

PROTECTING SOCIO-ECONOMIC RIGHTS IN NIGERIA'S RESPONSE TO THE COVID-19 PANDEMIC: LEGISLATIVE ACTION AS A 'SHIELD' UNDER THE 1999 CONSTITUTION

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ABSTRACT

Aside from public health devastations, one aspect of Nigeria's national life that was severely hit by the COVID-19 pandemic, was the economic space. As part of the government's mitigating measures, an economic stimulus package was put together to help those most hit by the crisis. However, a key item was left out i.e., legislation enacted by the Parliament, to ensure the protection of the socio-economic rights of the people. This article analyses how the Nigerian legislature could have triggered relevant provisions of the Constitution to adequately protect this class of rights, as a response to the devastating impact of the pandemic. This analysis is carried out against the backdrop of the existing non-justiciable status of socio-economic rights in the country. The article makes the point that there is a great deal of potential in the country's constitutional framework regarding legislative powers, that could have been creatively deployed by the Parliament to enact legislation that would serve as a 'Shield' for socio-economic rights in the pandemic, notwithstanding the clog of non-justiciability. The article concludes that the legislature as the people's representative ought to have better executed its constitutional powers, by demonstrating uncommon courage at a time when it mattered most.

Keywords: COVID-19, Socio-Economic, Rights, Legislature, Nigeria, and Constitution

INTRODUCTION

Human rights are rooted in man's nature as a divine being created by God Almighty.² Expounding on this point, leading American Professor of Jurisprudence, Robert P. George noted that this divine nature is well encapsulated in the natural law

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² Genesis 1:26, The Holy Bible states that "And God said, let us create Man in our image and after our likeness".

understanding of human rights, which asserts that the natural human capacities for reason and freedom are fundamental to the dignity of human beings.³ According to the scholar, the elementary goods of human nature are the goods of a rational creature, a creature who naturally develops and exercises capacities for deliberation, judgment, and choice, unless such creature is impaired one way or the other.⁴ These capacities are God-like and constitute a certain sharing of divine power, though the sharing is limited.⁵

Whereas human rights have two modern branches i.e., civil/political rights,⁶ and social/economic rights,⁷ it is worth stating that, underpinning the quality of life that God gave man at creation, are socio-economic rights which in fact give meaning, value, and standard to civil and political rights. Yet, despite the centrality of socio-economic rights to the condition in life of every human being, it is the most undervalued and disparaged between the two classes of rights. This is a most pressing issue in the developing nations of Africa, where scarcity of quality leadership has made matters worse, with 'non-justiciability' often the main mantra. It was in the midst of the non-justiciability conundrum that the COVID-19 pandemic broke out, severely afflicting the welfare of most people and impacting their enjoyment of this class of rights.

Accompanying the pandemic and its devastating spread, came unprecedented and cataclysmic consequences. Countries across the globe, whether in terms of the direct

³ Robert P. George, 'Natural Law' (2008) 31 *Harvard Journal of Law & Public Policy*, 171 – 196 at 176.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Some of these rights include the right to life, dignity of the human person, personal liberty, etc. They are codified in international law and also deemed justiciable under most national constitutions. See generally International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316, 999 U.N.T.S. 85 (entered into force Mar. 23, 1976) [hereinafter ICCPR]. The UN General Assembly oversaw the formal negotiation of the ICCPR between 13 June 1947 and 13 December 1966. As of February 2020, it had been ratified by 67 states, accessed by 98 and succeeded by 8. See Billy Holmes, 'Non-Universal Human Rights... How Article 6 (2) of the International Covenant on Civil and Political Rights Undermine Human Rights' (2020) 9 *International Human Rights Law Review*, 99 – 117 at 101, 102.

⁷ This class of right include the right to food, water, health, education, work, etc. They are codified under international law and have also found expression in constitutional texts. See International Covenant on Economic, Social, and Cultural Rights, opened for signature Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR]. Socio-economic rights are viewed as 'empowerment rights', which allow vulnerable and poor members of the society to use the legal process to obtain access to socio-economic resources. For an overview see generally Tinashe Kondo, 'Socio-Economic Rights in Zimbabwe: Trends and Emerging Jurisprudence' (2017) 17 *African Human Rights Law Journal*, 163 - 193 at 191.

impact of the pandemic or the resultant implication of containment measures, came face to face with staggering human and socio-economic costs. An example is the number of deaths resulting from infections and the loss of productive manpower, due to the fact that those who could, in fact, work, at some point got infected and had to be hospitalised.⁸ Greer, et al, capture the state of affairs correctly stating that “*entire economies have been put into medically induced comas, unthinkable tough public health measures have become widespread with levels of public compliance or non-compliance that often surprise, and health care systems as well as states are being put to tests many have not recently seen*”.⁹ Three things make the COVID-19 pandemic a peculiar crisis – the first being that it’s a global pandemic having being detected in every country; the second lies in its multi-dimensional impact majorly in terms of public health and economic disruptions; and the third, is its contagious nature not just in terms of local community transmissions, but essentially the interconnectedness of people in the global value chain reflected in international travels, commerce and trade.¹⁰ Not only is the pandemic the worst public health crisis in recent times, but subsequent mitigating responses have also been the most disruptive to global as well as national economies. Making this observation with respect to Africa, Fagbayibo and Uwie states that:

While the public health effects of the virus have not been as dire as envisaged, the socio-economic impact of COVID-19 on Africa is poised to be seriously disruptive, not only in the short term through national lockdowns but also in the medium and long term through wiping out decades of economic gains derailing continental integrative efforts and including the continental free trade agreement that is critical to Africa’s post-COVID-19 pandemic recovery human rights violations and destabilising democratic governance.¹¹

However, the impact of these disruptions has been tougher on poor and vulnerable people across the globe, a fact that scholars across disciplines have generally acknowledged. Taking a comparative view of the effect of COVID-19 in the United

⁸ Daniel Susskind and David Vines, ‘The Economics of the COVID-19 Pandemic: An Assessment’ (2020) 36 (1) *Oxford Review of Economic Policy*, 1 – 13 at 5.

⁹ Scott L. Greer, et al, ‘The Comparative Politics of COVID-19: The Need to Understand Government Responses’ (2020) 15 (9) *Global Public Health*, 1413 – 1416 at 1413.

¹⁰ Roger Strange, ‘The 2020 Covid Pandemic and Global Value Chains’ (2020) 47 *Journal of Industrial and Business Economics*, 455 – 465 at 456.

¹¹ Babatunde Fagbayibo and Udoka N. Uwie, ‘Crisis as Opportunity: Exploring the Africa Union’s Response to COVID-19 and the Implications for Aspirational Supranational Powers’ (2021) *Journal of African Law*, 1 – 28 at 4.

States (US), the United Kingdom (UK), and South Africa, Mubangizi notes that overall the pandemic disproportionately impacts black people more than their white counterparts.¹² Estimates on the pandemic on the global poverty index show that the worst hit regions are South Asia, Middle East and North Africa, and Sub-Sahara Africa, regions deemed as having been slow in their effort at reducing poverty in the last couple of years.¹³ In fact, it has been estimated that between 80% to 85% of the 'newly living in poverty', will be located in both South Asia and Sub-Sahara Africa.¹⁴ This makes these two regions critical in terms of the socio-economic rights dimensions of the COVID-19 pandemic. With the huge slump in international oil prices, crash in foreign exchange, low national revenue, and downward turn in economic activities, the financial ability required for meeting socio-economic rights obligations would appear to have been frozen.

For Africa, a continent housing the world's largest population of the poorest of the poor, the pandemic has been a different kettle of fish entirely. In response to the pandemic, governments across the globe implemented a number of restrictive measures.¹⁵ African governments also undertook measures to mitigate the impact of the pandemic, such as for example, strengthening and expanding the existing health systems, improving facilities in government hospitals, building new isolation centers, procurement of special COVID-19 materials such as Personal Protective Equipment (PPE), payment of extra-allowance to health workers, recruitment of volunteers, etc. Further measures taken include the imposition of country-wide lockdowns, restriction of movement, as well as a ban on travel both domestic and international. Non-Pharmaceutical Interventions (NPIs) such as social distancing, prohibition of large gatherings, and personal hygiene e.g., consistent handwashing, use of hand sanitizers, and the mandatory wearing of face masks, etc. were all introduced.¹⁶ The highly disruptive nature of the measures necessitates that governments' approach at this time be grounded in a socio-economic perspective. Reinforcing this very important point, the Director-General of the World

¹² John C. Mubangizi, 'Poor Lives Matter: COVID-19 and the Plight Vulnerable Groups with Specific Reference to Poverty and Inequality in South Africa' (2021) *Journal of African Law*, 1 – 22 at 2.

¹³ Andy Sumner, Chris Hoy and Eduardo Ortiz-Juarez, 'Estimates of the Impact of COVID-19 on Global Poverty', WIDER Working Paper 2020/43, United Nations University – UNU-WIDER (April 2020), 1 – 14 at 6.

¹⁴ *Ibid* at 10.

