#footnote-70) It, therefore, amount to a total failure on the part of government to respect, protect and to fulfil its obligation if it either engages in activities that are deleterious to the environment, or compromised with violators of the environment. It would, therefore, be self-defeating and a leeway on the part of government to abdicate its responsibilities and obligations using lack of resources as an excuse. Stressing that resource cannot be a good excuse for the government, Streak contends that resource constraint, if accepted as an excuse could only “allow the state to be complacent about taking innovative budgetary and other actions to fulfil socio-economic rights”.[[70]](#footnote-71) In Nigeria, resources can never be a constraint. There is an unimaginable availability of both natural and human resources. The problem being government’s lack of creativity in planning and implementation, wrong priorities and lack of political will.[[71]](#footnote-72)

It is important to point out that the relegation of economic, social and cultural rights is underserving. This is born out of the sheer ignorance of the fact that all human rights are universal, indivisible, inter-dependent and interrelated. It should be realized that there is no group/body of rights that is more important than the others. This is so because all human rights of whatever generation, irrespective of how they are couched, where they are located and the academic debate, are all aimed at the same thing the improvement of the status and dignity of the human person.

1. **A Case for Justiciability**

The recognition of the right to healthy or safety environment under the international human right instruments and the Nigerian domestic law is one thing while the status of the right so recognized is another thing entirely. At the moment, the concern of this paper is to make a case for the justiciability of the right to safety environment. The question is, whether the right to healthy or safety environment is justiciable? In other words, can any court of law adjudicate on the issue of compliance, enforcement or violation of the right to healthy or safety environment?

The right to environment as observed above is provided to wit: “the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”.[[72]](#footnote-73) This constitutional provision is under Chapter II titled:

Fundamental Objectives and Directive Principles of State Policy. By the provision of the same Constitution[[73]](#footnote-74) to wit: “the judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether by any or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.[[74]](#footnote-75)

The Nigerian courts in various judicial pronouncements have consistently maintained that by reason of this provision[[75]](#footnote-76) the courts of law in Nigeria lack the necessary jurisdiction (judicial powers) to entertain complaints, question or matter in context in connection with issues under Chapter II. In other words, it has been the stand of the courts in Nigeria that those issues under Chapter II, environmental objective inclusive are not justiciable. The case of *Okogie & Ors v. A.G. Lagos State,[[76]](#footnote-77) A.G. Ondo State v. A.G. Federation[[77]](#footnote-78)**ex cetera* are apposite.

However, considering the spirit of the same Constitution which provides to wit:

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 this Chapter of this Constitution.[[78]](#footnote-79)

A critical examination of the intent and purposes of this provision,[[79]](#footnote-80) demonstrates that it is not the intention of the drafters of the Constitution to conclude that the matter of human right as enshrined in Chapter II of the Constitution is completely not justiciable under any condition whatsoever. Incidentally, the rights articulated in chapter II of the Constitution (socio-economic, cultural rights) have the nature and character with those stated or enshrined in the African Charter on Human and Peoples’ Right (ACHPR).[[80]](#footnote-81) It is worth noting that the Supreme Court in the case of *Sani Abacha v. Fawehimi[[81]](#footnote-82)* interpreting the provisions of the African Charter on Human and Peoples’ Right maintained that those rights are enforceable. The stand of the Supreme Court of Nigeria in the above case[[82]](#footnote-83) seems to be the position or the attitudes of the India Courts on Directive Principles of State Policy long before now.

The Constitution of India[[83]](#footnote-84) like that of Nigeria incidentally provides for Directive Principles of State Policy[[84]](#footnote-85) to wit: “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 law.[[85]](#footnote-86)

Comparatively, the above provision is akin to the provision of the Nigerian Constitution[[86]](#footnote-87) to the extent that both the provisions intend to exclude the court’s jurisdiction from interfering or adjudicating on the matters within the purview of the Directive Principles of State Policy. The Constitution of India with respect to the Directive Principles of State Policy provides for the right to safety or healthy environment to wit: “the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”.[[87]](#footnote-88) Ordinarily, it is presumed that the intention of the drafters of both the Nigerian Constitution[[88]](#footnote-89) and the Constitution of India[[89]](#footnote-90) is to make the items under Directive Principles of State Policy not justiciable. Can this presumption be the intent and purposes of the drafters of the Constitution? The Constitution is the fundamental law of the people, the law of all laws and the *grundnorm* from where all other laws derive their source, their power and strength.

