ENFORCEMENT AND IMPLEMENTATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE NIGER-DELTA REGION OF NIGERIA: CHALLENGES AND OPPORTUNITIES.

A.U. ABONYI, Ph.D.
Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Uli, Anambra State.

Abstract

Nigeria is one of the states that have not promoted the regime of rights called economic rights to the extent that she has promoted the civil rights.Thus, even though in some African states, their Constitutions have made provisions for protecting and promoting economic rights as is the case in South Africa, Ethiopia and Senegal, the constitution of many other states in Africa including Nigeria has notmade such provisions, and as at today, the realization and enjoyment of these rights are not subjected to the availability or otherwiseof resources but to thedisposition of government and the leaders.The rights cannot be litigated upon before the court in such societies including Nigeria.This is unfortunate because the resources in question are in the hands of corrupt African Leaders as it is the case with Nigeria where the resources are available but are mismanaged due to corruption. The Niger-Delta Region is the highest revenue generator for the Federal Government of Nigeria and this is as a result of the huge deposits of oil and gas resources. Notwithstanding this, the regions is faced with series of environmental problems including pollution, gas flaring, oil spillages and other related hazards and have devastated the environment. The federal governments as well as the multi-national oil corporations have done nothing to provide the economic needs of the communities in Niger-Delta. Owing to the above problems, this paper becomes necessary to address the fundamental issuesas to whether or not economic, social and cultural rights can be effectively enforced and enjoyed in Niger-Delta and in Nigeria at large. The papers also aims at finding out the challenges to the

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realization and enjoyment of economic rights in Nigeria and in addition find options and opportunities available for the achievement of these rights. The paper considers the realization and enforcement of these rights in other jurisdictions and makes recommendations for the achievement of the rights in Nigeria and then end the crisis in Niger delta.

Introduction

It is no longer contested that economic, social and cultural rights are an essential part of the normative international code of human rights.[1] These rights have their place in international and regional conventions and in the plethora of human rights treaties and declarations.[2]What is howevercrucial is to critically engage the questions posed by Cooman and Scheinin as to whether economic, social and cultural rights only exist on treaties and national constitutions to which governments only pay lip service at international fora. This does not mean anything in practice for those who want to invoke these rights before the courts.[3] The above questions serve as pointers to the fact that notwithstanding the importance of economic and social rights, to the survival and existence of the citizenry, the implementation of these rights at the international and national level is still a mirage

Nigeria is not free of the problems of non-enforceability and implementation of these rights. It is observed that the challenges to the successful realisation of

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[1] John Nakuta "The Justiciability of Social, Economic and Cultural Rights in Namibia and the Role of Non-Governmental Organizations" johnnakutaarticlesonline.com.esr rights.org (accessed 11/4/2016).

[2] *Ibid*

[3] Scheinin, M, Economic and Social Rights as Human Rights, (Dorgrecht:Martins Nijhoff) 2001 p.29

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economic, social and cultural rights are institutional and constitutional, i.e. the challenge of *locus standi*, justiciability and dualism as the case may be. Therefore, there is the need to consider these challenges for purposes of ensuring the realisation of economic, social and cultural rights in Nigeria particularly for the people of oil rich Niger-Delta region.The region is regarded as one of the richest Deltas in the world with viability in oil and gas production and palm oil production. It ranks at the same level with the Amazon Delta in Brazil and the Mekong Delta in Vietnam. The revenue generated from Niger-Delta is more than the revenue generated from all the other regions combined but the administrative structure of governance in Nigeria within the provisions of Nigerian Constitution especially the derivative principle adopted, all revenue generated from oil produced in the Niger-Delta are concentrated in the Federation Account controlled by the Federal Government. The monies painfully, are used to develop other areas without any trace of development in the Niger-Delta. Worst still, the environmental degradation in the area continues unabated. There is poor housing for the people, lack of educational facilities, poor standard of living as well as scarce infrastructure in the form of good roads, hospitals, etc. All these form the economic needs of the people for which the Federal Government give excuses that resources are not enough. This indeed is a serious problem and demands urgent attention and hence this paper which is intended to find ways for the enforcement and implementation of economic, social and cultural rights in Nigeria.

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Conceptual Framework

Human Rights

The concept of human rights has suffered definitional problem just as the concept of law itself. The concept to is confused with other notions including fundamental rights. This controversy in the definition of human rights has been judicially noticed in a plethora of cases resolved by courts in Nigeria and in other jurisdictions. In *Uzoukwu and Others vs. Ezeonu I1 & Others,*[4] the Court of Appeal held interalia and stated that:

> Due to the development of Constitutional law in this field, distinct differences have emerged between fundamental rights an]it may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person. These rights were termed human rights. When the United Nations made its declaration, it was in respect of human rights as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race, and religion and so on.

This has now formed part of international law. Fundamental rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country, that is, the constitution.What the above holding of the Court of Appeal signifies is that human rights refers, to theright which all individuals enjoy by virtue of being human beings and the rights come to the

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[4] *(1991) 6 NWLR (pt 200) 708 at 761*

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individual naturally by his. The decision of court in Uzoukwu's case shows that human rights enjoy recognition and is part and parcel of international law as promoted by United Nations and international bills or instruments of rights. Relating this to the provisions of Nigerian Constitution, it is clear that the civil and political rights listed under *Chapter IV* of 1999 Constitution of federal Republic of Nigeria, as amended in 2010, i.e. right to life, assembly, association, movement religion etc, are all recognized as fundamental rights. They are not only inalienable but can be enforced when violated. However; in chapter 11 of the same Constitution, economic, social and cultural rights are not enforced in any court in Nigeria. This is the purport of session 6(6)(c) of the 1999 constitution as amended. The above constitutional provision has been judicially recognized in a number of cases. Human rights are those rights which are very essential to life as human beings. They are basic standards without which people cannot survive and develop in dignity.

Niger- Delta Region

The Niger-Delta in Nigeria is one of the richest Deltas in the world. It has been linguistically, ethnographically and culturally defined to comprise:a bewildering mix of ethnic groups among the communities of ijo (in eastern, western and central Niger Delta), the Ogoni, Itsekiri Urhobo, Isoko, Ikwere and Delta Igbo" all in Nigeria.[5]

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[5]46. S.W. Petres "Conservation and Development of the Niger Delta. "s.w.peters 2 http://www.online Nigeria.com/economics/?blurb=497 (accessed28/9/2015.

