

REALIZATION OF ECONOMIC AND SOCIAL RIGHTS UNDER THE HUMAN RIGHTS LAW

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ABSTRACT

Realization of social and economic rights is an inherent right which every man required. It is ideal for man to enjoy freedom, in the society, equal working standard, equal remuneration, education, good health care, respect to humanity, equal standard of living, right to organize, form and join trade unions right to participate in cultural activities and right of security. First generation of human rights relate to civil and political rights, second generation relate to economic, social and cultural life. While the third generation talks about solidarity. Human rights issue have become so imperative to the international, regional and national politics for past years. Looking at the United Nation Universal declaration on human rights of 1948 which 1966 international covenant on civil and political rights and international convent on economic social and cultural right were carved out which have become coalesce or their coalition, has made every sovereign state to implement the stability of their human rights. Nigeria being a signatory to African charter on human and people's right of 1982 Article has made us to recognize and understand our fundamental human rights notwithstanding all are not being implemented and considered.

INTRODUCTION

Nigeria is a country enclosed with enormous and material resources. However, these resources have not been harnessed and utilized to enhance the quality of the people's life. The reason for this stems from the fact that Nigeria, like most African countries is a casualty of history. She has been raped and traumatized by her slave trade experience, exploited by colonialism, culturally disrobed by neocolonialism, pauperized by administrative ineptitude and corruption, and destabilized by tribalism, ethnicism, nepotism and favoritism and of late, religious fanaticism.

The Nigerian populace, with the exception of the small ruling class who sits on the wealth of the nation, bears the consequences of this historical accident. Over the years, the Nigerian citizen has so continually and progressively been deprived of a share of the "National Cake", that presently, he lives below the poverty line. Like a man who lives at the bank of the river and still washes his hands with spittle, the Nigerian common man continues to wallow in penury in the midst of plenty.

Amidst this glaring deprivation the ruling clique, in order to consolidate their ill gotten wealth and to perpetually keep the populace in servitude, promulgate legislations that exclude economic, social and cultural rights from the justiciable rights under our law.

Against this background, an adventure into the field of the need for the enforceability of these rights is not only necessary but imperative. This work seeks as its aim, to define the concept of human rights, a discourse of the generational regime of human rights, a perusal of the Nigerian constitution vis-à-vis human rights and the need for the justiciability of social and economic rights.

DEFINITION

WHAT ARE HUMAN RIGHTS

S.36 1999 constitution gave us almost all right of humanity.

Human rights are predicated on human dignity, the preservation of which is one of the propelling factors of man as a social being, the absence of which gives to man, the Hobbesian conception of his life being solitary, nasty, nasty, brutish and short.¹

¹ General Obasanjo: HIRS & Democracy in African, edited by T. Abayomi (1983) p.39

² Osita Eze, Human Rights in Africa, Lagos NIIA & Macmillan (1984) p.5

³ M.A. Ajomo Fundamental Human Rights under the Nigerian Constitution Perspectives on Human Rights, edited by Hon. Clement Akpangbo published by Federal Ministry of Justice (1998) p.77

Attempts at a universally acceptable definition of human rights have been quite elusive. Each definition is subject to the perspective from which the person making it views human rights. To Professor Osita Eze, human rights represents demands or claims which individuals or groups make on society, some of which are protected by law and have become part of ex clata while others remain aspirations to be attained in the future.² M.A. Ajomo on his part sees Human Rights as those which are inherent in man; and which arise from the very nature of man as a social animal.³ Human rights in its contemporary usage is recognized as the intrinsic, equal and alienable rights of all members of the human family to a dignified existence. It is appreciated that its observance is a necessity for the promotion of social progress and better standard of life for all humanity.

To these writers, human rights are those rights whose fulfillment enable man to live as the image of God and without which he is reduced to a lesser being. The concept of human right has engendered one of the most profound questions ever to task the intellect. Discourse on the precise meaning and content of human rights has tasked the ingenuity of eminent scholars and jurists of remarkable intellectual prowess; yet, the issue raises more questions than answers.

THE GENERATION OF HUMAN RIGHTS

There exists presently, three generations of human rights. First generation of human rights are those which relate to civil and political rights; second generation of human rights are economic, social and cultural in nature, and third generation are rights which deal with the issues of solidarity.⁶

Civil and political rights include such rights as the right to life, freedom from torture and inhuman treatment, right to personal liberty; freedom of thought, conscience and religion, and right of franchise.

Economic, social and cultural rights embrace such rights as the right to work, the right to just conditions of work, the right to fair remuneration; the right to an adequate standard of living, the right to organize, form and join trade unions, the right to education and the right to participate in cultural life.