Can it be said that the intention of the drafters of the Constitution is that where the government of the day fails to give attention to matters under the Fundamental Objective and Directive Principles of State Policy including right to safety environment an individual or the community so affected by the failure of the government to give heed or to provide the atmosphere cannot be called to order or questioned in a court of law?

In the India case of *Minerva Mills v. Union of India*,[[90]](#footnote-91) the Supreme Court of India held to wit:

Directive Principles impose an obligation on the state to take positive action for creating socio-economic conditions in which there shall be an egalitarian social order with social and economic justice, for all, so that individual liberty would become a cherished value for all and the dignity of the individual living reality not for a few privileged persons but for the entire people.

It has been contended that despite the provisions of the Constitution[[91]](#footnote-92) of India, the Supreme Court of India maintained that for practical purposes, there should be no difference between the Part III[[92]](#footnote-93) of the Constitution and the Part IV[[93]](#footnote-94) of the Constitution when it held to wit:

Together they are intended to carry out the objectives set out in the preamble of the Constitution and to establish an egalitarian social order informed with political, social and economic justice, and ensuring the dignity of the individual not only to a few privileged persons but to the entire people of the country including the have-nots and the handicapped, the lowliest and the lost.[[94]](#footnote-95)

In the case of *Sani Abacha v. Gani Fawehinmi*,[[95]](#footnote-96) the Supreme Court of Nigeria relying on Laws of the Federation of Nigeria, 1990 now Cap A9 Vol. 1, Law of the Federal Republic of Nigeria (FRN), 2004 maintained that the provisions of the African Charter on Human and Peoples’ Right is now part of the domestic laws of Nigeria and like all other laws, the court must uphold it. It is essential to note that the provisions of the African Charter on Human and Peoples’ Rights to wit: “All people shall have the right to a general satisfactory environment favourable to their development”[[96]](#footnote-97) is akin to the constitutional provision under the Fundamental Objective and Directive Principles of State Policy to wit: “The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”,[[97]](#footnote-98) to the extent that both provisions deals with the right to safety or healthy environment.

Critically examining the tenor language of the provisions of the Constitution[[98]](#footnote-99) with respect to the Fundamental Objectives and Directive Principles of State Policy, right to safety or healthy environment inclusive, it is humbly contended that there is a case for justiciability of the rights and/or conditions or obligations stated therein as against the state[[99]](#footnote-100) even in Nigeria.

1. **State Obligations**

The question of state obligation with respect to the right of the minority to a healthy or safety environment can be discussed by briefly tracing the origin and examining the original purpose of a state. It is without debate that at a point in the history of man, man was in the state of nature, when it was assumed that there was no state and no government, man lived and survived under the concept of survival of the fittest. Under this state, life was solitary, poor, nasty, brutish and short. The life under the state of nature was that of a hostile environment far from safety environment. However, man by nature being a rational, sensible, social or political animal came to his senses and realized the need to form a society via a social contract and through which they undertook or promised to respect or value each other and consequently lived in peace.

It was in pursuance of this that law and government became the necessary means of promoting order and personal security. It was obvious that every citizen was interested in preserving his own life and in order to achieve this, they must give absolute and unconditional obedience to the law. Consequently, they surrendered their sovereign rights to a sovereign ruler and who was to guarantee to each citizen or individual the preservation of such rights.[[100]](#footnote-101)

Eventually, the concept and institution of statehood came on board with the primary responsibility of protecting, preserving and promoting the rights of man and ensuring the security of life and property of people generally and particularly that of the citizens. It is on this note that the Constitution provides to wit: “The security and welfare of the people shall be the primary purpose of government”.[[101]](#footnote-102)