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It is evident that the region called Niger- Delta is a large geographical area. Indeed attempts at defining the region have always been problematic. This is manifest in the finding of many researchstudies which tend to contrast with one another. i.e. Tekana Tamuno's Report points out that the Niger- Delta- comprised an area about 70,000sqm km while the 1995 World Bank Technical Report gives the total land area of the Niger - Delta as 20,000sqkm.[6] The reports referred to the then Delta located in southeastern Nigeria contrary to the present designation of the Delta as part and parcel of the area called the South South region which is a political designation. It includes states such as Edo, Delta, Bayelsa, Rivers, Akwa Ibom, Cross river, Ondo, Abia and Imo states. There is thepossibility that more willstillbe added as soon as oil is discovered in such area. However, the expression oil producing states should not be confused with the entity called Niger-Delta region or South-South region.

Mankind has a past which is studied today as history and since Niger-Delta is part of nature, so paramount in Nigeria, it is important to look at Niger-Delta and appreciate how long it took the delta to accumulate the petroleum resources which Nigeria has been exploiting without any development for the region. This indeed, in our view, is the cause of the crisis in the region.

Universality of Human Rights

The principle of universality of human rights is a global concept and has become an emerging idea in the realm of international law. Indeed, the concept of universality has received serious attention in national, regional and

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[6] 1995 WORLD Bank Technical Report Vol. 1 1995

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international human rights discourse and hence it imperative to properly give meaning to it for proper understanding.

When the word universal is used relative to the concept of human rights, it connotes total acceptance of the rights by all and secondly, the recognition of all classes of rights protectable and capable of being protected without any discrimination. Universality of human rights means that the two species of rights are seen as equal and necessary for overall healthy life of the individual.[7] The *Universal Declaration on Human Rights* recognized civil and political rights, as well as economic, social and cultural rights, and even the third generation of rights i.e. environmental and developmental rights[8] as enforceable rights.

It must be understood that the doctrine of universality of human rights is related to but different from the principle of indivisibility of rights.[9] Universality connotes that human rights belong to all citizens, i.e to every person.

Economic, Social and Cultural Rights

It is no longer in doubt that human rights are globally recognized as those rights which the individual is entitled to because he is a human being. By extension also, human rights are those claims or entitlements which the individual enjoys by virtue of his or her humanness. Further to the above,

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[7] Article 1 of Universal Declaration of Human Rights (UDHR) 1948

[8] *Universal Declaration of Human Rights, 1948 Article 1 to 21 Civil and Political Right, Article 22-26 Economic, Social and Cultural right, Article 27 to 30 (Development and Environmental right) General Comments on UDHR by Ogbu and Elias* http://www.ngr.udhr.humanrights.com

[9] 61. G. Ezejiofor. *Opicit* page 59.

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human rights comprise both the civil and political rights, as well as, economic, social and cultural rights. These two species of rights are of the same package and should be treated fairly and equally as none is regarded as superior or inferior to the other.[10]

In the context of Nigeria's domestic law, the above position may not be true for there seems to be a clear demarcation and discrimination between civil and political rights in the constitution. In Nigeria, as in most African states, civil rights are recognized as fundamental rights while the economic, social and cultural rights are mere state obligations and goals or aspirations which states strive to achieve for their citizens. Unlike the civil rights, economic rights are not enforceable in our law courts. Thus, they are capable of being enforced by individuals against the state.[11] In our view, economic, socialand cultural rights should be enforceable. This is because, they make life worth living. Hence, the need to enforce rights such as: right to work and be paid or be remunerated fairly without discrimination, right to quality food, educational opportunity, housing, comfortable and stable standard of living and good environment etc.

From the above, it is evident that the right to live a dignified life can never be attained unless the basic necessities of life such as work, food, housing, healthcare, educational opportunity are adequately and equitably provided for everyone. The necessities of life mentioned above i.e. food, housing, education, right to self-determination, health care,

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[10] *Ibid.*

[11] *Chapter IV and II of 1999 Constitution of the FederalRepublic of Nigeria (as Amended) in 2010, Sections 33 (1) 34, 35 to 46 (1) and Sections 15,16,and 17 of the 1999 (FRN) Aforesaid.*

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good work and stable standard of living all refer to what is today described as economic, social and cultural rights.[12]Based on the above, international human rights law established individual and group rights, relating to the civil, as well as cultural, economic and social rightsas enforceable rights.[13]Hence, the United Nations, both in her *Declaration of 1948* and in the *International Covenant on Economic, Social and Cultural rights* made bold efforts to progressively protect economic, social and cultural rights.

Challenges to the Realization of Economic Social and Cultural Rights in Nigeria:

There are challenges which stand against the full achievement of Economic Social and Cultural rights in Nigeria. Such challenges can be institutional or constitutional or others as case may be.

Constitutional Challenge: It is now a settled fact among legal minds that economic, social and cultural rights by their nature are crucial in the overall wellbeing of an individual in a community. What is still a problem at the domestic or international arena is the question of realization of these rights. The non-justiciability of social economic and cultural rights has by no means contributed to the controversy surrounding the implementation and enforcement of these species of rights. In Nigeria, the controversy surrounding the non-justiciability claim has generated a lot of argument and debate among scholars and the debate have negatively impacted on the realization of these rights.[14] Part of the

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[12] Ibid

[13] *Ibid*

[14] Mathias Zechariah etal "Institutional and Constitutional Constraints to Realization f Economic, Social and Cultural Rights in Nigeria. Lessons

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problems suffered in the realization and implementation of socio, economic and cultural rights in Nigeria is created by the Constitution. This is because under the Constitution of the Federal Republic of Nigeria 1999 (as amended) in 2011, not allhuman rights or human rights provisions have equal status.[15]

Arguing in support of the fact that the constitution itself provides a challenge to the implementation and realisation of economic, socio and cultural rights in Nigeria, Azinge however favour the enforceability of economic and social rights though he admitted that its application is restricted by section 6(6)(c) which is nothing but an ouster clause typical of military decrees.[16]In his view, courts or judges can exploit the provision of *Section 13* of the Constitution which implies that though the judges are precluded from questioning whether any law or decision is in conformity with *Chapter II* of the constitution, but are not precluded by *section 6(6) C* from determining whether or not the legislature or executive has failed to observe and apply the provisions of *Chapter II* of the constitution.[17]We share this view completely.