¹⁵ Nils Haug, et al, 'Ranking the Effectiveness of Worldwide COVID-19 Government Interventions' (2020) 4 *Nature Human Behaviour*, 1303 – 1312 at 1303.

¹⁶ Rajiv Chowdhury, et al, 'Dynamic Interventions to Control COVID-19 Pandemic: A Multivariate Prediction Modelling Study Comparing 16 Worldwide Countries' (2020) 35 *European Journal of Epidemiology*, 389 – 399 at 390.

Health Organisation (WHO) Dr. Tedeuus Gebreyesus, notes that, “*all countries must take a fine balance between protecting health, minimising economic and social disruption, and respecting human rights*”.¹⁷ However, the glaring implication of the pandemic in a country such as Nigeria, is that the government’s commitment to its socio-economic obligation has significantly dovetailed, with state officials finding it comforting to simply wave the COVID-19 banner as a valid excuse for non-performance. In a country where these rights have hitherto been given the cold shoulder, the pandemic has emerged as a sort of double jeopardy i.e., while the citizens are battered on one hand by the effects of the pandemic, on the other hand, the necessary palliatives to cushion these effects is farfetched. More significantly, the gains of deploying the law as a veritable instrument at such time of need are left untapped, to the end that an important class of rights is again left adrift.

This article examines the socioeconomic consequences of the pandemic in Nigeria, the status of socio-economic rights within the country’s constitutional framework prior to the outbreak, what the government has done in terms of mounting an economic response, and the failure of the legislature to invoke its powers towards protecting socio-economic rights in the crisis. Whereas much of the developing scholarly attention regarding human rights in the pandemic has been on violations of civil and political rights, this article argues that there is an important need to extend the focus to the protection of socio-economic rights, especially as it relates to developing countries in Africa. The article uses Nigeria as a case study for making this point. Nigeria is a unique case study, given the current state of non-justiciability of socio-economic rights in the country and how the same understanding flowed into governments’ measures in its response to the pandemic. In particular, this article examines relevant provisions of the Nigerian Constitution which could have served as a basis for the legislature to trigger its powers toward protecting socio-economic rights. It makes an important case that the exercise of such a power at a time like this would have been deemed as a necessary and obligatory ‘Shield’, given how much the pandemic has nearly obliterated the peoples’ enjoyment of socio-economic rights. This article’s contribution is relevant in the sense that it will help reignite the push for socio-economic rights protection in the country, especially as it highlights seemingly oblivious constitutional powers which legal scholars, legislators, and policymakers can engage in the future.

¹⁷ WHO, ‘WHO Director-General’s Opening Remark at the Media Briefing on COVID-19 – 11 March 2020’ World Health Organisation (WHO) <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> (last accessed 25/03/2021).

In light of the above, part 2 of the article discusses the socio-economic impact of the pandemic in Nigeria, highlighting different levels of disruptions as well as the impact of the pandemic on the enjoyment of socio-economic rights in the country. While part 3 discusses the constitutional framework governing socio-economic rights in the country, part 4 examines the government's socio-economic response to the pandemic, in terms of its stimulus package and its effectiveness. Part 5 examines the scope of constitutional powers that the Legislature has, to protect socioeconomic rights in the country. It examines relevant case laws as well as opinions of leading scholars in this area, stressing the point that the power of the legislature in this respect, has remained underutilised in the country's socio-political history and that much of this was replicated during the COVID-19 pandemic. It highlights the place of the legislature, as perhaps that direct arm of government embodying the collective interest of the people, and whose priority ought to be about how to defend that interest. Part 6 covers the conclusion.

SOCIO-ECONOMIC IMPACT OF THE COVID-19 PANDEMIC IN NIGERIA

Economic Disruptions in the Global Space

The COVID-19 pandemic disrupted major macroeconomic policies across the world.¹⁸ The pandemic alongside the mitigation and suppression measures has greatly impacted the socio-economic environment in Africa. The lack of advanced health and social infrastructure to handle the virus at its emergence, coupled with Western-styled mitigation measures, as well as the global economic influence of the pandemic meant that most African countries immediately began to experience economic issues. Countries on the continent, that over the years have operated as import and oil-dependent economies, were severely affected by disruption in international trade due to border closures and the sharp drop in international oil prices. While the casualties of the COVID-19 pandemic are of diverse forms, on the economic front a major sector that was severely affected is the global crude oil market. Much of the impact of the pandemic has come from external shocks such as a fall in oil prices, etc.¹⁹ Early as February 2020,

¹⁸ Adesoji O. Farayibi and Simplice A. Asongu, 'The Economic Consequence of the Covid-19 Pandemic in Nigeria' Research Africa Network (RAN) Working Paper (June 2020)
<<http://publications.resanet.org/RePEc/abh/abh-wpaper/The-Economic-Consequences-of-the-Covid-19-Pandemic-in-Nigeria.pdf>> (last accessed 26/03/2021).

¹⁹ Kwaw Andam, et al, 'Impacts of COVID-19 on Food Systems and Poverty in Nigeria' (2020) 5 *Advances in Food Security and Sustainability*, 145 – 173 at 146.

global oil prices had begun to fall in response to the reduction in oil demand from China,²⁰ with the price going as low as \$20 from an average of \$60 at the start of the year.²¹ Also, demands fell as buyers of goods in China and the rest of Asia decided to hold off on new orders.²² At the same time, the Aviation industry went into limbo, as countries across the globe shut their airspace to international travel.

Major international institutions have been giving their estimates on the possible impact of the pandemic. Referring to the economic crisis occasioned by the pandemic as the 'Great Lockdown', the International Monetary Fund (IMF) has projected that global growth in 2020 will fall to -3%.²³ It has also been estimated that the economic fallout of the pandemic may increase poverty by \$5.50 per day by as many as half a billion people.²⁴ While the International Labour Organisation (ILO) estimated a 10.5% job deterioration for the second quarter of 2020 which equals a loss of 309 million full-time jobs,²⁵ the World Tourism Organisation (WTO) states that there is likely to be a 20% - 30% fall in international tourist arrivals.²⁶ In October 2020, the World Bank estimated that the pandemic could cause between 88 million to 115 million to go into poverty, with the figures likely to jump to 150 million in 2021.²⁷ According to the United Nations

²⁰ John Sylvester Afaha, 'Effect of COVID-19 on the Nigerian Oil and Gas Industry and Impact on the Economy' CPEEL COVID-19 Volume II Discussion Paper Series, Centre for Petroleum Energy Economics and Law (University of Ibadan, Nigeria) 1-22 at 3
<<https://cpeel.ui.edu.ng/sites/default/files/publication/effect-covid-19-nigerian-oil-and-gas-industry-and-impact-economy.pdf>> (last accessed 26/03/2021).

²¹ Taiwo Oyedele, 'Nigeria's Covid-19 Fiscal Policy Measures: A Review of Government Interventions and What Else to Consider' Price Waterhouse Coopers (PWC)
<https://pwc-nigeria.typepad.com/files/nigerias-covid19-fiscal-measures_what-works-and-what-doesnt.pdf> (last accessed 26/03/2021).

²² Chiman Nwokoji, 'Nigeria's Economy, As Coronavirus Corrodes Global GDP Growth' The Tribune Newspaper (May 9, 2020) <<https://tribuneonline.ng.com/nigerias-economy-as-coronavirus-corrodes-global-gdp-growth/>> (last accessed 26/03/2021).

²³ Ligang Song and Yixiao Zhou, 'The COVID-19 Pandemic and its Impact on the Global Economy: What Does It Take to Turn Crisis into Opportunity?' (2020) 28 (4) *China & World Economy*, 1 – 25 at 2.

²⁴ HRW, 'Protecting Economic and Social Rights During and Post COVID-19' Human Rights Watch (HRW) (June 29, 2020) <<https://www.hrw.org/news/2020/06/29/protecting-economic-and-social-rights-during-and-post-covid-19>> (last accessed 25/03/2021).

²⁵ Rahmiye F. Ceylan, Burhan Ozkan, and Esra Mulazimogullari, 'Historical Evidence for Economic Effects of COVID-19' (2020) 21 *European Journal of Health Economics*, 817 – 823 at 820.

²⁶ Monika Chaudhary, P.R. Sodani and Shankar Das, 'Effect of COVID-19 on Economy in India: Some Reflections for Policy and Programme' (2020) 22 (2) *Journal of Health Management*, 169 – 180 at 171.

²⁷ OHCHR, 'Statement by UN Human Rights Experts Universal Access to Vaccines is Essential for Prevention and Containment of COVID-19 Around the World' United Nations Human Rights: Office of the High Commissioner (OHCHR) (November 9, 2020)
<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E>> (last accessed 30/03/2021).