The security and welfare of the people cannot be guaranteed and protected in absence of right to healthy or safety environment. The quest to ensure security and welfare of the citizens as well as the enjoyment of right to safety environment culminated into the various revolutions. For instance, the American and French Revolutions which gave rise to the American Declaration of Independence[[102]](#footnote-103) and French Declaration of the Right of Man[[103]](#footnote-104) respectively. These revolutions were evidence of the increase in the people’s realizations, awareness and knowledge of the inalienable rights as conferred upon them by law of nature to wit:

Uphold this truth to be self-evident, that all men are created equal, that they are endowed by the creator with certain inalienable rights that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments is instituted among men, deriving their just powers from consents of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and to institute new government or laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to affect their safety and happiness.

The obligation to respect requires states to refrain from unnecessary interference with the enjoyment of socio-economic rights. Interference can be in one of many forms as the circumstances of the case or situation may appear. Whichever form it takes, it is generally aimed at encumbering ones’ enjoyment of his rights.[[104]](#footnote-105) Respect for the right to a healthy environment would mean that the government must not engage in any activities that are harmful to the well-being of the environment. Government’s role in protecting the environment would require it to be firm against third parties whose activities are detrimental to the well being of the environment, and by extension the health of the citizens. Uwais contends:

The obligation to respect the right to housing for instance is violated if the state engages in arbitrary eviction, which does not; on its own incur any expense on the part of the state. The obligation to protect requires the state to protect from such violations by third parties so a failure to ensure that private employers comply with basic labour standards may amounts to a violation to a right to work, and does not require progressive realization that would render it non-justiciable.[[105]](#footnote-106)

This may be difficult for now in view of the fact that the Nigerian economy hangs helplessly on oil from the Niger Delta where the rights of minorities in the creeks have been compromised and sacrificed on the alter of the so-called (greater) ‘national interest’.

The decision of the African Commission on Human Rights in the case of *SERAC and CESR v. Nigeria*,[[106]](#footnote-107) which was based on the provisions of the African Charter on Socio-Economic Rights and the three-fold duties of government is quite illuminating on the obligations of the government. Since the Constitution was suspended and courts jurisdiction to review governmental actions was ousted at the time by a military regime the petitioner had no opportunity of exploiting the benefits of domestic judicial apparatus. The petitioner alleged that the military government of Nigeria was directly involved in oil production through the state oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC). It further alleged that the operations have caused environmental degradation and health problems resulting in outbreak of diverse diseases and ailments among the Ogoni people (a minority group) of Niger Delta. Finally, that the government was guilty of violation of the right to health, clean environment among others.

The Commission had taken the view that economic, social and cultural rights are important as others and that enforcement of human rights must not be discriminatory. It emphasized that all rights must be enforceable. Basing its decision on the Charter,[[107]](#footnote-108) the Commission found the Nigerian government wanting in its duties to ‘respect’ and ‘protect’ socio-economic rights. It held that the government violated its obligations to protect its citizens from exploitation and despoliation, and to respect which entails largely non-interventionist conduct from the state, for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.[[108]](#footnote-109) It held further that the government has a duty to protect its citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties.[[109]](#footnote-110)

*SERAC’s* case confirms the fact that the failure of government to undertake its obligations arising from socio-economic rights can successfully be challenged in our municipal courts using the African Charter which has been domesticated and now part of our laws.

By ramifications the primary state obligation is to provide and ensure the provision of a healthy or safety environment that would in turn enable the people to enjoy the right to life and liberty. For instance, Indian Constitution[[110]](#footnote-111) provides: “The state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Also, the Constitution of the People’s Republic of China[[111]](#footnote-112) provides: “The state ensures the rational use of natural resources and protects rare animals and plants. Appropriation or damaging of natural resources by any organization or individual by whatever means is prohibited: The state protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards. The state organizes and encourages afforestation and the protection of forests”. It must be understood clearly that the civil and political rights would be meaningless and valueless in the absence of the socio-economic, cultural and/or environmental rights.[[112]](#footnote-113) Recently, the Kogi State Governments of Nigeria reiterated its commitment to enforce the right to healthy environment when he asserted to wit:

Governor Idris Wada on Sunday led members of Kogi Project Volunteer Task Force, a youth-based organization located in the state on an environmental sanitation exercise to clear filth along a streets in Lokoja metropolis.[[113]](#footnote-114)

Therefore, of what is right to life, liberty and pursuit of happiness when the right to healthy or safety environment is not guaranteed and or protected. It must be understood that all that the Federal Government of Nigeria has spent, spending and would continue to spend especially in the North East and North West of Nigeria since the event of the Boko Haram insurgency is to provide and ensure the provision of enabling environment in order to guarantee and protect the peoples or citizens right to a healthy or safety environment. The state obligation on this matter is practically at work.

1. **Conclusion and Recommendation**

Resource constraint argument is no longer tenable as has been shown by this paper. The shallow commitment of the state to its threshold obligations to respect, protect and fulfil socio-economic demands is faultily premised on the wrong notion and claim that the realization of the first generation right is less costly compared with that of the second and third generations. Worse still, in Nigeria, more emphasis is placed on the classification of rights and the nature of obligation imposed rather than the nature of the obligation in question with disregard to the class of right involved.[[114]](#footnote-115) A right is useless, if it cannot translate to the improvement of the one it inures. If looked at from the perspective of the nature of obligation it makes it easier to realize that the object is the improvement of human life and dignity, and anything short of this makes it judicially amenable.

All rights are equal. The equality norm perspective or approach with regard to states’ positive obligations to address the needs of disadvantaged or minority groups is a more sure way of ensuring the fulfilment of socio-economic rights. In a jurisdiction as Nigeria, which is seemingly lacking, explicit protection of social and economic rights, the right to equality can serve as a critical vehicle for disadvantaged groups seeking to enforce their social and economic rights. This approach will invariably create significant positive obligations to address and equally remedy the social and economic disadvantage of the marginalized and vulnerable minority group. Therefore, “guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible in ways which facilitates the full protection (and fulfilment) of economic, social and cultural rights. Adjudication by courts upon whether the government of the day has taken concrete steps in the direction of fulfilling these rights will ginger and make it alive up to its responsibilities.

It is important to emphasize that the earlier it is realized that the attainment of a safety environment for the dawn-trodden minorities is only possible on the fulcrums of socio-economic rights and social equality the better. Provision of a good housing scheme, quality education, clean/portable water, good healthcare scheme, *et cetera* will no doubt, impact positively on the environment. The fulfilment of socio-economic rights has become scaring because of the neglect overtime. But it is no late. It takes a determined will and serious commitment on the part of government to take the issue of socio-cultural rights more seriously in spite of whatever the cost might be. Determined will, not only in enacting legislations and provision of institutional framework but, more importantly, in empowering them to make them work effectively without interference. The right to vote for instance, is a civil and political right which can only be realized with the periodic conduct of elections at all levels of the tiers of government. Apart from the institutional framework in place, the government has always demonstrated the commitment and will not to violate this obligation. This is not because the cost of conducting elections is on the low side but because the government realizes that it is under obligation to provide the necessary facilities for the citizens to exercise their civic and constitutional right only possible during elections. If the same government would view socio-economic rights in the same light it will not only change the lot of socio-economic rights but also the plight of the minorities.