The wordings of section 13 of the constitution is clear and from it, the following points and issues can be distilled for consideration, that is, there is a mandatory duty and responsibility on all organs of government, of all authorities

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from International Law" Nigerian Institute of Advanced Legal Studies Journal Vol 1, Lagos 2001, page 237.

[15]*Ibid*

[16]Azinge. E "Living Oracle of the Law and the Fallacy of Human Divination" Being text of Lecture delivered at the sixth Justice Idigbe Memorial Lecture 20/6/2006, University of Benin.

[17]*Ibid*

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and persons exercising legislative, executive and judicial powers in Nigeria to conform, observe, and apply the provisions of this chapter of the constitution. The environment is an important aspect of economic, social and cultural rights and by *section 20* of the constitution, the state has a duty to protect and improve the environment and safeguard the water, air, land, forest and wild life of Nigeria. This section of the constitution is very important in the sense that any statute or enactment in Nigeria protecting environmental rights can validly be enforced and given force of law through this provision especially in a sense of judicial activism. As Omaka reasoned, *section 20* of the 1999 Constitution gave Nigerians a non-justiciable right to a healthy environment and by this offered a functional meaning and scope of the concept of environment.[18] In this regard, the case of *Attorney General of Lagos v. Attorney General of the Federation* is quite instructive and important.[19]

Activism in the judiciary is necessary in using the provisions of *section 13, section 6(6) c* and *section 20* of the Constitution to realize the economic, social and cultural rights. Again, by the judicial activism and dynamism, as well as, influence from other jurisdictions, such as India and South Africa, Nigerian courts should, in our view, give expansive interpretation of the provisions of the constitution on civil rightsto give life to economic, social and cultural rights. This is because there cannot be a full realization of civil and political

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[18]C.A. Omaka "8th Inaugural Lecture, Delivered at EbonyiStateUniversity, Abakiliki, 27/8/2015

2003 FWLR Part 168 909 at 946.

[19]*2003 FWLR Part 168 909 at 946.*

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rights when the actualization of economic, social and cultural rights is impossible.

Institutional Challenge: It is important to note that apart from constitutional constraints to the realization of economic, social and cultural rights in the Niger-Delta, there are also institutional challenges that impede the achievement of these rights. The institutional challenges can be looked at from two perspectives, that is, conflict and overlapping functions of institutions /agencies and application of objectional laws and legislations by the government.

Considering the legal architecture of economic, social, and cultural rights, it is evident that this class of rights exists on three different but interconnected levels – international, regional and national.[20]It is indeed not in doubt that while much records of progress and success towards protection of the above rights have been recorded at international and regional levels, the story is not the same at the level of nations due to varying challenges and impediments. The Nigerian constitution does not promote the enjoyment of economic rights.

Among the institutional challenges to the realization of economic social and cultural rights is conflict and overlapping functions of institutions and agencies established to address some of the problems related to environmental issues and other matters connected with the exploration of petroleum resources in the Niger-delta region.

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[20] Matthew C.R. Craven *"The International Covenant on Economic, Social and Cultural Rights: A Perspective on the its Development"* (Clarendon Press, Oxford Monographs in International Law), 1998. p8

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Studies have shown that most of the serious problems are:

Oil spillages in the Niger Delta, gas flarring and burning of associated natural gas produced with oil, have contributed to environment pollution.

Aging infrastructure, poor maintenance and ecosystem degradation and ecological miasmas from international oil companies are other challenges. Recrimination, toxic oil and gas activities in the region by government and the international oil companies are problems remain which unabated and have combined to make the lives of the people of Niger – Delta miserable.[21] A good example is the recent experience of black soot's in the form of ashes falling in all parts of RiversState recently covering houses, roads, vehicles which researchers have indicated that the black particles are materials from oil exploration activities. The black soots are not only detrimental to the health of the people, but also endanger environmental safety and security.[22] The above problem in the region arising from oil activities is confirmed by the United Nations Development Project (U N D P) Report which states that a total of 6819 oil spills between 1976 and 2001 were recorded in the Delta.[23] Of the estimated 3 million barrels recorded, 69 percent occurred off shore, a quarter in swamps and 6 percent on land. The people of the Niger – Delta are helpless as environmental degradation continues unabated, unattended to and underreported and because these violated rights are not enforceable under the

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[21] Sonny Atumah " Justice, Ogoniland Remediation Etal "Oil And Summitteer, Vanguard, April 23, 2016 Pg 20

[22] *African Independent Television online environmental report, AIT news 15/02/2017*

[23] *Ibid*

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constitution, Niger-Delta communities now seek justice in offshore courts in the United Kingdom.[24]

The Federal Government has established institutions and agencies to address pollution and environment related problems arising from oil activities in the Niger Delta. Some of these institutions include.

1. The National Oil Spill Detection and Response Agency (NOSDRA)
2. The National Environmental Standards and Regulation Enforcement Agency (NESREA)
3. The Department of Petroleum Resources (DPR)
4. The Pollution Control Department of the Ecological Fund Office
5. The Federal Ministry of Environment.
6. The Niger-Delta Development Commission (NDDC)

Our candid view is that the multiplicity of these government departments and agencies with overlapping functions, powers and duties create confusion and conflicts leading to a scenario of not achieving results in Ogoniland and indeed the whole of Niger-Delta region. In other to appreciate this conflict, the functions of these agencies are highlighted and reviewed in this paper.

Section 1(1) of *National Oil Spill Detection and Response AgencyACT No 15*, 2006[25]established an agency known and called the National Oil Spill Detection and Response Agency as a body Corporate with perpetual succession having the responsibility for preparations, detection and response to all oil spillages in Nigeria as prescribed under *section 5* of the Act. From the stipulations of

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[24]*Ibid*
[25]*Cap 379 LFN 2004*

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section 1 above, the National Oil Spill Detection and Response Agency have the following responsibilities:

i. To make preparations leading to detection of oil spillages;
ii. To effect the detection proper of the spillages; and
iii. To make response to the spillages discovered.