Conference on Trade and Development (UNCTAD), the global economy is expected to contract by 4.3% in 2020, with about 130 million people expected to be living in extreme poverty due to the crisis.²⁸ The World Food Programme (WFP) has also estimated that, unless direct action is taken, about 265 million will face severe levels of hunger.²⁹ This is because the pandemic had severely affected the entire value chain of food and agricultural production, especially in terms of labour shortage due to continuous disruption.³⁰ It's been noted that the pandemic will likely generate one of the deepest economic recessions in years.³¹

Due to the global shutdown in businesses, especially in lower-income populations, economies are expected to contract with unemployment rates rising.³² The pandemic has altered social interaction and behavioural patterns. For instance, in response to the international travel ban and domestic lockdowns, people are to turn to digital tools and social media to keep up some form of normalcy and still keep human interaction going.³³ There is also the issue of health inequalities which not only stems from the rate of infections but also from the health consequences of policy responses to the pandemic.³⁴ In addition, the pandemic has interacted with pre-existing divides in areas such as income, gender, age, ethnicity, etc. while also magnifying pre-existing social inequalities as well as opening new frontiers.³⁵ It has also thrown up situational vulnerabilities such as the economic impact of living in the epicentre of an outbreak in any country.³⁶ Generally, the cost of the pandemic has been estimated at more than \$16 trillion, or about 90% of the annual GDP of the US.³⁷

²⁸ UNCTAD, 'Impact of the COVID-19 Pandemic on Trade and Development' United Nations Conference on Trade and Development UNCTAD 2020, 1 – 113 at 8.

²⁹ OHCHR, n 26.

³⁰ Serpil Aday and Mehmet S. Aday, 'Impact of COVID-19 on Food Supply Chain' (2020) 4 Food Quality and Safety, 167 - 180 at 169.

³¹ Victor Nechifor, et al, 'Food Security and Welfare Changes under COVID-19 in Sub-Saharan Africa: Impacts and Responses in Kenya' (2021) Global Food Security <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7938699/>> (last accessed 25/03/2021).

³² Amory Martin, et al, 'Socio-economic Impact of COVID-19 on Household Consumption and Poverty' (2020) 4 Economics of Disasters and Climate Change, 453 – 479 at 454.

³³ Syed A. Tabish, 'COVID-19 Pandemic: Emerging Perspectives and Future Trends' (2020) 9 (1) Journal of Public Health Research, 19 – 26 at 22.

³⁴ Clare Bamba, et al, 'The COVID-19 Pandemic and Health Inequalities' (2020) 74 Journal of Epidemiology & Community Health, 964 – 968 at 966.

³⁵ Richard Blundell, et al, 'COVID-19 and Inequalities' (2020) 41 (2) Fiscal Studies, 291 – 319 at 313.

³⁶ Yue Qian and Wen Fan, 'Who Loses Income During COVID-19 Outbreak? Evidence from China' (2020) 68 Research in Social Stratification and Mobility, 1 – 5 at 5.

³⁷ David M. Cutler and Lawrence H. Summers, 'The COVID-19 Pandemic and the \$16 Trillion Virus' (2020) 324 (15) JAMA, 1495 – 1496 at 1495.

In Africa, key commercial cities such as Accra, Johannesburg, and Lagos, in Ghana, South Africa, and Nigeria respectively, recorded a very high number of COVID-19 infections, effectively disrupting everyday social, economic, and political activities.³⁸ The pandemic also affected a variety of social groups, particularly the most vulnerable such as elderly persons, persons with disabilities, youths, indigenous people, etc.³⁹ For instance, homeless persons have been unable to find appropriate shelter while access to safe drinking water is difficult. Refugees, displaced persons, and migrants have also been disproportionately affected as the pandemic has dwindled available employment opportunities.

Impact of COVID-19 on Socio-economic Rights in Nigeria

In Nigeria, the government's mitigation measures in response to the pandemic grossly impacted the realisation of socio-economic rights. Following the first confirmed case, the country's economy became impacted.⁴⁰ Importantly, the pandemic affected the country's economy in 5 key ways.⁴¹ Firstly, it affected the capacity of debtors to service their loans.⁴² With the reduction in economic activities and the consequential drop in income, it was clear that the ability to meet loan obligations would be an issue. Given the inability of individuals to service their loans, banks were reluctant to give further loans, thereby reducing the possibility of reflating the economy.⁴³ Secondly, the crash in international oil prices that saw the commodity drop to as low as \$30 in March 2020,⁴⁴ affected the oil revenue of the country, as revenue from crude oil sales accounts for about 70% of its Gross Domestic Product (GDP) and 65% of the country's national revenue. Thirdly, there were massive shutdowns in the global supply chain as importers had to close their entities, particularly those trading with China.⁴⁵ As an import-

³⁸ Lewis A. Asante and Richael O. Mills, 'Exploring the Socio-economic Impact of COVID-19 Pandemic in Marketplaces in Ghana' (2020) 55 (2) *Africa Spectrum*, 170 – 181 at 171.

³⁹ Peterson Ozili, 'COVID-19 in Africa: Socio-Economic Impact, Policy Response and Opportunities' (2020) *International Journal of Sociology and Social Policy*, 1 – 24 at 13.

⁴⁰ Olusanya E. Olubosoye and Ahamuefula E. Ogbonna, 'COVID-19 and the Nigerian Economy: Analyses of Impacts and Growth Projections' CPEEL COVID-19 Discussion Paper Series, Centre for Petroleum Energy Economics and Law (University of Ibadan, Nigeria), 1- 38 at 1 <https://cpeel.ui.edu.ng/sites/default/files/publication/COVID-19_and_the_Nigeria_Economy_Analyses_of_Impacts_and_Growth_Projections.pdf> (last accessed 26/03/2021).

⁴¹ Peterson K. Ozili, 'COVID-19 Pandemic and Economic Crisis: The Nigerian Experience and Structural Causes', MPRA Paper No. 103131 (28 September 2020), 1- 29 at 8.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

dependent country, Nigeria was caught in this situation, thereby leading to a shortage of imports of things such as pharmaceutical products, spare parts, etc which comes largely from China.⁴⁶ Fourthly, the country's national budget which had earlier on been predicated on an oil price of \$57 per barrel was affected.⁴⁷ The drop in oil price meant that the budget became unrealisable, necessitating the drafting of a new one.⁴⁸ Lastly, the pandemic affected the country's stock market.⁴⁹ For instance, investors in the market lost about N2.3 trillion which was the equivalent of \$ 5.9 billion, barely three days after the first COVID-19 case was announced in the country.⁵⁰ Also, the market capitalisation of equities which as of Friday, February 28, 2020, was valued at N13.657 trillion, which was about \$35.2 billion depreciated to about N11.308 trillion, which was the equivalent of \$29.1 billion as of March 23, 2020.⁵¹

Since the pandemic, businesses and offices have remained closed and people asked to stay at home.⁵² The pandemic also created fear and disruption of social life in the country.⁵³ For example, most churches had to hold their services online as physical gathering was affected by the lockdown. Other sectors of the economy such as maritime, land, and aviation were also badly hit as countries imposed countrywide lockdowns and shut down their airspaces.⁵⁴ The impact on the maritime sector was particularly staggering given Nigeria's trading links with China, the initial the epicentre of the virus.⁵⁵ In 2019, Nigeria carried out an estimated N4.3 trillion worth of imports from China 25%.⁵⁶ Repeating such a feat in the year 2020 was bleak given the fact that China had to close its territory to the outside world.⁵⁷

⁴⁶ Ibid.

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid at 9.

⁵⁰ Ibid at 9.

⁵¹ Ibid at 9.

⁵² Afolabi Ojosu and Alexander Akolo, 'COVID-19 and Nigeria's Power Sector' CPEEL COVID-19 Volume II Discussion Paper Series, Centre for Petroleum Energy Economics and Law (University of Ibadan, Nigeria), 1 – 21 at 3 <<https://cpeel.ui.edu.ng/sites/default/files/publication/covid-19-and-nigerias-power-sector.pdf>> (last accessed 26/03/2021).

⁵³ Henry Ajibo, 'Effect of Covid-19 on Nigerian Socio-economic Wellbeing, Health Sector Pandemic Preparedness, and the Role of Nigerian Social Workers in the War Against Covid-19' (2020) 35 (7) *Social Work in Public Health*, 511 – 522 at 514.

⁵⁴ Uka J. Okeleke and Moses O. Aponjolosun, 'A Study on the Effect of COVID-19 Pandemic on Nigerian Seafarers', (2020) 5 (2) *Journal of Sustainable Development of Transport and Logistics*, 135 – 142 at 137.

⁵⁵ Ibid at 138.

⁵⁶ Ibid.

⁵⁷ Ibid.

