

**AN ANALYSIS OF THE NON- JUSTICIABILITY OF CHAPTER II OF THE NIGERIAN
CONSTITUTION: ENFORCEMENT, EXCEPTIONS AND RECOMMENDATIONS**

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ABSTRACT

The Constitution of the Federal Republic of Nigeria 1999 (as amended) establishes Chapter II as a set of Fundamental Objectives and Directive Principles of State Policy, outlining ambitious socio-economic, political, and developmental goals aimed at promoting citizen welfare, national unity, and equitable governance. Despite forming part of the supreme law, these provisions are largely rendered non-justiciable by Section 6(6)(c), which ousts the jurisdiction of courts from entertaining claims regarding government compliance or failure to implement them. This creates a significant gap between constitutional promises and enforceable rights, often reducing lofty ideals to mere political aspirations dependent on the goodwill of leaders. This paper examines the historical origins of Chapter II, tracing it to the 1979 Constitution and the recommendations of the Constitution Drafting Committee. It analyses key arguments supporting non-justiciability, including resource constraints, the doctrine of progressive realization, potential inter-branch conflicts, and the risk of raising unfulfilled public expectations. The study further highlights notable exceptions, such as legislative enactments that give effect to specific principles, cross-references to other justiciable sections, and the domesticated African Charter on Human and Peoples' Rights, which treats socio-economic rights as enforceable. The analysis concludes that the non-justiciability clause undermines accountability and weakens the social contract, effectively shielding the ruling class from delivering essential dividends of democracy, including security and welfare. It advocates for greater justiciability to foster responsive governance, poverty reduction, and sustainable development.

Keywords: *Chapter II, Nigerian Constitution, non-justiciability, Fundamental Objectives, Directive Principles of State Policy, Section 6(6)(c).*

INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999 is the grundnorm of the country, regulating the government, institutions and people. It is the organic and fundamental law, setting out the principles and guidelines for its citizens to regulate the affairs. Hence, it is an important part of the country, antecedent to the government and a consensus of the people.

The Constitution is divided into Chapters, each representing an important aspect of the country outlining the principles of that subject matter. Ranging from General Provisions, to Citizenship and Fundamental Rights, the provisions of the Constitution are sacrosanct, binding and supreme over the people by virtue of **S1(1)**¹. However, the mere fact that there is a particular chapter which has been hotly contested on whether it is justiciable or not raised eyebrows as it leads to a serious concern on the enforceability of the supreme law.

DEFINITION OF TERMS

The **Black's Law Dictionary**² defines Justiciability as the quality or state of being appropriate or suitable for adjudication by a court. A justiciable issue is one that is capable of being properly brought before a court of law and decided using legal principles, rather than political or hypothetical considerations. An issue becomes justiciable if the rights asserted by the plaintiff are capable of being judicially molded or that the duty asserted can be judicially identified and its breach judicially determined.

Non-justiciability on the other hand has been described as a situation where a matter falls outside the conditions and purposes that circumscribe judicial actions. A matter or action which is of such nature makes it inherently unsuitable or incapable of judicial enforcement.

The Chapter II of the Constitution, titled Fundamental Objectives and Directive Principles of State Policy is an inaugural provision introduced into the Nigerian constitutional lexicon for the first time in 1979. The historical perspective of this Chapter can be traced down the colonial and military ruled Nigeria, the first draft done by a Constitution Drafting Committee on the event of the handover to civilian rule, after an incessant period of political unrest arising out of the military regime. The fundamental objectives and directive principles of state policy refers to goals and aspirations which the constitution has provided to serve as a guide to every government in the execution of its mandate or in carrying out its responsibilities or obligations towards its citizens. It is an innovative that was first introduced into the Nigerian constitutional lexicon in 1979 and it underscores the obligation of the government in terms of provision of basic amenities and

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended)

² Bryan Garner *Black's Law Dictionary* (1990) 9TH Ed

creation of a conducive and suitable environment for the citizens to enjoy their rights. Furthermore, this objectives are ideals towards which the nation is expected to thrive, the directive principles laying down policies to be pursued³.