From the provisions of the *National Oil Spill Detection and Response Agency* Act reviewed, the Board of the agency created under *Section 2(1)* of *part II* of the Act carries out responsibilities and function which centres on:

1. Ensuring detection of all oil spillages in Nigeria and responding to them whether minor, major or 3 Tier spillages.
2. Addressing Oil Pollution whether major or minor.
3. Protect threatened environment including land, air and sea (water) as the case may be.

Looking at *Section 1(1)* of *National Environmental Standards and Regulations Enforcement Agency Act*[26] made by the National Assembly a year after the *National Oil Spill Detection and Response Agency* Act, the National Environmental Standards and Regulations Enforcement Agency was established as a corporate body with perpetual existence and vested with the responsibilities under *Section 2* of the Act to do the following:

a. Protection and development of the environment
b. Biodiversity conservation and development of Nigeria's natural resources in general and environmental technology.

[26] *Act No 25, 2007.*

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c. Coordination and liaison with stakeholders within and outside Nigeria on matters of enforcement of environmental standards.

Further to the above, the entrusted functions on the agency under *Section 7(a –m)* includes handling all matters related to environmental standard, polices, guidelines, and laws including environmental safety and protection. It is evident that from the review of the laws establishing and creating the two agencies *National Oil Spill Detection and Response Agency* and *National Environmental Standards and Regulations Enforcement Agency*, they all have the responsibility and functions of protecting the environment which includes:

i. taking steps to ensure environmental safety
ii. check pollution and oil spillage
iii. conserve and develop the environment.

From the above, it is clear that there is bound to be conflict and confusion as the responsibilities of the agencies overlap and appears to be an unnecessary duplication. i.e. While *National Oil Spill Detection and Response Agency* is vested with responsibility of overseeing all issues related to all oil spillages in Nigeria, the *National Environmental Standards and Regulations Enforcement Agency* oversees all environmental matters (protection, conservation and development) in and outside Nigeria which practically includes spillages.

Another point of confusion is that members of the Board and Council of the two agencies are by the Acts establishing them drawn from the same or related departments as can be seen from *section 2(2)* of *National Oil Spill Detection and Response Agency* Act and *Section (3) (1)* of *National Environmental Standards and Regulations Enforcement AgencyAct* they are all drawn from the ministry of environment, defence, works, housing and others. This

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confirmed the fact that the functions, duties and structure of the agencies are not only interconnected but intertwined and there cannot be a successful discharge of the responsibilities by one of the agencies without the other raising alarm of takeover of its duties.

The National Assembly in 2000 enacted the *Niger-Delta Development Commission Act* which repealed the *Oil Minerals Producing Areas Development Commission Decree.* The *Niger-Delta Development Commission Act* aforesaid in its preamble created and established the commission with the responsibility to use the funds allocated to it from the Federation account to tackle ecological problems which arise from the exploration of oil minerals in the Niger-Delta area and for connected purposes. Precisely under *Part II* of the act particularly *Section 7(1)h,* the commission shall perform the function of tackling ecological and environmental problems arising from oil exploration in the Niger-Delta and advice the Federal government and member states of the oil producing areas on the prevention of oil spillages, gas flaring and environmental pollution.

Furthermore, *subsection(i)* and *(j)* of *section 7* reviewed permits the commission to liaise with relevant authorities and bodies on all matters of pollution, control, prevention, as well as, taking all necessary steps to ensure sustainable environmental development of Niger-Delta. In our view, all these are functions similar to that of *National Oil Spill Detection and Response Agency* Act and *National Environmental Standards and Regulations Enforcement Agency* Act i.e. they all touch on environmental safety, protection, pollution control and general environmental development, sustainability and stability. As a result of these similarities there is bound to be an overlap, confusion and

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problems among these agencies thus making the realization of the goals of sustainable environment in the region an uphill task.

Another institutional challenge to the realization of economic, social and cultural rights in the Niger-delta is the application of objectional laws.[27] Nigeria has for some years developed policies and laws which vests ownership, exploitation and exploration of oil mineral resources right found in Niger- Delta region on the Federal Government.[28] These laws and policies are made without human face and with no clear spirit and mandate to advance the interest, wishes and aspirations of the people of the region. Sadly, the degradation of the environment including, gas flaring is yet to be abated. Similarly, oil spillages and pipeline leakages still occur and there are still effluent discharges from production and refinery operations.

Nigeria being a creation of British Colony inherited colonial policies including their legal system founded on the common law of England.No wonder, the British colonial authorities demonstrated clear intentions from the onset to vest the ownership and control of mineral resources extracted anywhere in Nigerian in the crown.[29] Laws were enacted to advance the intention of the crown without recourse to the interest of the traditional owners of the lands where the

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[27] F. E. G. Deinduono, "Essays in Honour of Late Hon Justice Emmanuel Joel Igoniwari" Law, Oil and Contemporary Development Issues in Nigeria, (Lagos, Malthhouse Law Books, 2004) p 1

[28] *Ibid*

[29] *Lucius E.N, Nigeria and the Challenge of Development in the Niger Delta, being a text of as paper presented at Annual General Conference of Nigeria Bar Association held in Portharcort P 11(referred to and relied by Sylvanus Abila, Law and Policy of Oil Ownership In Nigeria, Chapter 11, Malthahouse Law books Pg 27*

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mineral resources were being extracted.[30] With independence, the government of Nigeria found it convenient to adopt the same laws to ensure a continuum, ostensibly for the benefit of the country, but in reality, it protects the supply chain from the raw minerals areas.[31] The supply and protection was indeed for the rest of the country except the traditional owners. This amount to tapping the minerals to develop other areas of the country living out the Niger-Delta undeveloped and impoverished. A look at the objectional laws which were enacted against the interest of the Niger-Delta Communities is crucial in attempt to resolve the militancy in the Niger-Delta region. The laws are, the Petroleum Act.[32], Exclusive Economic Zone Act[33], Land Use Act[34], the 1999 Constitution of the FederalRepublic of Nigeria.[35], Lands (Title Vesting Act)[36] and Oil and Minerals Act in Nigeria.[37]

A review of the above laws indicates clearly in our view that they expropriated the resources of Niger-Delta and deny the region their benefits.