The pandemic also impacted food security in the country. According to the Global Alliance for Improved Nutrition (GAIN) eight key impacts of the pandemic on Nigeria's local food systems, particularly as it relates to Small and Medium Enterprises (SMEs) include - low food production, reduced stock of important products, lack of cashflow, broken linkages in Agri-food SMEs, poor storage facilities resulting in waste, information gap hampering the ability of SMEs to cope, adapting to the view that food workforce are essential workers, and innovations across food systems.⁵⁸ In terms of its impact at the domestic level, a number of issues stand out. Due to a combination of reduced agricultural activities from the mitigation measures, increased purchase of food items as a basic necessity during the stay-at-home periods, as well as incidences of panic buying, the market price of food items shot up quite drastically.⁵⁹ In the course of the pandemic, Africa's young and prodigious entrepreneurs were left with no choice but to shut down.⁶⁰ In the case of Nigeria, where a lot of people on the lower rung of the societal ladder live on daily wages, which they get from buying and selling and general commerce, it was a heartrending experience. Estimates by the ILO show that 80% of working people in the country are employed in the informal sector.⁶¹ Capturing this correctly, Ataguba, notes that *'the precarious nature of informal work, as evidenced by the absence of a contract or income protection, means that their source of livelihood, may be impacted significantly by the COVID-19 pandemic, especially countries experience lockdown'*.⁶² Yet this was one of the sectors that the pandemic affected the most in Nigeria, particularly the direct hit it received from mitigation measures such as national lockdowns and movement restrictions.

⁵⁸ GAIN, 'Impact of COVID-19 on Nigeria's Food Systems', Situation Report- Edition 1, Global Alliance for Improved Nutrition – GAIN (November 2020), 1 – 14 at 7.

⁵⁹ Andrew G. Onokerhoraye, et al, 'The Effect of Containment Measures on the Welfare of Household Members and the Livelihoods in Delta State, Nigeria', CPED Policy Brief Series 2021 No.3, Centre For Population and Environmental Development
<https://media.africaportal.org/documents/cped_policy_brief_series_2021_no_3_effect_of_covid_19_on_household_welfare.pdf> (last accessed 26/03/2021).

⁶⁰ Samuel O. Nokolawe, 'The Impact of COVID-19 Measures in Africa: Socio-Economic Rights in Perspective' WATHI (April 24, 2020) <<https://www.wathi.org/the-impact-of-covid-19-measures-in-africa-socio-economic-rights-in-perspective/>> (last accessed 25/03/2021).

⁶¹ Thelma Obiakor, 'COVID-19 and the Informal Sector in Nigeria' CSEA (April 24, 2020) <<http://cseaafrica.org/covid-19-and-the-informal-sector-in-nigeria-the-socio-economic-cost-implications/>> (last accessed 25/03/2021).

⁶² John E. Ataguba, 'COVID-19 Pandemic, A War to be Won: Understanding its Economic Implications for Africa' (2020) Applied Health Economics and Health Policy, 1 – 4 at 2.

The restrictions on inter-state movement were compromised due to the endemic corruption in society.⁶³ With an estimated 90 million of the population in Nigeria living on less than \$2 a day, the WFP has warned that the pandemic is likely to unleash hunger in the country.⁶⁴ The UN also notes that in the second quarter alone, the loss in working hours globally was 400 million fulltime jobs.⁶⁵ Generally, the impact of the pandemic can be classified into two i.e., its impact on the international scene and that at the domestic space. While this may appear as two different environments, in reality, both are interconnected, as much of the impact which occurred domestically was largely influenced by factors at the international level. These developments clashed headlong with domestic permutation in government circles. For instance, the 2020 Appropriation Act i.e., the National Budget in Nigeria had been prepared on the basis that most of the revenue will come from crude oil sales, with an expected income of N8.24 trillion Naira, a 20% increase from the 2019 figure.⁶⁶ This was predicated on an expected oil production of 2.18 million barrels per day at a \$57 per barrel budget benchmark.⁶⁷ With the outbreak of the pandemic, and in response to its economic impact, governments at both federal and state levels introduced measures to cushion the staggering effect. For instance, the Federal government wrote to the National Assembly for an amendment of the 2020 Appropriation Act, to reduce the benchmark price from \$57 to \$30 per barrel and projected oil production from 2.1 million barrels to 1.7 million barrels.⁶⁸

⁶³ Oluwaseun Oyeranti and Babajide Sokeye, 'The Evolution and Spread of COVID-19 in Nigeria' CPEEL COVID-19 Volume II Discussion Paper Series, Centre for Petroleum Energy Economics and Law (University of Ibadan, Nigeria) 1 – 18 at 7, <<https://cpeel.ui.edu.ng/sites/default/files/publication/evolution-and-spread-covid-19-nigeria.pdf>> (last accessed 26/03/2021).

⁶⁴ Lisa Schlein, 'COVID-19 is Threatening Food Security in Nigeria' VOA (June 9, 2020) <<https://www.voanews.com/africa/covid-19-threatening-food-security-nigeria>> (last accessed 26/03/2021).

⁶⁵ OHCHR, 'Business and Human Rights in Time of COVID-19' United Nations Human Rights: Office of the High Commissioner, (October 2020) <<https://www.ohchr.org/Documents/Issues/Business/BusinessAndHR-COVID19.pdf>> (last accessed 30/03/2021).

⁶⁶ Sylvester Anani Anaba, 'Is Nigeria Winning the Battle Against COVID-19' CPEEL COVID-19 Volume II Discussion Paper Series, Centre for Petroleum Energy Economics and Law (University of Ibadan, Nigeria) 1- 8 at 5 <<https://cpeel.ui.edu.ng/sites/default/files/publication/nigeria-winning-battle-against-covid-19.pdf>> (last accessed 26/03/2021).

⁶⁷ *Ibid.*

⁶⁸ Deloitte, 'COVID-10: Economic, Tax, and Fiscal Stimulus Measures in Nigeria' Deloitte (April, 2020) 1- 10 at 3 <<https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/tax/ng-COVID-19-economic-tax-and-other-fiscal-stimulus-measures-in-Nigeria-22042020.pdf>> (last accessed 26/03/2021).

The impact of the pandemic also extends beyond the immediate health concerns and economic shocks discussed above. For instance, it has been noted that the social and economic consequences of loss of income, separation from loved ones, and social isolation, in the course of the pandemic are likely to be a bigger threat in terms of survival in middle- and low-income countries.⁶⁹ More so, there is the issue of direct vulnerability to mitigation and suppression measures.⁷⁰ It has been noted that control measures such as quarantine, isolation, lockdown, travel bans, the ban on mass gatherings, etc. may have a consequential impact on livelihood, etc.⁷¹ Systemic vulnerabilities in informal settings such as overlapping health issues, social concerns, and infrastructural challenges such as collapse and fire outbreaks, have also been identified.⁷²

Socio-Economic Rights in Nigeria: The Constitutional Context

The concept of social rights is rooted in the obligation of governments to provide their citizens with essential amenities and conditions necessary for the sustenance of life such as food, water, housing, health, etc.⁷³ These amenities and conditions form a part of positive rights which upon acceptance, creates certain obligations on states, who are parties to international human rights treaties. The International Covenant on Economic, Social, and Cultural Rights (ICESCR),⁷⁴ a leading document in this respect, catalogues a number of these rights.⁷⁵ Such rights typically involve the state actively going ahead 'to do' as against the other class of rights i.e., civil and political rights, which requires the state to refrain 'from doing'. The nature of social rights makes it that obligation in this respect may be onerous, hence the idea of 'progressive realisation'.⁷⁶ The shared international understanding underpinning this notion, is captured in Article 2 (1) of the ICESCR⁷⁷ which states that:

⁶⁹ S. Cheema, 'The COVID-19 Pandemic: The Public Health Reality' (2020) 148 *Epidemiology & Infection* 1 – 4 at 3.

⁷⁰ Annie Wilkinson, 'Local Response in Health Emergencies: Key Considerations for Addressing the COVID-19 Pandemic in Informal Urban Settlements' (2020) 32 (2) *Environment and Urbanisation*, 503 – 522 at 508.

⁷¹ *Ibid.*

⁷² *Ibid* at 509.

⁷³ Murray Wesson, 'Social Condition and Social Rights' (2006) 69 *Saskatchewan Law Review*, 1010 – 117 at 102.

⁷⁴ ICESCR 1966.

⁷⁵ See e.g., art. 6 (right to work), art. 9 (right to social security), art. 12 (right to health), art. 13 (right to education),

⁷⁶ Wesson, n 72.

⁷⁷ ICESCR 1966.

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the present covenant by all appropriate, including particularly the adoption of legislature measures.⁷⁸

The idea of 'progressive realisation' remains more of an open-ended obligation. It has inadvertently created a window for unwilling governments, to rely on so-called inability as well as incapacity, to evade their socio-economic rights obligations. This abuse of an otherwise genuine objective has seen social rights take the backseat in national governance. Realising the danger that this portends, the Committee on Economic, Social and Cultural Rights (CESCR) introduced the idea of 'minimum core' which demands that in the push towards progressive realisation, governments should prioritise the needs of distressed citizens, before those which are less urgent.⁷⁹

In the context of the COVID-19 pandemic and the protection of socio-economic rights, the relevance of the Nigerian Constitution is to the extent to which it provides for or doesn't provide for protection. Clearly, the Constitution doesn't expressly provide for social and economic rights, in the same sense as civil and political rights. For instance, whereas Chapter 4 of the Constitution provides for 'Fundamental Rights', Chapter two which deals with socio-economic rights related provisions is titled 'Fundamental Objectives and Directive Principles of State Policy'. The distinction in these two chapters by the drafters appears deliberate, as it allows the state to evade direct obligation. That is not to however say that socio-economic rights don't have a place in the country's constitutional framework. To start with, the preamble to the Constitution states that, "...for the purpose of promoting the good government and welfare of all persons in our country".⁸⁰ In addition to the preamble, Section 14 (2) (b) of the Constitution provides that, "the security and welfare of the people shall be the primary purpose of government".⁸¹ As it is apparent, the word 'welfare' occupies a central place in the two provisions above. This clearly has a use, as it conveys the idea that the Constitution will be mindful of the socio-economic conditions of the people, so as to pursue it. Generally, welfare connotes a state of wellbeing. As established in the Holy Bible, it means a state

⁷⁸ Ibid.