BASIS FOR NON-JUSTICIABILITY

In as much as the provisions of Chapter II are embodied in the grundnorm and captures national ideals and guidelines for government, it's provision have been reduced to a mere ideal without sanctions and has been regarded as a sterile law. The rationale for this glaring contradiction is captured by the same supreme constitution in **S6(6)(c)** which provides that

“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 of omission by any authority or person or as to whether any law 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”

This provision has the effect of ousting the jurisdiction of the courts from entertaining any issues arising from the government's neglect or failure to comply with the provisions of Chapter II. The plausibility of such a provision has been criticized because the lofty and rosy goals and objectives which every government are obligated to and should perform are given a loophole and maneuver, leaving the public to the mercies of their leaders, who will not regard themselves as under that obligation. The reason for the adoption of directive principles of state policy is to invest the principles with the quality of Constitutional directive to the various organs of Government, and inform and guide the actions of government with reference to those principles.

According to the Constitution Drafting Committee (1976), the Government of Nigeria and indeed those of other developing countries tend to be preoccupied with power and it's material prerequisites with little regard for political ideologies as to how society can be organized and transformed to the best advantage of all.. The CDC (1976) also viewed the inclusion of the fundamental objectives as providing a yardstick for measuring the performance of every government. It was to be a Constitutional directive to the various organs of Government to inform and guide their actions. With the objectives entrenched in the Constitution it was believed that those in government would concentrate on the business of governance and strive to achieve the goals of the government.

This then begs the question of what the intention of the draft man was in limiting the enforcement of such an innovative provision in Chapter II. These objectives cannot be enforced in court in the

³ Prof. M. Ogwezzy *Lecture Note on Constitutional Law* (2024) Unpublished, Faculty of Law RSU

sense that an individual cannot bring an action against the government for not conforming to these objectives because they are non-justiciable. In **OKOGIE V ATTORNEY GENERAL OF LAGOS STATE**⁴, the court held that section 13 is part of Chapter 2 that has been declared non-justiciable pursuant to section 6(6)(c) that has rendered the entire Chapter II non-justiciable. The effect is to the tune that there can be no legal course of action or remedy for anyone who is dissatisfied with the non-compliance of the government in conforming to the provisions of the Fundamental objectives and directive principles. Arguments for the non-justiciability will be treated as follow, viz-a-viz;

- A. Constitutional Basis:** Section 6 (6)(c) of the 1999 Constitution on the powers vested in the judiciary provides for non-justiciability. The clear wording of this Section perfectly ousts the jurisdiction of the Court as it relates to the Fundamental Objectives contained in Chapter II. This provision begs the question: why include rights on one hand and invalidate its enforcement with another? This is a sharp contradistinction and total departure from the provisions of Section 13, which mandates all organs of government, including the judiciary to adhere to, follow, and implement the directives outlined in the fundamental objectives and directive principles of state policy. It is common knowledge that the legal enforcement characteristic enjoyed by the law is what lends it the force that compels adherence. When this force is however removed from any law, it renders such a law an image of a mere toothless bulldog.
- B. Influence from International Community:** Another argument is that Nigeria must have been influenced by the notion in international law where socio-economic rights are differentiated from civil and political rights and as **Ellen Willes** opined on the doctrine of Progressive Realization, such idealized policies cannot be achieved on the go. Furthermore, it is argued that wealth has to be created first before it can be distributed⁵. More so, the non justiciability is validated by the fact that it would be dangerous from a political standpoint to arouse expectations that cannot be fulfilled, thus leading to a revolution of rising frustrations.
- C. Economic Reality and Difficulty in Attainment:** Thirdly, while maintaining the position that socialist economies tend to be less efficient than free enterprise economies, it is asserted that it will be difficult to pursue the two goals of rapid development and extreme

⁴ (1981) 2 NCLR 337

⁵ Adeoye Akinsanya *Fundamental Objectives and Directive Principles of State Policy in the Nigerian Constitution* (1993)

forms of income at the same time. It is also argued that states do not have the resources to implement socio-economic rights and therefore will need time to acquire such resources.⁶

D. Burden on the Wheel of Justice : Making these provisions justiciable would only lead to constant confrontation between the executive and/or the legislative on the one hand and the judiciary on the other. Also, the provisions are relatively new and no one could be too confident of the most appropriate method of ensuring their observance.