1. Gasiokwu, M.O.U., *Human Rights History, Ideology and Law* (Jos: Fab Educational Books, 2003) p. 1. [↑](#footnote-ref-2)
2. Ebobrah, Y., The Future of Economic, Social and Cultural Rights Litigation in Nigeria “Review of Nigeria Law and Practice”, vol. 1(2) 2007 p. 110, where it is proposed that “the dichotomy between various categories of human rights exists at both the domestic and the international levels of human rights discourse. [↑](#footnote-ref-3)
3. The Constitution of the FRN, 1999 as amended. [↑](#footnote-ref-4)
4. S. 1(3), *Ibid*. [↑](#footnote-ref-5)
5. Chapter II of the Constitution of the Republic of India, 1949. [↑](#footnote-ref-6)
6. Chapter II of the Constitution of the Republic of the Philippine, 1987. [↑](#footnote-ref-7)
7. Chapter II of the Constitution of the Republic of Pakistan, 1973. [↑](#footnote-ref-8)
8. Chapter II of the Constitution of the Republic of Bangladesh, 1972. [↑](#footnote-ref-9)
9. Longman Dictionary of Contemporary English, Pearson Education Limited, Edinburgh Gate, Harlow, Essex CM20 2JE, England at p. 1048. [↑](#footnote-ref-10)
10. Bryan, A. Garner, *Black’s Law Dictionary,* 9th edn. (U.S: West Publishing Co., 2009) p. 787. [↑](#footnote-ref-11)
11. Encarta World English Dictionary, at p. 1679. [↑](#footnote-ref-12)
12. Cap F10 LFN 2004, now NESREA ACT Cap N LFN 2004. [↑](#footnote-ref-13)
13. Longman, *op. cit.,* n. 9, at p. 523. [↑](#footnote-ref-14)
14. Encarta, *op. cit.,* n. 11 at p. 822. [↑](#footnote-ref-15)
15. Longman, *Active Study Dictionary,* 5th edn., (Edinburgh: Pearson Education Ltd., 2010) p. 416. [↑](#footnote-ref-16)
16. *Ibid.* [↑](#footnote-ref-17)
17. *Oxford Advanced Learner’s Dictionary,* New 7th edn. (London: Oxford University Press) p. 690. [↑](#footnote-ref-18)
18. Bryan, A. Garner, *Black’s Law Dictionary,* *op. cit.,* p. 787. [↑](#footnote-ref-19)
19. Constitution of the World Health Organization in Basic Documents (Official Document No. 240 Washington, 1991). The Constitution of WHO was adopted at the International Health Conference held in 1946 in New York, where it was signed by the representatives of sixty one states. Also Module 14, The Right to Health, <http://www.UUnn.edu/humanrights/1/edumal/HRIP/cipcle1module14htm> 27/9/2009. [↑](#footnote-ref-20)
20. The Holy Bible. [↑](#footnote-ref-21)
21. 3rd John vs 2, King James Version of the Holy Bible (London: Cambridge University Press); Also, Ogwo, B., Rights and Health, NTFDHL Vol. 2, 2009, p. 15. [↑](#footnote-ref-22)
22. WHO Constitution adopted at the International Health Conference held in 1946 in New York. Also Right to Health in htt://Wikipedia.org/wiki/righttohealth2f 27/1/2009. [↑](#footnote-ref-23)
23. *Op. cit.,* n. 8 at p. 943. [↑](#footnote-ref-24)
24. Encarta, *op. cit.,* n. 9 at p. 1378. [↑](#footnote-ref-25)
25. Ebobrah, S.Y., “The Future of Economic, Social and Cultural Rights Litigation in Nigeria”, Review of Nigerian Law and Practice (CALS) Vol. 1(2) 2007, pp. 108-124, where it is proposed that “the dichotomy between various categories of human rights exists at both the domestic and the international levels of human rights discourse...” [↑](#footnote-ref-26)
26. Okpena, O., *Human Rights Law and Practice in Nigeria,* (Enugu: Chenglo Ltd., 2005) p. 377. [↑](#footnote-ref-27)
27. *Ibid.,* according to that of Okpena. [↑](#footnote-ref-28)
28. Ebeku, Kaniye, S.A., “The Right to a Satisfactory Environment and the African Commission” in African Human Rights Law Journal and in [www.corteidh.or.cr/tablas/R21584.pdf Visited on 5/10/2013](http://www.corteidh.or.cr/tablas/R21584.pdf%20Visited%20on%205/10/2013) on “the controversial question whether there is an international human right to environment”. [↑](#footnote-ref-29)
