

FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLE OF STATE POLICIES UNDER CHAPTER TWO OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (2004) AS A CLOG IN THE WHEEL OF DEVELOPMENT IN NIGERIA: AN EVALUATION

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ABSTRACT

Without doubt most modern states are governed under a single document which stands prominent in modern constitution. The advantage of such a constitution is its precision and brevity which clearly leaves much room for flexibility and necessary in a dynamic state. The Nigerian constitution judged by the standard of democracy as contained in modern constitutions, would appear to have attempted to promulgate a democratic form of government but the issue of development is under great pressure to which all of us are complete strangers. Fundamental human rights were not created by the state but are external and universal institution common to all mankind and antedating the state and founded upon natural law. By and large the provision of Chapter two of the constitution of the Federal Republic of Nigeria 2004 as amended in respect of the provision of fundamental objectives and directive principle of state policies is one of our most unfortunate circumstances which lacks an overriding economic ideology. This is the greatest dilemma in our country and the attitude of most Nigerian government is one of a tendency towards non development, unprecedented upheaval, oppression, war and the blatant abrogation of rights to development. It certainly appears unwise to accept being immune to the atrocities perpetrated by our leaders at all level. The teeming millions of our illiterate or semi illiterate people had no hand in the making of the constitution. Therefore chapter 2 of the constitution need to be amended to enable individuals sue the government and demand their rights to development¹.

INTRODUCTION

A constitution is a fundamental and organic law of a nation or State that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers and guarantees individual civil rights and civil liberties. The Constitution of a State is that collection of rules and principles according to which a State is governed. In other words, the Constitution refers to the framework or the composition of a government, the structure with regards to its organs, how power is allocated and the process by which power is exercised. Nigerians have constantly criticized the preamble to the Constitution which reads 'We the people of the Federal Republic of Nigeria do hereby make, enact and give to ourselves the following constitution' as being a complete fabrication to suit their selfish ambitions.²

It would appear that the criticism is predicated on the fact that the people of Nigeria were not

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²The Preamble Constitution Of The Federal Republic Of Nigeria 1999 As Amended.

consulted before the Constitution was enacted. The Constitution houses a lot of Act and provisions such as the companies and Allied Matters Act, The Land Use Act, etcetera.³

ECONOMIC DEVELOPMENT

The indispensability of values is increasingly felt as a guide for economic development hence the need to recognize the fundamental rights to development which is a necessary adjunct of a democratic form of government.

Economic development can be defined as efforts that seek to improve the economic well-being and quality of life for a community by creating and/or retaining jobs and supporting or growing incomes and the tax base. It is the process by which a nation improves the economic, political, and social well-being of its people. The term has been used frequently by economists, politicians, and others in the 20th and 21st centuries.⁴ Economic development usually refers to the adoption of new technologies, transition from agriculture-based to industry-based economy, and general improvement in living standards. It is a much broader concept than economic growth based purely on Gross Domestic Product, reflecting social and political, as well as economic, progress. It may be defined as an increase in a country's wealth and standard of living.

Economic development is usually measured by an increase in the gross domestic product or other measures of aggregate income. An example of economic development is when a country begins to produce more products and increase its overall welfare.⁵ It is said to be economic development only if it brings outside money into a community.

Nations of the world have at various times and stages of political and economic development had to grapple with issues of statehood which of course embodies very germane economic concerns of sustainability of the available human and natural resources which make claims to nationhood a reality. The Nigerian nation has had its share of economic programmes. Plausibly targeted at galvanizing the economy to be more productive and independent of external forces so as to sustain the nations teeming and still growing population. The hue and cry of over dependence of the Nigerian economy on one major product (crude oil) which is substantially managed and controlled by expatriates have led to the setting up of various committees agencies to explore alternatives to drive the Nigerian economy.⁶

Efforts of government at the state and federal levels to encourage better and active private sector participation in government economic policies all underscore the need for a stronger national economic base. This fact is actually an acknowledgement that public private sector financing need infrastructural facilities for any meaningful progress.⁷ The private sector initiatives and support of public institutions in different sectors especially investing in other sectors like agriculture, real estate, equipment and other sectors of Nigerian economy is rife.

³ *The Land Use Act 1978 And The Companies And Allied Matters Act 2020*

⁴ *Ibid*

⁵ *Ibid.*

⁶ Okorodudu, F. M., *Law Of Environmental Protection. Material And Text, Caltop Publication Nigeria Ltd Ibadan* 1988, P.15

⁷ *Ibid.*

THE PROVISIONS OF CHAPTER 2 OF THE CONSTITUTION AND ITS NATURE:

It is now necessary to consider the constitutional provision guaranteeing rights to development. Chapter two of the constitution provided for economic development and which:

Enjoins the states to control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity and that the state shall direct its policy towards ensuring the promotion of a planned and balanced economic that the material resources of the community are harnessed and distributed as best as possible to serve the common good". Section 17 sub sections 2 (d) provides that exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented.⁸