Consequently, the non-justiciable nature of Chapter II of the Nigerian Constitution means that while the objectives and principles outlined therein serve as important national aspirations and moral guidelines, they do not provide a strong legal basis for direct enforcement.⁷ The government's compliance with these principles depends on political will and the accountability of elected officials, rather than legal mandates

EXCEPTIONS TO NON-JUSTICIABILITY

It is a trite principle of law that for every general rule, there is an exception. The following arguments establish reasons for the justiciability of the Fundamental Objectives and Directive Principles of State Policy;

a. Legislative Competence

Foremost amongst these exceptions is that the National Assembly (the legislative arm of the government) can enact specific legislation that gives legal backing to any of the directive principles and these legislations shall be justiciable. This means that where there is a law passed to implement a particular directive principle, individuals can challenge the government's compliance with that law in court]. The case of *OLAFISOYE V. FEDERAL REPUBLIC OF NIGERIA*⁸ lends a judicial backing to this exception

The enactment of the Economic and Financial Crimes Commission Act is a typical example in furtherance of Section 15(5) of the CFRN 1999 which provides that *the state shall abolish all corrupt practices and abuse of power*. It is important to highlight that the National Assembly has made limited legislative efforts to ensure the enforceability of the provisions in Chapter 2 of the Constitution. In contrast, there has been a multitude of legislations enacted to enforce the duties of citizens as stipulated in the chapter, the Personal Income Tax Act and other tax legislations being a typical example.

The legislature still has powers to confer actionable rights on the contents of the Chapter vide Item 60(a) of the Exclusive Legislative (part 1 Second Schedule) of the 1999 Constitution which

⁶ Mack Ogbamosa *Combating Governance Crises through Justiciability of Chapter II* TheCable (2021)

⁷ Nwauzi, L. O. *How Fundamental are the Fundamental Objectives and Directive Principles Under Chapter II of the Constitution of Nigeria 1999*. (2017)

⁸ (2004) 4 NWLR (PT. 864) 580

empowers the National Assembly to make laws for the ” establishment and regulation of authorities...to promote and enforce the observance of Chapter II of the Constitution.” When the legislature takes a step in this direction, S6(6)(c) will become impotent and right of access to court for enforcement of such rights by aggrieved citizens will be boosted.

This argument is further reiterated by the courts in the case of AG ONDO V AG FEDERATION⁹. The court held that “Notwithstanding Section 15 of the 1999 Constitution, the EFCC Act was validly made to stamp out corruption as contained in Chapter II of the Constitution and in line with Item 60 of the Exclusive Legislature List.”

b. Intersection with other Constitutional Provision

Another exception is that some elements within Chapter II are directly incorporated into other parts of the Constitution, making them justiciable such as the provision in Section 42 that protects against discrimination as provided under section 15(2) of the Constitution. More so, where any part or any section of the constitution mentions any part in Chapter II of the constitution, by mere mentioning of that part, it has rendered the part mentioned in Chapter II justiciable. For instance, section 147(3) of the constitution mentioned section 14(3) which is under Chapter II by providing that the “President's appointment should be in conformity with the provisions of S14(3) of the constitution”.

S.14 (3) provides that “*The composition of the Government of The Federation or any of its agencies and the conduct of it's affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies.*” Hence by the mere mention of this provision of Section 14(3) in Section 147(3), it has rendered section 14(3) which is under Chapter 2 of the constitution justiciable.

c. International Law

Nigeria is a signatory to the African Charter on Human Rights vide the African Charter on Human and People’s Rights(Ratification and Enforcement Act Cap 10 , Laws of the Federation of Nigeria (LFN), which does not discriminate between the two types of rights. It means that socio-economic rights are actionable in Nigeria, notwithstanding the provision in S6(6)(c) of the Constitution.

In the case of REGISTERED TRUSTEES OF SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) V PRESIDENT, FEDERAL REPUBLIC OF NIGERIA AND UNIVERSAL BASIC EDUCATION COMMISSION¹⁰ the ECOWAS Court of

⁹ (2002) NWLR (PT 772) 1

¹⁰ Suit No ECW/CCJ/APP/08/08

Justice held that the rights guaranteed by the African Charter on Human and People's Rights are justiciable before the Court. It also held that every Nigerian has a right to education which can be enforced before the court and that Nigeria has the duty to give effect to the provisions of the African Charter.