The combined analysis of the recital of the *Petroleum Act* of 2004 and its *section 1*, vest the ownership of the on-shore and off shore revenue derivable there from petroleum resources on the Federal Government of Nigeria.[38] The purport and implication of the recital and *section 1* above is

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[30] *Ibid*
[31] *Ibid*
[32] *Cap PIO, Laws of the Federation of Nigeria, 2004*
[33] *Cap E17 Laws of the Federation of Nigeria, 2004*
[34] *Cap L5, Laws of the Federation of Nigeria 2004*
[35] *As amended in 2011*
[36] *Cap L7 Laws of the Federation 2004*
[37] *Cap M12 Laws of Federation of Nigeria, 2004*
[38] *Ibid*

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that the entire ownership and control of all petroleum in and under or upon any land or lands to which this section applies shall be vested in the state i.e. Nigeria. The intent of the above provisions of the *Petroleum Act* is that it made the federal government the exclusive owner of petroleum resources extracted from anywhere in the country including the oil producing communities in the Niger-Delta region. The law also makes the federal government the exclusive owner of the oil revenue accruing there from in the region. The areas covered under the law by *section 1(b)* of the act include lands stretching to include all lands in Nigeria, under the territorial waters and those forming part of the continental shelf.[39] To further confirm the control of the resources by the Federal government, Abila insists that by *section 2* of the Act, it is the Federal government that can lawfully grant appropriate licenses to prospective explorers including oil Exploration Licence (OEL), oil Prospecting Licence (OPL) and oil Mining Lease (OML)

Regrettably, *section 11(1)* of the *Oil Pipelines Act* makes a similar provision divesting control and ownership rights from the communities and vesting the same on the Federal government when it authorized the holder of the license, as well as, workers, or agents to enter and take possession upon any land subject to *section 14, 15 and 16* and maintain and operate oil pipelines and installations. *Section 11(4)* gives wide powers on the holder of such licenses to dig and get free of charge gavel sand or any other such substances. Although, the Act allows for payment of compensation, it is viewed that a law that denies the

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[39] *Ibid, See also section 1(b) of Petroleum Act Cap p10, Laws of Federation of Nigeria, 2004*

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traditional owners of resources in the land which they own prior to the enactment of such law cannot be a good one in any modern society.[40] Such laws invite conflict as is witnessed in Niger-Delta region between the traditional land owners and holders of oil licenses.[41]

The Challenge of Locus Standi

The concept of *locus standi* is fundamental to the issue pertaining enforcement of rights, and institution of actions, in courts, to establish claims, reliefs or entitlement. Such right or rights can be in the specie of fundamental rights, i.e. civil and political rights. It may also be in the form of economic, social and cultural rights.

The implication of the above is that a person seeking to enforce any of his right or rights, claim, relief, or entitlements before and in a court of law must show that he or she or they have sufficient interest in the subject where the cause of action arose. Under the common law and in many statutes, the concept of *locus standi* also known as "legal standing" is the ability of a party to demonstrate to the court sufficient connection to the law or action challenged.[42]

In a number of jurisdictions, a person cannot bring action or suit challenging the constitutionality of a law unless the person can demonstrate that he is or will be harmed by the law. If this is not shown, the court usually rules that the plaintiff or applicantlacks standing and the matter will be struck out.[43] The effect and purport of the above position is that in order to sue or to have a court declare a law unconstitutional, or to activate the machinery of court to

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[40] *Ibid*
[41] *Ibid*
[42] *ibid*
[43] *Ibid*

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entertain an action in respect of a right, a claim or relief or entitlement, the party bringing the action before the court must show he has something to lose, or is losing something already if the law is left as it is or the action causing the loss or possible loss is left to continue to occur without check. Even in India where there is expansion of *locus standi* in the area of public interest litigation, sufficiency of interest is still the test. Through that busy bodies are not admitted or allowed to initiate or continue proceedings. The flexibility in matters of public interest litigation in India appreciates that there must be genuine grievance.[44]

Looking at Economic, Social and Cultural Rights, the challenge of *locus standi* is relevant in the context of realization of these rights.Apart from this, *locus standi* cannot be divorced from the issues of justiciability of the right itself because if a right is not litigable, then the issue of whether a person has sufficient interest is more or less academic. The reason is because it is only in this context that it would be necessary to approach the courts as individuals or a group for the purpose of seeking judicial interpretation or a resolution of the problem arising from or attributable to violations of economic, social and culture rights.[45]

The practicability of realizing economic, social and cultural rights by the people of Niger-Delta region will be a quagmire if the issue of justiciability or non-justiciability of the rights within the realm of our national laws and some regional instruments like African charter is not addressed. This is because, even where it is evident that the people of Niger-

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[44] *Ibid*

[45] Mbazira Christopher, Strategies for Effective Implementation of Economic, Social and Cultural Rights, Social-Economic Right Project, Community Law Center, University of Cape Town, 2008 pg63

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Delta region has sufficient interest in the oil resources and other natural resources found in their traditional lands, they are incapacitated in bringing actions before the court or tribunal because the rights which accrue to them in this respect cannot readily be enforced in the courts.

It is our candid view that the issue of establishing the above which will give a party a standing to sue or approach the court is largely dependent on first resolving whether the right or the claim or entitlement is one that can legally be subject of litigation economic, social and cultural rights. In view of this, the issue of locus standi more or less is more in civil rights litigation and not really in economic, social and cultural rights. Looking at the provisions of *Chapter II* of the 1999 Constitution of Federal Republic of Nigeria, as amended, in 2011, it is evident that the species of rights created therein are not justiciable and cannot be enforced in any court in Nigeria as they are mere aspirations states are directed to pursue as a policy. Even though the African Charter recognized these rights it nevertheless left them with member states to take steps that will lead to progressive realization of the rights without mandatory obligations on states to give effect to the protection of these rights like it is in civil and political rights.

Although, the issue of *locus standi* cannot be without justiciability of a right sought to be redressed, there is a progressive global and modern thought that since human rights is universal and indivisible including civil and political rights, as well as economic, social and cultural rights, states must enact their laws to advance the core values of international standard practice in human rights jurisprudence to the effect that civil and political rights cannot be achievable if the realization of economic, social and cultural rights are

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impossible.[46] If this is applied, the issue of *locus standi* in pursuing of breached economic, socio and cultural rights in Nigeria will no longer be necessary.

The constitution of the Federal Republic of Nigeria under its *section 20* places an obligation on the state of Nigeria (the federal government) to protect and improve the environment, safeguard the water, air and land and the wild life.[47]

The implication of the above provision of the constitution is that it imposes a mandatory obligation on the government of Nigeria to protect and improve the environment. The above definition and meaning received support and was quoted with approval in the Supreme Court case of *AG Lagos State v. AG Federation & 32* others (earlier referred).