Clearly, if the material resources of the community and exploitation of natural resources is not to be for the good of the community, then the economic set up in the country at the moment is completely and totally faulty, yet no one has ever thought of re-ordering the system.⁹ On the other hand, Section 18 deals with Educational objectives and enjoins the government to direct its policy towards ensuring that there are equal and adequate educational opportunities at all level. These are all object of economic development and need resources but with conflicting provisions¹⁰, in that one of the economic objectives of the state policy is that the state shall: -

Without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

Again Section 16 (1) (a) says that the state shall –Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.¹¹ Whilst paragraph (c) of subsection (2) of the same section says that the state shall direct its policy towards ensuring that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group.¹² One would not have thought that this matter was too difficult, but politicians decided to make it difficult only in the hope that the judiciary was there to resolve a conflict for which there was no real cause.¹³

The right to development is an unalienable right by virtue of which every human person and all people are entitle to participate in and enjoy economic, social, cultural and political development in fundamental freedom which cannot be realize under chapter 2 of the Constitution. The citizens are the central subject and beneficiaries of development through formulation of appropriate national development policies of their well-being without any constraint.¹⁴

⁸ Alemika, E. "The Non-Justifiability Of Chapter 2 Of The 1999 Constitution As Amended", *Implication For Development: (2011) Bayero University Law Journal (Vol. 1), (No. 1) P. 353*

⁹ *It Is The Abiding Duty Of The Law To Ensure That The Right To Development Is Guaranteed*

¹⁰ *Section 18 Of The Constitution Of The Federal Republic Of Nigeria 1999 As Amended, Directs Government to ensure equal and adequate educational Opportunities at all levels.*

¹¹ *Section 18 Sub-Section 2 Constitution Of The Federal Republic Of Nigeria 1999 As Amended.*

¹² *Section 16 (1) (a) And (c) Ibid*

¹³ *Section 16 (c) Sub-Section (2), Ibid*

¹⁴ *African Charter On Human And People's Right 1981 And International Convention On Economic, Social And Cultural Rights 1966*

THE ROLE OF LEADERSHIP IN ECONOMIC DEVELOPMENT

The role of leadership in economic development is to mobilize and direct the people by providing the necessary policy framework, incentives, infrastructures and other facilities on the basis of their active free and meaningful participation and fair distribution of the benefit resulting there from.

Lending credence to the contemporary scholarly view that economic development is synonymous with freedom and happiness of the people, Nwabueze¹⁵ had explained that:

Economic development does not come by itself, like manner from heaven,' it is a product of diligent application by people of all the hard work, self-reliance, initiative, creativity, enthusiasm and entrepreneurship of which they are capable.

Sadly, these rights cannot be enforced under what is tagged “fundamental objectives and directive principles of state policy”. Indeed, many Nigerians are beginning to wonder if the provisions of section 16 (1) (a) and (c) of the constitution is not being carried to an extreme.

The question is, is the so-called ‘Fundamental Objectives and Directive principles of State Policy’ which forms chapter II of the constitution,¹⁶ a “white elephant”? It is not necessary to list all the provisions, but there are ten sections altogether. Some of these have the appearance of legal provisions which can be enforced in a court of law. But what do we have? Section 16 (c) of the constitution provides that: The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person 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.¹⁷

In evaluating such elusive provisions and forming their own conception of what is justifiable in all circumstances, it is inevitable that the social philosophy and the scale of values of those who participated in the decision should play an important part by being directed by their sense of responsibility and the sobering reflection that the constitution is meant not only for people of their own way of thinking but for all, and that the majority of people considered the restrictions unreasonable. The right to development has won recognition internationally by the United Nation;¹⁸ the African Union, and African Charter for Human and Peoples Rights.¹⁹ Thus attention should be directed to the ends that make development important rather than decreasing their economic security. Under chapter 2 of the constitution of the Federal Republic of Nigeria, the rights to development are guaranteed without power to question its non-existence, this is nothing but a scam. It should be noted that all those who drafted the constitution and approved it come from the propertied class with serious and substantial vested interest.²⁰

¹⁵ Nwabueze, B. *Constitutional Democracy In Africa Volume 2 P. 30*

¹⁶ Aguda, T.K “*Judiciary In The Government Of Nigeria New Horn Press Ibadan, 1983, P. 129*

¹⁷ *Chapter 2 of The Constitution of Federal Republic Of Nigeria 1999 As Amended*

¹⁸ *The Character Of The United Nation Was Signed On 26 June 1945 In San Francisco At The Conclusion Of The United Nation's Conference On International Organizations And Came Into Force On 24th October 1945*

¹⁹ *Ibid*

²⁰ Aguda, T. A. *Ibid At P. 130*

The teeming millions of illiterate or semi-illiterate Nigerians had no hand in the making of the Constitution which are designed to protect the interest of the propertied class, as well as those of their children but in order to give some cold comfort to the teeming millions who are living in abject poverty the makers of the constitution threw in chapter two.²¹ They remembered, however, to make sure that none of its provisions are justifiable. It is also worthy to note that most judges of the superior courts themselves come from the same class as the men who made the constitution, thus they cannot question the unconstitutionality of chapter 2 of the constitution.²²

It is submitted that the Supreme Court should work their way around the non-justifiability provisions of the constitution in order that millions of Nigerians can gain independence from hunger, deprivation, disease and ignorance. It is suggested that in spite this provision the Supreme Court should bear in mind the directive principles when construing the other provisions of the constitution and other laws passed either by the federal or state governments.²³ In particular the provisions of chapter 2 and 4 must be regarded as supplementary ones with the others with a view to better economy of the country and the life of people who manage merely to survive at near starvation level.