⁷⁹ General Comment No. 3, The Nature of State Parties' Obligation (Article 2, para. 1, of the Covenant) (1990) UN ESCOR 5th Sess. UN Doc. E/1999/23 Annex III (1991) para. 10.

⁸⁰ Preamble, 1999 Constitution.

⁸¹ Section 14 (2) (b), 1999 Constitution.

of “*nothing missing, nothing broken*”. Often used in a broad sense, the idea of welfare encompasses several things such as benefits, resources, goods, etc all expected to secure to an individual, a state of general wellness. Clearly, a citizen traumatised by the impact of a pandemic such as COVID-19 can’t be said to be in a state of “*nothing missing, nothing broken*”. In fact, suffice it to say. a lot may have been broken by the pandemic.

A case can therefore be made, that within the sphere of the preamble to the Constitution as well as Section 14 (2) (b), the people’s welfare is a core aspect of their socio-economic right demanding legal protection both generally, and specifically, in the context of the COVID-19 pandemic. To better understand the validity of this argument, there would be a need to examine certain provisions of the Constitution, which this author deems necessary to gain better insights. An example is Section 17 (3) (a) of the Constitution, which encompasses the right to work. This section states that “*the state shall direct its policy towards ensuring that - all citizens, without discrimination on any group whatsoever have an opportunity to for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment*”.⁸² One may also consider Section 17 (3) (c) of the Constitution, deals with the right to safe working conditions. It provides that “*the health, safety, and welfare all persons in employment are safeguarded and not endangered or abused*”.⁸³ Also instructive is Section 17 (3) (d) of the Constitution which relates to the right to health. This section states that “*the state shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons*”.⁸⁴ Another relevant provision is Section 18 (1) of the Constitution bordering on the right to education. It provides that “*government shall direct its policy towards ensuring that there are equal and adequate opportunities at all levels*”.⁸⁵ Within the same understanding, recourse may be made to Section 20 of the Constitution which covers the right to environment and water. This provision states that “*the state shall protect and improve the environment and safeguard water, air and land, forest and wildlife in Nigeria*”.⁸⁶ The above provisions are classified under Chapter II and deemed non-justiciability i.e., that they are generally unenforceable in any Nigerian court. This is based on the ouster clause in Section 6 (6) (c) of the Constitution which states that:

⁸² Section 17 (3) (a), Ibid.

⁸³ Section 17 (3) (c), Ibid.

⁸⁴ Section 17 (3) (d), Ibid.

⁸⁵ Section 17 (3) (c), Ibid.

⁸⁶ Section 20, Ibid.

The judicial powers vested in accordance with the foregoing provisions of this section: (c) shall not except as otherwise provided by this Constitution, extend to any issue or question as whether any act or 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.⁸⁷ This is notwithstanding that Section 13 of the same Constitution prescribes that, “it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive and judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.”⁸⁸

According to Anifalaje, the import of the above is that “*the rights enunciated in Chapter II of the Constitution are not binding legal instruments, but mere aspirational goals*”.⁸⁹ The effect of the non-justiciability clause is that notwithstanding the abysmal state of these rights in the country in terms of their enjoyment by the citizens, and no matter how much this state of affairs may have been exacerbated by the COVID-19 pandemic, and no matter the extent to which government’s failure to deploy appropriate legal and policy responses, may have in fact further impacted the peoples’ conditions in life, an action cannot be brought in a Nigerian court to compel government to meet its obligations in this respect. This is also despite the fact that Nigeria has clear obligations regarding the progressive realisation of this class of rights under relevant international law instruments such as the ICESCR.

Clearly, this is a troubling situation. The debate on the non-justiciability of socio-economic rights is one of the most contentious in Nigeria’s constitutional development. Judicial intervention in the matter has also not helped much, as the courts have continuously upheld the non-justiciability of Chapter II.⁹⁰ It has been correctly observed, that rather than pursuing a progressive route of constitutional interpretation in addressing the problem of Chapter II, which would have headed the country on the path of being a proper constitutional state, the Nigerian judiciary has preferred to look

⁸⁷ Section 6 (6) (c), *Ibid.*

⁸⁸ Section 13, *Ibid.*

⁸⁹ Kehinde Anifalaje, ‘Implementation of the Right to Social Security in Nigeria’ (2017) 17 African Human Rights Law Journal, 413 – 435 at 418.

⁹⁰ See e.g., *Archbishop Anthony Olubunmi Okojie & Ors v. Attorney-General of Lagos State* (1981) 2 NCLR 350 (CA) (where the Court of Appeal held that the Fundamental Objectives and Directive Principles of State Policy wasn’t justiciable); *Badejo v. Federal Minister of Education* (1990) LRC (Const.) 735; *Uzuokwu v. Ezeonu II* (1991) 2 NWLR Pt. 200) 708.

towards technicalities, thereby depriving itself of opportunities to etch its name in gold.⁹¹ This has rendered this chapter a key shortcoming in the Constitution, by which it sits down the pecking order when compared to other transformative constitutions like the South African Constitution of 1996,⁹² and its progressive bill of rights.⁹³ It also attests to the undervaluing of socio-economic rights protection in the country. With this clear obstacle in Chapter II, there is a need for a creative approach towards making a case for socio-economic rights protection in the country, especially as the COVID-19 pandemic has made this imperative. This is a task this article intends to undertake in the latter part of this article; however, it is pertinent to first look at how the government attempted to respond to the economic consequences of the pandemic.

Nigerian Government's Socio-Economic Response to the Pandemic

Imperative of Socio-economic rights protection in the pandemic

The link between public health response and human rights, and in this instance, socio-economic rights isn't just clear, importantly, prioritising the protection of the most vulnerable of persons, at a time such as this, ought to be the business of all. Highlighting this point in its COVID-19 guidance the UN noted that "*fiscal and social protection packages aimed at those least able to cope with the crisis are essential in mitigating the devastating consequences of the pandemic*".⁹⁴ Along the same line, the role of governments in making this a reality has in recent times been affirmed. In a videoconference held on 7 October 2020, titled - '*Overcoming the socio-economic crisis sparked by the COVID-19 pandemic*' the European Union (EU) Sub-Committee on Social Charter of the Parliamentary Assembly of the Council of Europe, highlighted the role of the State in securing socio-economic rights across Europe during the

⁹¹ Olusola B. Adegbite, 'Between Chasm and Contours: Revisiting Constitutional Legitimacy and the Quest for a Progressive Constitutional State in Nigeria' (2009) *African Journal of Comparative Constitutional Law*, 77 – 101 at 100.

⁹² That the South African Constitution of 1996 is one of the most transformative in the world, particularly because of its justiciability framework with respect to socio-economic. Noting this development, Heyns and Brand states that "...the scale on which this was done in the South African Constitution is certainly unique". For an overview, see generally Christof Heyns and Danie Brand, 'Introduction to Socio-economic rights in the South African Constitution' (1998) 2 (2) *Law, Democracy & Development*, 153 – 167 at 156.

⁹³ Mubangizi notes that this bill of rights contains all rights incorporated in modern international human rights instruments majorly civil and political rights, social and economic rights and third generation rights. Mubangizi, n. 11 at 10

⁹⁴ OHCHR. 'COVID-19 Guidance', United Nations Human Rights: Office of the High Commissioner (May 13, 2020) <https://www.ohchr.org/Documents/Events/COVID-19_Guidance.pdf> (last accessed 30/03/2021).

pandemic.⁹⁵ According to Guiseppe Palmisano, President of the European Committee of Social Rights “*compliance with the European Social Charter provisions should rather be a permanent feature, the default setting. Fulfilling them is necessary both in order to deal with the enduring effects of the crisis and the persistence of the coronavirus, and also to respond to crisis that the future holds in store*”.⁹⁶ He called on national parliaments to take appropriate steps towards enacting legislation for the protection and promotion of socio-economic rights and to also be a driving political force for governments.⁹⁷ This is in addition to the EU itself providing direct socio-economic support to its member-states by allowing flexibility for member-states to support businesses as well as combat poverty and social exclusion.⁹⁸ Also, adumbrating the role of the state, Sekalala, et al, notes that beyond respect for individual liberties, states have an obligation to ensure proper public health response to the pandemic under the right to health, as well as rights underlying health such as work social security, housing, food, water, and sanitation.⁹⁹

In a study by Danielli et al, it was shown that globally, governments across the globe have demonstrated a clear intention to protect their people and business from the impact of the pandemic.¹⁰⁰ For instance, in developed countries such as the UK, France, and the US, governments in these countries subsidised employee salaries to as much as 80%, 70%, and 50% respectively.¹⁰¹ This was to protect jobs on a temporary basis while the people are able to take care of necessities.¹⁰² In Spain and Italy, mortgage repayments were suspended for 5 and 12 months respectively.¹⁰³ In line with the CESCR recommendation on ‘minimum core’ as regards socio-economic rights, the

⁹⁵ COE, ‘The Role of the State in securing Social and Economic Rights is Crucial, especially in times of Crisis’ Council of Europe (COE) - European Social Charter (October 7, 2020) <https://www.coe.int/en/web/european-social-charter/-/the-role-of-the-state-in-securing-social-and-economic-rights-is-crucial-especially-in-times-of-crisis> (last accessed 22/11/2021).