The people of the region can bring action to enforce their right by placing reliance on statutes like:

1) Sea Fisheries Act[48] which prohibits use of harmful substances that may harm fishes within Nigerian waters including those in Niger Delta region.
2(a) Inland Fisheries Act[49] which prohibits in its section 6 the taking or destruction of fish by harmful means.
2(b) The Federal Environmental Protection Agency Act,[50] which created *Federal Environmental Protection Agency* with responsibility for protection and development of the environment under its section 4.

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[46] *Ibid*
[47] *Section 20 of 1999 Constitution of the FederalRepublic of Nigeria as Amended in 2011*
[48] *Cap 54 Vol 13 LFN 2010*
[49] *Cap 110 Vol 7 LFN 2010*
[50] *Cap 131 LFN, 1998*

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3. The Water Resources Act[51] which is targeted at developing and improving the quantity and quality of water resources by government.
4. The Environmental Impact Assessment Act[52] and the Nigerian Urban and Regional Planning Act.[53]

The Challenge of Justiciability:

Human rights traditionally, are divided into two main groups,.[54] These two groups are:

i. Civil and political rights "often perceived to be the fundamental rights or the basic rights; and
ii. Economic, social and cultural rights.

The above categorization of rights is recognized at the national level, regional sphere and at the international arena. The classification of human rights into two broad groups has also brought with it the issue of prioritization of these rights i.e. which one is superior and inferior to the other.

This critical issue has reflected in most national and local laws i.e. the laws of Nigeria and other states in Africa such as Namibia, Ghana etc.[55] In Nigeria and Namibia economic, social and cultural rights are regarded as goals or aspirations of the state which adopts strategies to integrate them into the policies of government. There is no legal obligation to provide them. With the above, it becomes clear that the issue of enforceability or justiciability of these species

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[51] *Cap W2 Vol 14 LFN 2010*
[52] *Cap E12 Vol 5 LFN 2010*
[53] *cap N138 vol. 11 LFN 2010 (section 2 and 18)*
[54] United Nations Document Ab confistles
[55] *Chapter 11 of 1999 Constitution of the Federal Republic of Nigeria (as amended) in 2011 and Article 95 of Constitution of the Federal Republic of Namibia*

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of rights is a challenge at the local level. However, at the regional and international platforms, both civil and political rights, as well as, economic, social and cultural rights are universal and by extension are realizable, as the satisfaction of one of the groups without the other makes it impossible.[56]

In view of the above, it is pertinent to look at the concept of justiciability as a challenge to the realization of economic, social and cultural rights.

The term "justiciability" refers to the ability to claim a remedy before an independent and impartial body when a violation of a right has occurred or is likely to occur,[57] Justiciability implies access to mechanisms that guarantee recognized rights. The two important questions that need to be asked in case of Nigeria and the justiciability of economic, social and cultural (ESC) rights are: (a) Is there appropriate redress or remedy mechanism for aggrieved persons for violation of ESC rights. (b) What is the appropriate means to hold the government of Nigeria accountable for the realization of these rights.

The above questions are crucial and fundamental and needs serious attention. The popular view, which is our opinion, appears to be that aggrieved persons can rely on the mandate of *Section 20* of the Constitution and seek redress of any right or rights established by a statute or legislation in

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[56] Vienna Declaration and Programme of Action, Part 1, Parag 5, UN Document on line.com.org, UK (accessed 17/6/2016). See Also The Universal Declaration of Human Rights (UDHR), African Charter on Human and Peoples Rights

[57] International Commission of Jurists Report, 2008 Geneva, Edited by Federico Andreu – Guzman, Tayler and Hown "Courts and Legal Enforcement of Economic, Social, and Cultural Rights: Coparative Experiences of Justiciability page 6.

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Nigeria and enforce the same in a competent court of law.It is a settled principle in law that different remedies could be granted as a result of legal action. When such remedies are granted by independent and impartial bodies, government as well as private persons are held accountable for their actions. The remedies include:

i. Preventive measures
ii. Injunctions
iii. Monetary compensations
iv. Administrative penalties or criminal punishment.[58]

It is important to observe that in all cases involving justiciable rights, there are clear and common elements. Essentially the right holder or somebody acting on his behalf should be able to lodge a complaint before an impartial and independent body when he or she considers that the duties arising from the rights have not been complied with.[59] An impartial or independent body is so called because it is not subject to the control or influence of the authorities whose actions or omissions the body has to review. Such body is capable of making decisions solely on law and facts and exercise enough legal power to impose an order.[60] What the above implies is that the power to make suggestions or recommendations but not to enforce orders would fall short of a definition of a mechanism establishing the justiciability of a right.[61] In modern state, this task is most frequently

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[58] *International Commission for Jurists Publication "The Right to a Remedy and to Reparation for Human Rights Violations", Practitioners Guide No2, Geneva 2006.*
[59] *Ibid*
[60] *Ibid*
[61] *Ibid*

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performed by courts and other mechanisms that the law may prescribe.

Justiciability in the Context of Local and International Laws: In many developing countries, the crisis over the justiciability of economic, social and cultural rights has lingered on for decades and has not stopped till date. Nigeria is a good example as other African states. However, it is equally a settled fact that in some states in Africa i.e. South Africa and Ethiopia, national constitutions did not only recognize civil and political rights as enforceable and justiciable, they also treat and regard economic, social and cultural rights without any discrimination.[62] This is in contrast to the situation in Nigeria were chapter II dealing with economic, social and cultural rights are enforceable and by extension non-justiciable. The government has relied on this provision to renege on her responsibilities and obligations to the citizens and has always defended its stand on the excuse that resources are scare. This is notwithstanding the endowed natural and human resources that abound in the country but are wasted through poor and corrupt leadership.