29. 10 December, 1948, UNGA Res. 217A (111), UN Doc. A/810 at 71 (1948). [↑](#footnote-ref-30)
30. Article 22. [↑](#footnote-ref-31)
31. Article 23. [↑](#footnote-ref-32)
32. Article 25 [↑](#footnote-ref-33)
33. Adopted at New York, 16 December, 1966. Entered into force 23 March, 1976. GA Res. 2200A (XXI) UN Doc. A/6316 (1966). [↑](#footnote-ref-34)
34. Article 1. [↑](#footnote-ref-35)
35. Article 9. [↑](#footnote-ref-36)
36. Article 12. [↑](#footnote-ref-37)
37. Article 21. [↑](#footnote-ref-38)
38. Article 27. Also for these rights and those identified at footnotes 12-15, see comments of Javaid Rehman, International Human Rights Law, 2nd edn., (London: Pearson Education Ltd., 2010) pp. 75-139. [↑](#footnote-ref-39)
39. Adopted at New York, 16 December, 1966. Entered into force 3 January, 1976 GA Res. 2200A (XXI) UN Doc. A/6316 (1966) 993 U.N.T.S. 3:61.1. M (1967) 360. [↑](#footnote-ref-40)
40. Article 11 of ICESCR, 1966 and Article 12(2) of ICESCR, which provides to wit: “The steps to be taken by the States parties to the present covenant to achieve the full realization of this right shall include those necessary for... (b) The improvement of all aspects of environmental and industrial hygiene”. [↑](#footnote-ref-41)
41. Modules 15 “The Right to a healthy Environment” in file 111C/users/MosesOgwo/Desktop/rights%20of%20minority%20and%20right%20to%20healthy%20environment/module15htm visited on 5/6/2015. [↑](#footnote-ref-42)
42. Cited in Lloyd Timberlake, “Freedom of Information on the Environment”, *Index on Censorship* (London: Writers and Scholars International) 18, Nos. 6 and 7 (1983): 7, The relationship between protection of the environment and the right to information and participation was extensively explored in this very interesting issue of *Index on Censorship.* [↑](#footnote-ref-43)
43. Lawrence, O., “G.7 Summit: Buhari Briefs World Leaders on Security, Corruption, Unemployment”, reported in People’s Daily of Monday, June 8, 2015, pp. 1 & 2. [↑](#footnote-ref-44)
44. *Ibid.,* where the President further stated that “the leaders of the industrialised nations have shown a preparedness to work with Nigeria to help the country out of her problems... that he (President) has used every opportunity at his disposal ahead of this meeting to discuss the countries needs with specific reference to terrorism and development needs at person-to-person meetings and phone conversations with some of these leaders”. [↑](#footnote-ref-45)
45. Article 3 of UDHR, 1948. [↑](#footnote-ref-46)
46. Article 25, *ibid.* [↑](#footnote-ref-47)
47. Agarwal, H.O., *International Law and Human Rights,* 17th edn., (Allahabad: Central Law Publications, 2010) p. 632. [↑](#footnote-ref-48)
48. (1981) 2 SCR 516. [↑](#footnote-ref-49)
49. *Ibid.,* at p. 529. [↑](#footnote-ref-50)
50. Principle 1, Stockholm Declaration on the Human Environment, *Report of the United Nations Conference on the Human Environment* (New York, 1973), UN Doc. A/CONF.48/14/Rev.1. See L. Sohn, The Stockholm Declaration on the Human Environment, 14 *Harv. ILJ* (1973), 451-5; Also Alan Boyle; “Human Rights and the Environment: A Reassessment Boyle UNEP Paper Revised. [↑](#footnote-ref-51)
51. The CFRN, 1999 as amended. [↑](#footnote-ref-52)
52. Nakuta, J., *The Justiciability of Social, Economic and Cultural Rights in Namibia and the Role of the Non Governmental Organizations,* available at [www.kas.De/upload/auslandshomepages/Namibia/HumanRightss/nakuta](http://www.kas.De/upload/auslandshomepages/Namibia/HumanRightss/nakuta) p. 92. [↑](#footnote-ref-53)