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Barbara Safradin, Sybe de Vries and Simona de Heer, ‘Fundamental Social Rights Protection and COVID-19 in EU: Constraints & Possibilities’ (2021) 17 (3) Utrecht Law Review, 103 – 117 at 104.

⁹⁹ Sharifah Sekalala, et al, ‘Health and Human Rights are inextricably Linked in the COVID-19 Response’ (2020) 5 BMJ Global Health, 1 – 7 at 3.

¹⁰⁰ Shaun Danielli, et al, ‘Economic Interventions to Ameliorate the Impact of COVID-19 on the Economy and Health: An International Comparison’ (2020) 43 (1) Journal of Public Health, 42 – 46 at 45.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

needs of citizens at the lower rung of the societal ladder constitute a state of distress, and ought to be prioritized by the government.

Commendably, Africa has seen a progressive increase in social safety net measures in recent years, with 45 countries having one of such programmes designed to address issues such as chronic poverty and assist poor households to divest their investments as well as invest in the education of their children.¹⁰⁴ However, due to fiscal and capacity constraints, much of this can only take care of a small proportion of people, which often are the rural poor.¹⁰⁵ With this constraint, whereas developing countries also mustered a stimulus effort toward mitigating the economic impact of the COVID-19 pandemic, the end result was different. In India, for example, stimulus packages made up of food allocation to the vulnerable only lasted for two months, while in South Africa the food distributed did not include refugees and asylum seekers.¹⁰⁶ The situation in Nigeria wasn't too different from that of India and South Africa, putting into context the realities in developing countries, where the protection of socio-economic rights during the pandemic was a major challenge.

Nigeria's Socio-Economic Stimulus-Response

As part of its approach to mitigating the impact of the pandemic, the Nigerian government through several agencies rolled out measures. For instance, on March 24, 2020, the Federal House of Representatives passed for third reading the Emergency Economic Stimulus Bill towards providing some sort of cushion for the general population.¹⁰⁷ Also, on April 6, 2020, the Ministry of Finance, Budget and National Planning in a press briefing announced some fiscal stimulus measures in response to the pandemic.¹⁰⁸ Principal amongst this was the President's approval of a N500 billion COVID-19 Crisis Intervention Fund to be drawn from various special funds and

¹⁰⁴ Christian Bodewig, et al, 'COVID-19 in Africa: How Can Social Safety Nets Help Mitigate the Social and Economic Impacts?' World Bank Blog (April 24 2020) <<https://blogs.worldbank.org/africacan/covid-19-africa-how-can-social-safety-nets-help-mitigate-social-and-economic-impacts>> (last accessed 23/11/2021).

¹⁰⁵ Ibid.

¹⁰⁶ Sekalala, et al, n 98 at 4.

¹⁰⁷ PWC, 'COVID-19 and Its Impact on Nigerian Banking Sector: Counting the Cost' Price Waterhouse Coopers (PWC) (April 1, 2020) <<https://www.pwc.com/ng/en/assets/pdf/covid19-nigeria-banking-industry.pdf>> (last accessed 23/11/2021).

¹⁰⁸ Oladejo Adeyemi and Somtochi Onyiliofor, 'COVID-19: Overview of Nigeria's Economic Response to the Pandemic' Andersen Tax Digest (April 14, 2020) <https://drive.google.com/file/d/1yxXzid0pSTHyOinS9_rUgAfWpUwfWEkf/view> (last accessed 23/11/2021).

accounts, following approval by the National Assembly. The CBN also took additional measures to mitigate the economic impact of the pandemic stating that it will support the local manufacturing sector, as well as boost import substitution and assist health authorities with N1.1 billion.¹⁰⁹ The CBN additionally granted deposit money banks leave to restructure loan terms for businesses and households affected by the pandemic especially those related to sectors like agriculture, manufacturing, and oil and gas.¹¹⁰ A stimulus package of N50 billion Targeted Credit Facility (TCF) on the auspices of the NIRSAL Microfinance Bank was also announced, to support micro, small, and medium enterprises.¹¹¹ Along the same line, the country's principal federal tax agency i.e., the Federal Inland Revenue Service (FIRS) in its Public Notice of 23 March 2020 announced an extension of time in the filling of Value Added Tax (VAT) and Withholding Tax (WHT) from the 21st of the month to the last working day in the month.¹¹² The Federal government equally announced a social support programme to ameliorate the effect of the pandemic.¹¹³

However, realising the goals of such programmes has always been fraught with the familiar problems of ethnicization, sectional interest, and corruption.¹¹⁴ A good example is the social support fund of N2 billion which the Federal government announced it was distributing to about 2.5 million Nigerians.¹¹⁵ With the disbursement criticised as lopsided, the government later announced that the details of the distributions of the funds had been lost in the fire that gutted the Office of the Accountant General of the Federation.¹¹⁶ The implication was that the integrity of the government's response to the pandemic had been eroded.¹¹⁷ In addition, the National Assembly and the International Monetary Fund (IMF) granted the Federal government approval to borrow N850 billion domestically and \$3.4 billion to fund the 2020 budget.¹¹⁸ Following the huge health and economic challenges generated by the COVID-19 pandemic governments across the globe have committed about \$12 trillion in the form of stimulus to address

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ C.G. Chidume, C.N. Oko-Out and G.C. Aro, 'State Fragility and COVID-19 Pandemic: Implications on the Political Economy of Nigeria' (2021) 3 *Social Sciences & Humanities Open*, 1 – 7 at 5.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ CODE, 'The Impact of COVID-19 on Nigeria's Economy' *Connected Development* (May 21, 2020) <<https://www.connecteddevelopment.org/the-impact-of-covid19-on-nigerias-economy/>> (last accessed 23/11/2021).

the pandemic.¹¹⁹ The stimulus from the Nigerian government is however a far cry from what was obtained in other climes. For instance, in the US the average size of the stimulus package is 11% to GDP, compared to Nigeria's stimulus package which comes to 0.34% to GDP, and has been deemed insignificant and less likely to stimulate an already stressed economy.¹²⁰ It is worth stating that before the pandemic, the 2020 growth estimate for the continent was 3.9%.¹²¹

These policy responses have not been without challenges. While the government distributed food items in terms of palliatives to those it termed the poorest of the poor, as it later turned out, most of the food items had been stored for months in large warehouses across the country, only to be eventually discovered by hungry citizens, such that what followed were episodes of serial looting and brigandage across the country. According to Olu and Irabor, the government's response to the pandemic in Nigeria was fraught with issues of human rights abuses, mismanagement of palliative distribution, inadequate fiscal policy, and ineffective coordination of lockdowns across the country.¹²² So, at the end of the day, the government's supposed response ended up compounding the existing crisis situation. The reality is that with regard to the pandemic, not only did the government's mitigation measures impact the realisation of socio-economic rights, the supposed follow-up stimulus measures were largely mismanaged and ended up adding to the people's economic woes. Much of this is traced to the absence of a clear political will from the very start, on how best to address the situation.

Powers of the Nigerian Legislature in Protecting Socio-Economic Rights in the COVID-19 Pandemic.

It is important to reiterate the point that government is made up of a tripartite structure consisting of the Executive, Legislature, and Judiciary. The stimulus-response

¹¹⁹ Anthony Nyong, et al, 'Nigeria Moves towards a Sustainable COVID-19 Recovery' World Resources Institute (WRI) (January 14, 2021) <<https://www.wri.org/insights/nigeria-moves-toward-sustainable-covid-19-recovery>> (last accessed 23/11/2021).

¹²⁰ Nairametrics, 'From Pandemic to Poverty: Nigeria's Future with COVID-19' Nairametrics (June 13, 2020) <<https://nairametrics.com/2020/05/17/from-pandemic-to-poverty-nigerias-future-with-covid-19/>> (last accessed 23/11/2021).