Although, the above position is still the law on enforcement and justiciability of economic, social and cultural rights in Nigeria, our view which has the support of many legal minds is that a citizen who believes any of his rights provided under chapter II of the constitution and guaranteed in a statute or legislation made by the National Assembly can enforce or seek redress against the federal government,

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[62] *See Constitution of Republic of South Africa No 108 1996 and also the 1993 Constitution of FederalRepublic of Ethiopia (CFEDRE). Explanatory Notes: The above two Constitution of the two states recognized the economic, social and cultural rights as justiciable rights.*

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companies etc for the violation of such rights under *section 20* of the 1999 constitution. In Namibia; research has shown that poverty is still widespread in rural communities where nearly half the households spend more than 60% of their income on food.[63] The question is whether it is reasonable and justifiable for an open and democratic society with a large majority of her citizen to live in abject poverty in the midst of extreme wealth?[64]This is sad and should not be the case. A situation where the majority has no access to available facilities is in our view painful. This is the same situation in Nigeria particularly, the Niger-Delta Region.

Although, the provisions of the constitution of states in Africa including Namibia, Nigeria and others does not seem to guarantee the realization of economic, social and cultural rights, the dominant trend and view is that there are still direct and indirect ways to enforce these rights[65] i.e. *Chapter II* rights (in Nigeria) and *Chapter 3* rights (in Namibia) which are in the nature of economic, social and cultural rights can still be enforced and made justifiable under the domestic legal system.[66] As Liebenberg argued, there are prospects for direct and indirect ways to protect the economic, social and cultural rights in the domestic domains. He made reference South Africa and Federal Republic of Ethiopia where the respective constitution of the states provided a clear example of the direct protection of economic, social and cultural rights by containing a detailed catalogue of these entitlements in their

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[63] *Ibid*
[64] *Ibid*
[65] *S. hiebenberg. The Protection of Economic, Social and Cultural Rights in domestic Legal Systems, The Hague Global Law International, 2001, pp57 -78.*
[66] *Ibid*

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constitutions. Such an entrenchment of economic, social and cultural rights allows individuals and groups whose rights have been violated to seek redress from the courts.[67]

The argument and contention above validates the fact and position in international law that a state is bound by the stipulations of international instruments or agreements when such regime has been domesticated through proper legislative activities and process as domestic law. Once this is done, such convenat or treaty forms part of the law of such state. Nigeria like other states of Africa as member state of International organizations and regional unions has ratified some treaties as part of her domestic law. A good example is the *African Charter on Human and Peoples Rights*. As a signatory to that treaty, she is bound to observe the stipulations and principles thereto. In this regard, mention also has to be made of the *Universal Declaration on Human Rights,* which though has no binding effect, has become in our view, part and parcel of customary international law. So also is *International Covenant on Economic, Social and Cultural Rights* and the *Vienna Declarations* and *Tehran Declaration* as case may be.

Individuals and groups in Nigeria including the Niger-Delta communities should be ready and prepared to pursue these rights by approaching the courts to invoke the expansive intervention initiative and measure adopted in India which uses civil and political rights to give legal character to the economic, social and cultural rights and therefore make those rights not only enforceable but justificiable. The state of Namibia has started adopting this approach and this is a good leaf to borrow by Nigeria.

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[67] *Ibid*

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The Challenge of Dualism

Another challenge which hinders the positive realization of economic, social and cultural rights in Nigeria, in our opinion, is the challenge of dualism. As a concept, dualism is described as adhoc incorporation of international rules by the legislature. Under dualist systems, international law, with its entrenched principles, becomes applicable within the state's legal system only if and whenever the legislature passes specific implementable legislation.[68] Thus, the National Assembly has a formidable role to play in promoting human rights in Nigeria by exercising the legislative duties and powers of making laws for the federation under the constitution.[69] The process of lawmaking does not in our view end in enacting new laws or amending old and existing ones, it also includes creating legislations or statutes that reinforce international agreements, conventions and treaties to which Nigeria is signatory so as to make such instruments form part of the laws of Nigeria and by this, make such conventions, treaties or agreements enforceable in Nigerian courts.[70] It is indicated that Nigeria has a dualist system regarding international laws.

Specifically, *Section 12* of 1999 constitution of Nigeria provides that:"No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by National Assembly"

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[68] *http://www.nigeria.law.org/General(assesd 28/7/016),*

[69] *Section 4 of the 1999 constitution of the FederalRepublic of Nigeria (as amended)in 2011.*

[70] *Section 12 of the 1999 constitution of Federal Republic of Nigeria (as amended) in 2011.*

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Interpreting this provision against Nigeria's obligations under the convention of International Labour Organization, the Supreme Court insisted that *Section 12(1)* was a condition precedent to applying international treaty or treaties ratified by her.[71]Precisely, the stand of the Supreme Court in *TAC Case* (Treatment Action Campaign Case) is that in so far as the *International Labour Organisation Convention* is not yet enacted into law by National Assembly, it has no force of law and cannot possibly apply.[72] The effect of the decision, in our opinion, is that where a treaty has not been incorporated into Nigerian law through legislative action of the National Assembly, such a treaty has no place in Nigerian law, but if incorporated, the Nigerian courts are no doubt under obligation to give effect to its provisions.The Supreme Court in reaffirming the position and attitude of courts in Nigeria towards incorporated and unincorporated treaties took a different position in *Abacha v. Fawehinmi* as against the background in *TAC's case* when the full panel of the Nigeria's Supreme Court examined the legal effect of incorporated treaties, specifically the African charter and held that such a treaty is binding and must be given effect like other laws falling within the judicial power of the court.[73] It must be stated that the Supreme Court was careful in Abacha's case and did clarify that such treaty with international flavour did not and does not in any way by virtue of its domestication or

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[71] *Minster of health & others V Treatment Action Campaign & Others 2002 5 SA 721 (CC) TAC case* http://www.law.utoronto.ca/Diana (accessed 28/7/2016)

[72] *Ibid*

[73] *Abacha V Fawenhinmi SC 45/1997,* http://www.nigeria.law.org.general (accessed 28/7/2016

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incorporation into the local law assume a status higher than the constitution.[74]

The problem with the concept of dualism is that there will always be a conflict in the application of the two laws. Each will strive to be given prominence like it is the case with the constitution of Nigeria and domesticated or incorporated treaties. The problem is not with Nigeria alone, it also exists in other states including the United States of America. Usually, the argument or contention, by states has always been that to make treaty with international flavour superior to national constitution will amount to giving away sovereighty.[75]