53. UDHR, General Assembly Res. 217-A (111) of 10th December, 1948. Gen. Ass. Official Records. Third Session Part I, Resolutions (UN. Doc. A/810) pp. 71-77. [↑](#footnote-ref-54)
54. ICSECR, 1966 particularly Part III of the Covenant. [↑](#footnote-ref-55)
55. Nakut, J. *op. cit.,* n. 15, p. 92. [↑](#footnote-ref-56)
56. Sections 20, 17(3)(c) of the CFRN, 1999 as amended. [↑](#footnote-ref-57)
57. *Ibid.* [↑](#footnote-ref-58)
58. *Ibid.* [↑](#footnote-ref-59)
59. Ebobrah, S., *op. cit.,* n. 1, p. 113, Also S. 1(3) of the CFRN, 1999 as amended. [↑](#footnote-ref-60)
60. S. 6(6)(c) of the CFRN, 1999 as amended. [↑](#footnote-ref-61)
61. Viljoen, F., “The Justiciability of Socio-Economic and Cultural Rights: Experience and Problems”, cited by Ebobrah, S., *op. cit.,* n. 1, p. 112. [↑](#footnote-ref-62)
62. Ebobrah, S., *op. cit.,* n. 1, p. 118. [↑](#footnote-ref-63)
63. Uwais, M., *Fundamental Objectives and Directive Principles of State Policy: Possibilities and Prospects,* in Okpara Okpara (ed.), Human Rights and Practice in Nigeria, Vol. 1, p. 276. [↑](#footnote-ref-64)
64. S. 23(a) of the CFRN, 1999 as amended. [↑](#footnote-ref-65)
65. S. 13 of the CFRN, 1999 as amended. [↑](#footnote-ref-66)
66. Viljoen, F., *op. cit.,* n. 21 at p. 116. [↑](#footnote-ref-67)
67. Item 60 of the Exclusive Legislative List, Part I Second Schedule to the CFRN, 1999 as amended. [↑](#footnote-ref-68)
68. Viljoen, F., *op. cit.,* n. 21 at p. 122. [↑](#footnote-ref-69)
69. Uwais, Maryam, *op. cit.,* n. 23 at p. 293. [↑](#footnote-ref-70)
70. Streak, J., ‘Claiming Resources for Socio-Economic Rights’ in S. Khoza (ed.), Socio-Economic Rights in South Africa, 2007, Community Law Centre, University of Western Cape, 132, cited in Ebobrah, S., *op. cit.,* n. 1 at p. 122. [↑](#footnote-ref-71)
71. *Ibid.* [↑](#footnote-ref-72)
72. Section 20 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. [↑](#footnote-ref-73)
73. *Ibid.* [↑](#footnote-ref-74)
74. *Ibid.,* section 6(6)(c). [↑](#footnote-ref-75)
75. *Ibid.* [↑](#footnote-ref-76)
76. (1981) 2 NCLR 350. [↑](#footnote-ref-77)
77. (2002) 9 NWLR (Pt. 272) 222. [↑](#footnote-ref-78)
78. *Ibid.,* section 13. The provision of this section is the first section under Chapter II which comprises of sections 13 to 24. [↑](#footnote-ref-79)
79. *Ibid.* [↑](#footnote-ref-80)
80. ACHPR came into effect in 1981 where in Article 24 provides all peoples shall have the right to a general satisfactory environment favourable to their development. [↑](#footnote-ref-81)
81. (2006) 6 NWLR (Pt. 660) 228. [↑](#footnote-ref-82)
82. *Ibid.* [↑](#footnote-ref-83)
83. The India Constitution of 1949. [↑](#footnote-ref-84)
84. Part IV Directives Principles of State Policy. [↑](#footnote-ref-85)
85. Article 37 of the Constitution of India, 1949. [↑](#footnote-ref-86)
86. Section 6(6)(c). [↑](#footnote-ref-87)
87. Article 48A Directive Principles of State Policy under Part IV of the Constitution of India, 1949. [↑](#footnote-ref-88)
88. 1999 as amended. [↑](#footnote-ref-89)
89. *Op. cit.* [↑](#footnote-ref-90)
90. (1980) SC 18473. [↑](#footnote-ref-91)
91. Article 37, *op. cit.* [↑](#footnote-ref-92)
92. Fundamental Rights. [↑](#footnote-ref-93)
93. Directive Principles of State Policy. [↑](#footnote-ref-94)
94. *Minerva Mills v. Union of Indian, A.I.R.* (1980) SC at 1989. [↑](#footnote-ref-95)
95. *Supra.* [↑](#footnote-ref-96)
96. Article 24 of ACHPR, 1981. [↑](#footnote-ref-97)