¹²¹ David Evans, 'The Economic Impact of COVID-19 in Africa: A Round Up of this Week Analysis' Centre for Global Development (April 3, 2020) <<https://www.cgdev.org/blog/economic-impact-covid-19-africa-weeks-latest-analysis>> (last accessed 23/11/2021).

¹²² Awofeso Olu and Paul A. Irabor, 'Assessment of Government Response to Socio-economic Impact of Covid-19 Pandemic in Nigeria' (2020) 3 (3) *Journal of Social and Political Sciences*, 677 – 686 at 683, 684.

announced by the Nigerian government was an action carried out by the executive arm of government, executing its mandate within the province of Section 5 of the Constitution.¹²³ It is however clear that the function of government isn't complete without the other branches i.e., the Legislature and Judiciary, also performing their complementary roles. In the context of the matter before us, the Nigerian Legislature i.e., that at the federal level, must be considered culpable, in the sense that it shirked its constitutional obligations with respect to the mitigation measures of the executive arm. This it did by failing to craft appropriate legislation to government the COVID-19 mitigation measures, in particular, legislation to protect socio-economic rights. While the stimulus package by the Executive would appear tantalising, the real deal is in the exercise of power by the Legislature to craft emergency legislation to secure social welfare, especially a fundamental entitlement such as socio-economic rights. One may wonder why this is important and whether the Nigerian Legislature has got any such power.

To address the first issue, socio-economic rights go to the root of the condition of life of citizens of any country, especially the most vulnerable. Capturing this point in the context of COVID-19's impact on the poor and vulnerable in South Africa Mubangizi notes that of all the categories of human rights "*it is mainly through the protection (or lack thereof) of socio-economic rights that COVID-19 impacts the poor. This is because these rights directly affect the poor*".¹²⁴ Strengthening Mubangizi's viewpoint, Bilchitz notes that the purpose of socio-economic rights is to provide individuals, in this context citizens of a country, with access to certain socio-economic resources.¹²⁵ He further noted that all individuals need, that their right to control and use resources, for their social and economic well-being, is protected.¹²⁶ Such resources relating to matters such as work, health, housing, education, etc. are the type that the people by themselves cannot create, hence the need for positive obligation on the part of the state regarding protection. This becomes more important in developing countries where a state of crisis has somewhat become the norm.¹²⁷ And it is in such times of crisis that obligations in respect of the protection of socio-economic rights are most important.¹²⁸ With the fight to make socio-economic rights in Nigeria trapped in the *dingdong game* of partisan

¹²³ 1999 Constitution.

¹²⁴ Mubangizi, n. 11 at 10.

¹²⁵ David Bilchitz, 'Socio-economic Rights, Economic Crisis, and Legal Doctrine' (2014) 12 (3) International Journal of Constitutional Law, 710 – 739 at 713.

¹²⁶ Ibid at 718.

¹²⁷ Ibid.

¹²⁸ Ibid at 719

politics, the people would appear to have been left to their own fate. However, the COVID-19 pandemic, and its character as an emergency of some sort, has provided a legal route to that same destination that the legislature has all along ignored. There is however a need to first understand the interconnection between the impact of the pandemic and socio-economic rights, before getting to that point.

The first line of the impact of the pandemic on socio-economic rights in Nigeria is that the resources required to provide social/welfare entitlements such as education, health, housing, food, water, etc., which form the bulk of these rights have been greatly depleted. The bigger implication is that this class of rights importantly stands at a greater risk and serious peril of abandonment by a government that may hitherto have been unwilling to act. This is because the air of disrespect and serial disdain displayed by successive governments in the country, is likely to get worse, as government characteristically may simply assert that as a fallout of the COVID-19 pandemic it has become 'practically impossible' for it to meet its obligations in respect of these rights. This is certainly not a good fortune for the general human rights framework in the country. There is, therefore, an urgent need for drastic legislative action to adequately protect this class of rights and ensure that the government is not allowed to get away with any abandonment agenda, it may be nursing on the ground of COVID-19. The legislative power to achieve this goal has always been an inherent part of the Constitution, but successive parliaments in the country either did not understand, or did understand, but chose to ignore it on the basis of political considerations. An understanding of this power is important for the recommendations to be made in this article.

To address the second issue, the Nigerian legislature indeed has powers to enact legislation to protect socio-economic rights, in the context of the COVID-19 pandemic. In Nigeria's democratic journey, the directive principles as constitutional provisions were first given recognition under the 1979 Constitution.¹²⁹ The Constitution contains several principles expected to serve as guidelines to the government, towards achieving the common good.¹³⁰ Despite suggestions that these principles be granted justiciable status, this was not to see the light of the day, with the accepted position being that they

¹²⁹ No. 104 of 1979 (1979 Constitution); Atudiwe P. Atupare, 'Reconciling Socioeconomic Rights and Directive Principles with a Fundamental Law of Reason in Nigeria and Ghana' (2014) 27 *Harvard Human Rights Journal*, 71 – 106 at 88.

¹³⁰ Dejo Olowu, 'Human Rights and the Avoidance of Domestic Implementation: The Phenomenon of Non-Justiciable Constitutional Guarantees' (2006) 69 *Saskatchewan Law Review*, 39 – 78 at 56.

should remain as guidelines on issues of governance.¹³¹ This constitutional norm wasn't limited to Nigeria. As Olowu rightly observed the “*idea of non-justiciable constitutional provisions had indeed become Nigeria’s legacy for constitutionalism in Africa, as after the debut in 1979, political power brokers in other African countries had found a leeway out of rights-based accountability to their people*”.¹³² The result was that ouster clauses, either identical with that of the Nigerian Constitution, or of the same shade appeared in several other African constitutions.¹³³ In the course of Nigeria’s constitutional development, this chapter of the Constitution has remained hemmed in the zone of judicial aloofness. As opined by Olowu, the first time the court will speak of these provisions as rights was in *Uzuokwu v. Ezeonu II*¹³⁴ where the Court of Appeal remarked that “*there are other rights which may pertain to a person which are neither fundamental nor justiciable in the court. These may include rights given by the Constitution as under the Fundamental Objectives and Directive Principles of State Policy under Chapter II of the Constitution*”.¹³⁵

Notwithstanding the status of non-justiciability, the provisions of Chapter II are not to be regarded as mere ornaments, which a government can allude to when it wants its reputation enhanced, but ignore when it comes to catering for the people’s welfare. In *Attorney-General of Ondo State & Ors v. Attorney-General of the Federation & Ors*,¹³⁶ the enactment of the Corrupt Practices and Other Related Offences Act¹³⁷ was challenged by the Ondo State government as unconstitutional, given that it had been

¹³¹ Atupare, n. 128 at 89.

¹³² Olowu, n. 129. In supporting this position, the author specifically named the Constitution of Zimbabwe 1980, as amended by the Constitution of Zimbabwe (Amendment) Act No. 14 of 1996; Constitution of the Federal of Namibia 1990 (art. 12 – 14); Constitution of Botswana 1966 as amended by the Constitution (Amendment) Act No. 27 of 1992; Constitution of the Republic of Ghana 1992 (art. 34 – 41); Constitution of Lesotho 1993 (art. 25 – 36); Constitution of the Republic of Liberia 1994 (art. 1-10); Constitution of the Republic of Malawi 1994 (art. 12 – 14); National Constitution of Sierra Leone, No. 6 of 1991 (art. 4 – 14); Constitution of the Republic of Uganda 1995 (art. 1-25); Constitution of Zambia No. 1 of 1991 as amended by Constitution (Amendment), Act No. 8 of 1996.

¹³³ For instance, while Section 346 (1) of the Ghanaian Constitution states that “The Directive Principles of State Policy contained in this Chapter shall guide (not bind) all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, Political Parties and other bodies and other persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions for the establishment of a just and free society”. Also, Section 14 of the Sierra Leonean Constitution provides that “the provisions contained in this Chapter shall not confer legal rights and shall not be enforceable in any court law.” Olowu, n 129 at 58.

¹³⁴ (1991) 6 NWLR (pt. 200) 708 (CA).

¹³⁵ (1991) 6 NWLR (pt. 200) 761 – 762.

¹³⁶ (2002) 9 NWLR (Pt. 722) 222 SC; (2002) 9 Sup. Ct. Monthly 1 (Nig. Sup Ct.).