Furthermore, in *FAWEHINMI V ABACHA*¹¹, per Ogundare JSC, it was held that where there is a conflict between a local statute and the African Charter, the provisions of the African Charter will prevail. The Court of Appeal in *ORONTO DOUGLAS V SHELL PETROLEUM DEVELOPMENT COMPANY LTD*¹² endorsed the justiciability of an action brought pursuant to Article 24 of the African Charter on Human Rights (Ratification and Enforcement) Act

d. Negating Proviso under S6(6)(c)

More so, the loophole for the non sacrosanctity of S6(6)(c) was expressed by Niki Tobi JSC in *FEDERAL REPUBLIC OF NIGERIA V ANECHE*¹³ due to the leeway of the proviso '*except as otherwise provided by this constitution*'. In essence, the draftsman had in mind the existence of exceptions and not providing for a strict and rigid provision.

Furthermore, the provisions of S13 also made it a responsibility of all organs of government to '*conform to, observe and apply the provisions of*' Chapter II. However this has been argued that it as a responsibility without liability, as no sanctions are attached to it.

CONCLUSION AND RECOMMENDATION

The ruling class is advantaged by the non-justiciability clause because **S 6(6)(C)** takes away the ability and power of the citizens to make the government accountable for the promises in Chapter II which indeed is the basic dividend of democracy¹⁴. Despite the fact that the rights and duties enclosed in Chapter II of the Constitution are lofty and promising, they are such that form the basis of an ideal Nigeria that is desirable, however, the ouster clause in **S6(6) (C)** transforms those sweet savory promises into a poisonous and tasteless promise as it has become what an average Nigerian cannot enforce or enjoy. The ouster clause has now made those assurances of equality and prosperity an inappropriate subject matter for judicial determination.

The death of the provisions of Chapter II by virtue of its non-justiciability is also tantamount to the death of the Constitution. The opening phrase of the Constitution, says "*We the people.....Do hereby make, enact and give ourselves the following constitution.*" The question therefore is would a Nigerian gladly agree that as beautiful and lofty the provisions of Chapter II

¹¹ (2000) 6 NWLR (PT. 660) 228

¹²(1992) 2 NWLR (PT 591) 466

¹³ (2004) 1 SCN 36

¹⁴ A. T. Durodola (2022) *Chapter Two of the 1999 Constitution of Nigeria; The Fraud, Illogicality and Prospects*

is, it will not be Non-justiciable? Chapter II houses the benefits and fruits of Democracy and the question if Nigerians would reject these fruits? The non-justiciability of Chapter II, put succinctly, amounts to fraud on the part of the drafters of the Constitution and deprivation of the manifold benefits of democracy.¹⁵

The law and rights are clearly resident in Chapter II of the Constitution of the Federal Republic of Nigeria, and the duties imposed on the government by the provisions of Chapter II of the Constitution crystalizes into rights for the enjoyment of the citizens. The failure of the government to carry out these duties amounts to a violation of the rights of the citizens which ordinarily should give room for remedy, but the non-justiciability of Chapter II of the constitution takes away remedy from the citizens

The recommendation of making Chapter II of the Nigerian Constitution justiciable is a significant proposal with the potential to yield several positive outcomes for the country. Allowing citizens to directly enforce the fundamental objectives and directive principles of state policy would **encourage better governance** by (a) holding government institutions accountable for the fulfilment of their obligations toward the welfare and well-being of citizens, (b) reduce poverty and (c) ensure that the government can be compelled to create and support policies that promote job creation and economic growth.

These goals are predicated on the necessity for the material wellbeing of the citizens with the state playing a pivotal role. They are means devised to attain the Constitutional promises enshrined in the preamble which are considered as necessary for the social, political, cultural and economic development of Nigeria.

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¹⁵ Okeke Odinakachukwu "Pro-justiciability approach towards enforcing the provisions of chapter ii of the constitution of the Federal Republic of Nigeria 1999." (2023). Nnamdi Azikiwe University Journal of International Law and Jurisprudence 14.1

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