Third generation of human rights includes, inter alia, "collective rights spanning an assortment of such issues as rights to peace, development, health, environment, solidarity, perfection against the social and physical deterioration wrought by drug abuse etc.

THE NIGERIAN CONSTITUTION AND HUMAN RIGHTS

The constitution of 1960 succeeding with 1963 constitution 1979, 1989 and the draft constitution 1999⁷. Presently, chapter II & IV of the 1979-1999 constitution as amended make provisions for human rights in Nigeria Chapter II deals with fundamental objectives and directive principles of state policy, chapter IV regulates fundamental human rights.

Fundamental objectives refer to the identification of the ultimate objective of the nation while directive principles of state policy indicate the paths which have already been enumerated.⁸ It should be noted that these rights are not justiciable under Nigerian law.⁹ The reason given by the constitution drafting committee for the exclusion of chapter II among the justiciable rights is that, unlike first generation rights which impose restraints on the state, the other generations of human rights require positive action on the part of the state to secure material means for their enjoyment. They argued that if second generation rights are made justiciable, the court would be choked with multiplicity of cases which will not augur well for Nigeria as an under-developed nation.

THE NEED FOR THE JUSTICIABILITY OF THESE RIGHTS

Human rights issues have become the stock in trade of both international, regional, and national politics over the years. Apart from the Nigerian constitution which regulates its human rights at the national level there are various instruments at the other sphere which regulate human rights. In the international realm, there is the United Nation Universal Declaration on Human Rights of 1948 (UNNDHR) from which two

legal covenants were charged out, vis-à-vis the International Covenant on Civil and Political Rights of 1966 (ICCPR) and the International Covenant on Economics, Social and Cultural Rights of 1966 (ICESCR).

On the regional pedestal there is the African Charter on Human and People's Rights¹¹ of 1982. Nigeria is a signatory to these instruments.

Article 22 of the United Nations Universal Declaration on Human Rights provides for the rights to social security while Article 23 provides for the right to work, to free choice of employment, to just and favourable conditions of work, protection against unemployment, equal pay for equal work, just and favourable remuneration and to form and join trade unions. Article 25 provides for everyone the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care etc. the Covenant on Economic, social and Cultural Rights also embodies these rights in its Article 6, 7, 8, 9, 12 & 13, which says thus: Part III Article 6(1) of the state parties to the present covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.¹²

To achieve the full realization of this right shall include technical and vocational guidance, training programmes, policies and techniques to achieve steady economic, social and cultural development and full productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7¹³: The parties recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present covenant.
- (b) Safe and healthy working conditions.
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holiday. Article 8(1)
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interest. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the protection of the rights and freedom of others.
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organization.
 - (c) The right to trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

Article 8(2) Prevents the imposition of law restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the state.

Article 9 talks about right of everyone to social security, including social insurance.

Article 10 talks about the perfection and assistance should be accorded to the family, children, young persons and mother both before and after childbirth.

Article 11 right of everyone to an adequate standard of living for himself and family.

Article 12 provides enjoyment of the highest attainable standard of physical and mental health, reduction of the still birth rate and of infant mortality and for the healthy development of the child. Prevention, treatment and control of epidemic, endemic, occupational and other diseases. Creation of conditions which would assure to all medical service and medical attention in the event of sickness. Finally, article 13 gives right of education.

The exclusion of economic, social and cultural rights from the justiciable right under the 1999 constitution of the Federal Republic of Nigeria is not tenable. Nigeria's under development is not caused by death of natural resource, but the absence of a family entrenched realization mechanism for social-economic¹⁴ rights which has promoted exclusion and structural violence against the majority of the populace, denied them access to essential services (potable water, electricity, sanitation etc). It has led to the looting and privatization of common property, resources and created ethnic and economic ghettos. It is also this absence of good government that has led to lack of accountability, corruption, governments disobedience of court orders.

There is therefore the need to make all (not few) the social and economic rights in chapter II of the constitution justiciable. This will check the excesses and institutionalized corruption of our leaders and the promotion of the dignity of the person is the guiding principle and when the search for the common good is the overriding commitment, then solid and lasting foundations for building peace are laid. But when human rights are ignored or scorned, and even the pursuit of individual interests unjustly prevails over the common good, then the seeds of instability, rebellion and violence are inevitably sown. The neglect, refusal, and or lack of commitment on the part of government in the fulfillment of these basic economic rights, is no doubt, the cause of the chronic social ills the country is experiencing today.