97. Section 20 of the Constitution of FRN, 1999 as amended. [↑](#footnote-ref-98)
98. Section 13 which provides to wit: “It shall be the duty and responsibility of all organs of government and of all authorities and persons, establishing legislative, executive or judicial powers to conform to, observe and apply the provisions of this Chapter of this Constitution”. [↑](#footnote-ref-99)
99. Aoife Nolan Bruce Porter and Malcolm Langford “The justiciability of social and economic rights: An Updated Appraisal” Centre for Human Rights and Global Justice Working paper November 15, 2007 in [www.chrgi.org/publications/docs/wp/nolamporterlangford.pdf. visited on 15/10/2013](http://www.chrgi.org/publications/docs/wp/nolamporterlangford.pdf.%20visited%20on%2015/10/2013) where it is stated *inter alia* “that debate about the justiciability of social and economic right is an old and well won one. In recent years, with an increasing number of countries including social and economic rights in the Constitutions and with domestic Courts and Regional bodies routinely adjudicating and niting upon social and economic rights claims, the trend has been it pronounce that the debate is over and that social and economic rights have been proven to be justiciable. [↑](#footnote-ref-100)
100. Ijalaye, D.A., “Natural Law and the Nigerian Experience” in Nigerian Essays in Jurisprudence: Elias, T.O. and Jegede, M.I. (eds.) (Lagos: M.I.J. Publishers Ltd., 1993) p. 26. [↑](#footnote-ref-101)
101. Section 14(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. [↑](#footnote-ref-102)
102. American Declaration of Independence, 1776. [↑](#footnote-ref-103)
103. The French Declaration of the Rights of Man and Citizens, 1789. [↑](#footnote-ref-104)
104. Nakuta, J. “The Justiciability of Social, Economic and Cultural Rights in Namibia and the Role of the Non-Governmental Organizations” in [www.kas.de/upload/auslandshomepages/namibia/humanrights/nakuta](http://www.kas.de/upload/auslandshomepages/namibia/humanrights/nakuta) visited on 15/10/2013. [↑](#footnote-ref-105)
105. Uwais, Maryam, *op. cit.,* n. 23 at p. 293. [↑](#footnote-ref-106)
106. Communication No. 155/96. [↑](#footnote-ref-107)
107. Articles 16, 20 and 21 of the Charter. [↑](#footnote-ref-108)
108. *Ibid.,* at para. 63. [↑](#footnote-ref-109)
109. *Ibid.* [↑](#footnote-ref-110)
110. Article 48A of the Indian Constitution, 1949. [↑](#footnote-ref-111)
111. Articles 9 and 26 of the 1982 Constitution of the People’s Republic of China. See section 20 of the Constitution of the FRN, 1999 as amended which provides “The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”. [↑](#footnote-ref-112)
112. Nakuta, J., “The Justiciability of Social, Economic and Cultural Rights in Namibia and the Role of the Non-Governmental Organizations” in [www.kas.de/upload/auslandshomepages/namibia/humanrights/nakuta](http://www.kas.de/upload/auslandshomepages/namibia/humanrights/nakuta) visited on 15/10/2013. [↑](#footnote-ref-113)
113. Aduku, A., “Kogi Government Restates Commitment to Clean Environment” reported in the Graphic Vol. 23 No. 1,088 Wednesday June 10 – Tuesday June 16, 2015, p. 5 ISSNI/16, where the Governor further stated “...members of the public to make proper disposal of refuse at the appropriate government designated sites a way of life for a sustained clean environment...plans are on to acquire more waste management equipment that would boost the efforts at ensuring Lokoja the state capital was free of filth”. [↑](#footnote-ref-114)
114. Aoife Nolan, et al, *op. cit.,* n. 31 at p. 20. [↑](#footnote-ref-115)