Conclusions and Recommendations

As the problem of realising economic, social and cultural rights in Nigeria lingers, stakeholders are looking at opportunities to be explored in making a fast but reliable in-road towards achieving success in this area in the country.In Nigeria, suggestions have been made on how make economic, social and cultural rights achievable in Nigeria. These suggestions are summarized below.[76]

i. Constitutional review/amendment process: The legislature in Nigeria has the mandate to make laws.[77] Apart from making laws, the National Assembly, has the powers to amend the

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[74] *Ibid*

[75] Comments on United States Unwillingness to sign the Protocol Additional to the Convention on Abolition of Death Penalty, Un Document No 98 2001 UNDocumentonline.com. deathpenalthyabonition.org (access 28/7/2016)

[76] *Ibid.*

[77] *Section 4 of the 1999 CFRN (as amended) in 2011*

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laws already made.[78]There has to be committed efforts at law making and the process of amending such laws made by the National Assembly where necessary. The above factors played in 2014 during the National Conference organized by the former President of Nigeria, Dr Goodluck Ebele Jonathan. At the end, there was a "2014 Confab Report", which could have resulted in the amendment of the Nigerian Constitution but the implementation of the recommendations of the conference are far from being realized as there is no political will on the part of the government to backup the report with a legal framework which will give it a legal force or potency.[79] Economic, social and cultural rights and their enforceability formed part of the issues discussed during the 2014 National Conference.[80] The current attempt in the constitutional review process presents an opportunity for legislative proposal to place economic, social and cultural rights on a firm footing.[81] In our opinion, in order to ensure equality of all categories of rights under the constitution in Nigeria, it is necessary to merge all rights under a single Chapter in the constitution and vest jurisdiction over a violation or threatened violation of these rights in the courts.

ii. **Access to Information:** The debate on access to information in Nigeria has remained an age long process and started primarily in the last ten years when a bill on the subject was submitted to the National Assembly.[82] Through

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[78]*Section 9 of the 1999 CFRN (as amended) in 2011*

[79] Wikipediafreeencyclopedia.Nigeriaconstitutionreview.confabreport.2014, comments.com.ng (accessed 28/7/2016)

[80]*Ibid.*

[81]*Ibid*

[82] Wikipedianewsonline.comaccesstoinformation.ng (accessed 28/7/2016)

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these years, Nigerians unfortunately did not enjoy freedom of information. This violated the promise of past governments; however opportunity came in 2011 when the National Assembly successfully passed the Freedom of Information Bill into law. The *Freedom of Information Act,* 2011 presents an opportunity for legalizing existing legislations guaranteeing access to information such as the *Environmental Impact Assessment Act*.[83] Specifically, the Act provides a latitude for citizens to interrogate government income and expenditure with a view to ensuring that needs are met timely.

iii. **Legislative Action:** The 1999 Constitution of the Federal Republic of Nigeria, as amended in 2011, empowers the National Assembly to establish and regulate authorities of the federation or any state to promote and enforce observance of fundamental Rights Objectives and Directive Principles contained in the constitution.[84] This provision gives the National Assembly the mandate to ensure the promotion and enforcement of economic, social and cultural rights which are entrenched as fundamental objectives and directive principles. Any neglect of this duty on the part of the National Assembly is a fundamental issue which indeed is a constitutional question.

It therefore means that *item 60* of the second schedule to the constitution provides and presents an opportunity for the legislature to hold the executive accountable for steps taken to progressively realize economic, social and cultural rights. It is our view that the Nigerian Bar Association and other stakeholders in human rights promotion in Nigeria

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[83] *Cap E12 Laws of Federation of Nigeria, 2004*
[84] *Item 60 of the Second schedule to the constitution.*

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including civil society groups or non-governmental organizations should engage in legislative advocacy to ensure that the National Assembly takes necessary steps, failing which, the groups should work in collaboration and invite the courts to compel the Assembly to perform its lawful duties.

iv. **Education, Empowerment and Mobilization of citizens:** Our candid opinion is that Nigerian Bar Association, Non-governmental Organization, as well as, Nigerian Association of Law Teachers owe it a sacred duty to Nigerians, namely, empower and mobilize them in order to take positive action towards realizing their full potentials. Therefore, public advocacy events directed at equipping the rural and urban poor with the requisite skills to interface with government and more importantly demand good governance, are crucial to the nation's fledgling democracy.

To ensure long term success, our view is that lawyers and law teachers must be equipped. Consequently, the teaching of human rights law, in our considered thinking, should be made a compulsory or core course in the third or fourth year programme in our faculties of law and for lawyers practicing, the continuing legal education programme of the Nigerian Bar Association should aim at providing a minimum of four hours of human rights training per year, while law teachers are encouraged to engage in their post graduate degrees and research studies with specialty in human rights law.

The following recommendations are fundamental to the realization of economic, social and cultural rights in Nigeria:

i. There is the need to restructure Nigeria to reduce the imbalance that presently exist in the country and to power this, there must be further amendment to the 1999 constitution.

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ii. The 2014 National conference report should be given a legal force by National Assembly so that the recommendations in the report that will guarantee true federalism in Nigeria will be implemented by the government.

iii. The expansive judicial innovation which applies under international law and in some countries should be adopted by the Nigerian Judicial system where political rights are interpreted to give meaning and life to economic, social and cultural rights.

iv. Section 20 of the 1999 constitution is a radical provision which the courts and litigants can readily use to enforce any of the rights under chapter 2 of the constitution if such right has been provided for by any statute in Nigeria.

v. Public education and awareness on economic, social and cultural rights should be promoted in Nigeria.

It is not in doubt that economic, social and cultural rights are important in the life of citizens just like the civil and political rights. However, at the international level, regional and national domains, less importance is still being given to these rights as opposed to civil rights. There cannot be a successful enjoyment of civil rights without a reciprocal achievement of economic rights. This is the crux of the matter. Nigeria as a country should make no mistake about this. What it means therefore is that Nigeria, like other African States, must work hard to realize economic rights for her citizens just as South Africa, Senegal and even Ethiopia has done. The Niger-Delta region being the revenue base of the country must be given what it deserves and by extension every other part of Nigeria should enjoy their economic rights. Resources abound in Nigeria but are mismanaged by corrupt leadership. To realize

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economic rights, we must collectively fight corruption and address all the challenges standing against the realization of economic rights in Nigeria. This is our takeand if all these suggestions are adopted by the government and her agencies, we will sooner than later realize economic rights in Nigeria.

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