"African youths are universally denied the rights to life, liberty and the pursuit of happiness. Why then should they not rebel against such a state? Why should they not vent their rebellion by being violent? In the perception of the African youth, the state in Africa has not only failed them, it has also been oppressing them. All the odds are slacked against them. The education system has collapsed, health services are virtually non-existent and employment opportunities are hard to come by. Those who are lucky to have any employment live in a constant state of job insecurity.

Until recently, the relationship between public accountability and human rights has constantly been ignored by many Nigerians. The abundant cases of fraud, embezzlement of public funds, personal aggrandizement, and misappropriation of public property involving public officers, have been condemned along parochial moral lines. This is not helpful to Nigeria as a developing country especially when, "In most third world countries, development also includes, at least rhetorically, a commitment to the simultaneous fulfillment of basic economic rights.

The enforcement of these rights should not be restricted to the national level alone. Human rights are universal, consequently, any nation that violate the rights of a particular people should be made to compensate them. Most of the socio-economic dilemma of the African countries today arise as a result of the triple tragedy of slavery, colonialism and neocolonialism.

THE CHALLENGE OF ASSESSING COMPLIANCE ON ECONOMIC AND SOCIAL RIGHT

There is increasing recognition of the elegance of economic and social (ES) rights to development (ODI, 2006)¹⁵

Human rights principles, such as accountability and non discrimination are now cornerstones of broad governance efforts to ensure that states and societies contribute to sustainable and inclusive development. A number of challenges have stopped economic and social right from achieving a fully functional role within development policy and practice, however, these include legal challenges related to the status of Economic and Social rights within national law, as well as the feasibility of applying such law in practice. Assessing government compliance to economic and social rights obligations – or the lack of it – is a key dimension of this practical challenge. Without evidence on compliance, it is not only difficult to hold governments accountable, but it is also difficult to find out what is preventing the full realization of economic and social rights.

Economic, social and cultural rights were recognized formally in international law in 1966, as earlier said, when they were enshrined in the international covenant on economic, social and cultural rights

(ICESCR). The ICESCR is the first part of an International Bill of Human Rights, the second being the covenant on civil and political rights. Both are international treaties and are binding on state parties under international law. The Vienna Declaration (1993) recognized civil and political rights and economic and social rights as indivisible, interdependent and interrelated¹⁶. The reason is that both sets of rights are necessary to establish the integrity and dignity of the person. There is therefore, no necessary hierarchy or precedence among these rights within international treaties¹⁷.

WHAT ARE SOCIAL AND ECONOMIC RIGHT?

Broadly speaking, social and economic rights concern the “conditions in which people live and work, they give people a claim to an adequate standard of living and stress the quality of life in both material and moral sense¹⁸. Social and economic rights are human rights, but their realization, especially within national spheres had been undermined not only by the absence of political will to implement them or the exiguous system of monitoring compliance, but by various provisions of domestic constitutional law which in many developing countries deny legal enforceability to them.

RECOMMENDATIONS

The realization of economic, social and cultural rights may be viewed as a necessary precondition for the enjoyment of civil and political rights. A person without any form of social security will not find much meaning in freedom and personal autonomy.

It is a well known fact that there are more than enough resources for the realization of economic and social rights in Nigeria and many other developing countries of the world. The failure to implement these rights is not a reflection of the physical shortage of resources but rather of political decisions about its distribution.

The resources are not only badly managed, misallocated or misappropriated, but are out rightly stolen and looted by those who are saddled with the responsibility of managing the common resources for us. This therefore leads to the artificial existence of wide spread illiteracy, poverty and diseases, hunger and malnutrition, gross shortage of health care and housing.

In the light of the above, and in order to improve the living conditions of the people to enable them take charge of their own destiny, these writers are of the view that economic, social and cultural right sin chapter II of the 1999 constitution as amended, should be made justiciable and enforceable so that when such rights are violated, citizens could claim such rights in courts. This, we believe will check the excesses and institutionalized corruption of our leaders.

The economic, social and cultural needs of every individual should not be at the mercy of changing governmental policies and programmes but should be defined as entitlements¹⁹.

CONCLUSION

Civil and political rights cannot be realized in isolation of economic, social and cultural rights. Indeed, these rights form the basis upon which all other rights are predicated. Consequently, social and economic rights should be made justifiable just like the civil and political rights contained in chapter IV of the Nigerian 1999 constitution because “Economic rights cannot be true rights unless there is an effective means for their realization” and the realization of the economic rights is usually embedded in citizen’s empowerment and individual’s capacities to enforce their claims against the state.

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