¹³⁷ Act No. 5 of 2000 (establishing the Independent Corrupt Practices and Other Related Offences Commission -ICPC).

enacted to promote the objective in Section 15 (5) of the Constitution.¹³⁸ The Supreme Court made the important point that though the provisions of Chapter II were unenforceable in a court of law, the government would be deemed as having failed in its obligation, where it disregards them.¹³⁹ The Court remarked that:

As to the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy, s. 6 (6) (c)...says so. While they remain mere declarations, they cannot be enforced by legal process but would be seen as a failure of duty and responsibility of State organs if they acted in clear disregard of them...the Directive principles can be made justiciable by legislation.¹⁴⁰

The Court noted that despite the directive principles being unenforceable, they can become legally binding when enacted into law in furtherance of the values and objectives they promote.¹⁴¹ The understanding to be drawn from this decision is similar to saying that though a child cannot enforce a right to parental care against his parents in a law court, a parent found derelict in this area would be deemed as having failed in its parental obligation. This decision is complicated as it renders the issue of holding government accountable, more of a moral issue and less of the law. However, a clear route to accountability would seem to have been created by the opinion of Niki Tobi, JSC in *Federal Republic of Nigeria v. Anache & Ors*,¹⁴² where he stated that:

The non-justiciability of Section 6 (6) (c) of the Constitution is neither total or sacrosanct as the subsection provides a leeway by the use of the words 'except as otherwise provided by this Constitution'. If the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiciable, it will be so interpreted by the court.¹⁴³

Drawing strength from this position, an examination of the powers of the legislature i.e. the National Assembly will reveal that, in addition to its other sundry powers, it is empowered to make laws for the "*peace, order and good government of the federation*

¹³⁸ Section 15 (5) of the Constitution provides that "the State shall abolish all corrupt practices and abuse of power".

¹³⁹ (2002) 9 NWLR (Pt. 722) 222 SC.

¹⁴⁰ (2002) 9 Sup. Ct. Monthly 1 (Nig. Sup Ct.) at 96-97.

¹⁴¹ Atupare, n. 128 at 91.

¹⁴² (2004) 1 Sup. Ct. Monthly 36, 78.

¹⁴³ Ibid.

or any part thereof, with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution".¹⁴⁴ The key focus here is on the items listed in the 'Exclusive Legislative List' to which the National Assembly alone is permitted to make laws. Under item 60 (a), the National Assembly has the powers to make laws for "the establishment and regulation of authorities for the federation of any part thereof – to promote and enforce the observance of the Fundamental Objectives and Directive Principles of State Policy".¹⁴⁵ The implication of this provision, which is also a constitutional provision, is that notwithstanding the ouster clause in Section 6 (6) (c), where indeed a law has been made by the National Assembly for the 'protection' of provision (s) of Chapter II, this can stand as a constitutional basis for demanding that the executive arm make policies that seek to execute such legislation. Though citizens ordinarily don't have the required standing in law to bring an action under Chapter II, the National Assembly by virtue of its constitutional powers can establish agencies towards compelling the government to carry out certain obligations under this Chapter.¹⁴⁶ This is most especially important in a crisis situation such as the COVID-19 pandemic which demands a stealth-like political will and prompt legislative action to ensure that the people are protected. This reasoning was adopted by the court in *Attorney-General of Ondo State & Ors v. Attorney-General of the Federation & Ors*,¹⁴⁷ whereby following its combined application of Section 4 (2), Section 15 (2), and Item 60 (a) of the 1999 Constitution, it upheld the Corrupt Practices and Other Related Offences Act (earlier referred to) as having been validly enacted by the National Assembly, for the peace, order and good government of the federation.¹⁴⁸

In the process of passing such legislation, the National Assembly would be compelled to aggregate the views of the people on the eventual content of the document. This would require holding townhall meetings and receiving memoranda from stakeholders across different sectors of the country, in demonstration of sound democratic norms and a show of inclusive governance. This would also engender the promotion of the rule of law, particularly as it relates to the supremacy of the constitution (given that the powers of the legislature in this respect are constitutionally grounded) as well as the protection of human rights (this includes socio-economic rights). So far, the National Assembly has

¹⁴⁴ Section 4 (2), 1999 Constitution.

¹⁴⁵ Item 60 (a), Part 1, Second Schedule, 1999 Constitution.

¹⁴⁶ Anifalaje, n. 88 at 418.

¹⁴⁷ Ibid.

¹⁴⁸ Atupare, n. 128 at 91.

ignored this provision of the Constitution, rather preferring to go along with the non-justiciability clause under Section 6 (6) (c).

This article's position isn't that, by exercising its powers under Section 4 (2) and item 60 (a) of the Constitution, the National Assembly can go ahead and make Chapters II justiciable. Rather the argument being made is that with this power, it can shield these provisions from a situation where the executive largely abandons them, as it obtained under the pandemic. Put differently, the central argument of this article is that the exercise of this power would be deemed a 'shield', protecting the people, as against a 'sword' that they can use to bring a suit before the law courts. This is more so given the developing practice in the context of the COVID-19 pandemic, in which human rights protection are deemed central to any mitigation measure. As one commentator correctly noted, it is important that human rights considerations guide governments' responses to the COVID-19 pandemic, given that they have a legal obligation to do so, and especially since there is evidence that human rights-based responses strengthen public health.¹⁴⁹

Furthermore, this analysis is instructive as it shows how the legislature (where it wants to) can creatively protect socio-economic rights, especially in a crisis situation. Amongst the three arms of government, the legislature is perhaps the only one made up of the people's representatives. Under the Nigerian Constitution, these representatives consist of 109 members of the Senate called '*Senators*', and 360 members of the House of Representatives referred to as '*federal legislators*' representing various senatorial districts and federal constituencies across the country. The voice of some of these districts and constituencies will never be heard until their Senator or legislator stands up for them. Clearly, it must have been the intention of the drafters of the Constitution, that all 469 members of the National Assembly will be the 'eye' and 'ears' of the people at all times, acting as a bulwark and defending their interest against the executive, which largely made up of political appointees. No time is more auspicious to protect the people's socio-economic rights, than the opportunity presented by the COVID-19 pandemic. Though previous legislatures have left this power fallow, clearly where the political will is right, the legislature can act for the protection of socio-economic rights.¹⁵⁰ Atupare has also made a useful observation on this score stating that "*Nigeria's Constitution calls on courts to conform to the Directive Principles but not enforce them,*

¹⁴⁹ Sekalala, et al, n. 98 at 5.

¹⁵⁰ This can be paralleled by constitutional developments in India where the Supreme Court of India's in its decision in *Central Inland Water Transp. Corp. v. Ganguly* (1986) 2 S.C.R. 385-88, held that the Court can strike down any law by Legislature seeking to undermine directive principles.

leaving it to Parliament to assess whether the state has fulfilled its constitutional responsibilities vis-à-vis the Directive Principles".¹⁵¹ This actually shows that the ball has always been in the court of the legislature and not really with the judiciary. With COVID-19 taking its toll on the most vulnerable section of the Nigerian population, the National Assembly by now ought to have exercised its powers under Section 4 (2) and Item 60 (a) of the Constitution, and enacted legislation directing the executive to take significant steps to protect the people's economic livelihood as well as rejigging the economy, as guaranteed under the Fundamental Objectives and Directive Principles of State Policy.

CONCLUSION

This article has examined the socio-economic cost of the COVID-19 pandemic in Nigeria. It has also examined the state of socio-economic rights in the country, as well as the government's attempt at providing a stimulus package towards mitigating the economic effects of the pandemic. More significantly, it has revealed the inherent vulnerabilities in Nigeria's constitutional framework, especially the lack of ability on the part of the country's legislature to take its place as a powerful arm of government, in enacting appropriate legislation to protect socio-economic rights in the course of the pandemic. The article is of the considered view that this lack of legislative action, can be explained by the weak framework of governmental institutions in the country. The legislature isn't just an arm of government, it is a powerful one at that, responsible for making laws that will shape how the executive arm exercises its powers. Clearly, it is the laws that the legislatures enact, that the executive will implement. Conversely, where the legislature fails in its obligation, it allows arbitrariness on the part of the executive, who can deploy extra-legal behaviours to fill the vacuum.

As against what obtains in other climes, the legislature in Nigeria is generally viewed as a 'rubber stamp' given its penchant for serial kowtowing to the whims and caprices of the executive arm of the government. Many a time, political expediency and the need to retain the political stronghold of the party in power, is often elevated above the interest of the people. Legislative actions that ought to be based on clear constitutional powers, as well as the moral probity to do what is right, are determined and shaped by the consideration of not appearing confrontational with the executive or seen to be

¹⁵¹ Atupare, n 128 at 92.

uncooperative. This has ensured that much of the powers of the legislature remain underutilised and even when used, guided towards maintaining the status quo.

The outbreak of the COVID-19 virus and the follow-up pandemic has revealed the important fact that the future of human rights lies not so much in the protection of civil-political rights, but in the active push for the protection of socio-economic rights, thereby imposing necessary obligations on governments. As COVID-19 continues to unravel, moving from wave to wave, there is still ample time for legal scholars to further engage the central position of this article, thereby enriching research in this area. In addition, the Nigerian legislature can still act, whether as the pandemic winds down or in a post-pandemic era. For it to meaningfully achieve progress in this regard, it must be ready to apply a more nuanced understanding of its powers and match it with a fit-for-purpose political will. Civil Society Organisations (CSOs) equally have an obligation to keep the legislature on its toes and hold it to this power, through continuous advocacy on socio-economic rights protection. Along the same line, organisations such as the UN and other international stakeholders in their engagement with developing countries such as Nigeria, must continue to resist cosmetic constitutional amendments, and insist on far-reaching reforms, which will achieve more protection for socio-economic rights.

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