NIGERIA AT A CROSS ROAD

Today Nigeria stands at a cross road, one road leads to survival as a democracy which ensures the maximum welfare freedom and happiness of every citizen on the basis of social justice and equality of status, while the other leads ultimately to self destruction as a result of the greed of a few at the expense of the teeming millions and they cannot enforce their rights.²⁴ The large majority of people are living in almost sub human existence in condition of abject poverty and for whom life is one long broken story of want and destitution. Notions of individual freedom and economy need though representing some of the most cherished values of a free society, but as seen in chapter two, it sound as empty words bandied about in the drawing rooms of the rich and well to do.²⁵

In Nigeria, inflation is increasingly making the workers' salaries meaningless and so the workers are forced to grumble²⁶ and eventually go on strike. It is strike that forces the government to consider the plight of workers. Labour union are still crawling on the floor begging to be paid their salaries and Allowances, Armed robbers are taking their tolls from the rich,²⁷ but they do not spare the poor and law has grown in strength in the modern world to oppress the working class and the masses.²⁸ It is submitted that the sure way of enhancing economic development is by correcting the imbalance of the economic positions of the different strata of the society.²⁹

Although we just came out of the corona virus pandemic (Covid-19) which was a catastrophic

²¹ *Ibid*

²² *Ibid*

²³ Nwebo, O. E. *Critical Constitutional Issues In Nigeria 3rd Edition*, Versatile Publishers 2011, P. 13

²⁴ Enabulele, A. And Bazuanya, B. *Teachings On Basic Topic In Public International Law*; Ambik Press 2014, P. 116 available At: <https://Books.Google.Com.Ng/Books?Shn=9788430775>, Accessed On 23/1/2024

²⁵ *Ibid*

²⁶ Osita N. O., *Modern Nigerian Legal System* Cidjap Publishers, 2002, P. 12

²⁷ Nnabue, U.S.F; *Understanding Jurisprudence And Legal Theory*, Owerri, Bon Publishers, 2009 P. 26

²⁸ Chukwumaeze U.U. (SAN) And Okorie C.K, *Challenges Of Law In Promotion Of Justice: Essays In Honour Of Honourable Justice Florence Ikwuoma Duroha-Igwe*, Chief Engr Obiora Duroha 2018

²⁹ Free Man, M.D.A *Llyod's Introduction To Jurisprudence (7th Edition)* London Sweet And Maxwell 200 1 P. 3

drain on our limited resources which had not been properly harnessed or judiciously planned before the commencement of Covid-19, but if the selfishness of our leaders can be controlled, the conflict will not arise.³⁰ Conflicts usually arose because of numerous restraints imposed on citizens. The federal government proscribed strikes and lockdown the economy yet strike is even more frequent now than before the proscription and the government are doing nothing about it knowing that the workers and other citizens have genuine reasons to complain about their conditions of service, including their pay and its closes its eyes to the workers strike action just like the strike embarked upon by the health workers, Nigerian medical association, National association of Academic Staff Union of Universities and others.³¹ It is sad to note that government, instead of taking measures to correct the imbalance, has taken stringent action against these groups of workers by denying them their salaries and entitlement. This is an indication that they have not felt a sense of duty to correct the imbalance in the society. This class distinction is what economic theorist stands to fight against.³²

Although there may be imposition of heavy taxes on the higher income earners in the society by government and the reduction to a minimum the tax burden on the low income earners, this does not scratch the surface of the problem because the rich are getting richer while the poor are getting poorer.³³ Moreover, the revision of salaries and wages commonly known as minimum wage was not to be in that a commission was set up to look into this but before it even completed its work, not to talk of submitting its recommendation, the salaries and wages of some groups of fairly well paid loyalist of the rich men was reviewed upwards while other workers suffers Hunger, Anger, mental trauma and agitated for increases which was never given and the result is that the economic imbalances will continue unless the government introduces policies that will remove the economic depression and correct the imbalance.³⁴

Furthermore, prices of essential food stuffs have soared up almost beyond contemplation, and famine is staring us in the face, crimes are on the increase as famine naturally provides fertile ground for all sorts of crimes. Thus killings stealing, robbery, kidnapping rapings, banditry, terrorist and hoodlums has taken over the society. The incidents of smuggling, money laundering and internet fraud are so alarming and capable of causing substantial damage to our economy and flow of cash for credit transactions.³⁵ The effect is that millions of poor people who see the wealth of the rich leaders will become jealous and create animosity within the society by revolting so that their future and that of the generation unborn will be guaranteed.

Flowing from the above submission, it is the contention of this writer that Nigeria is sick because ill-gotten wealth are applauded, which shows a wrong sense of value and a sign of abnormalities. Nigerians cannot afford to live under this situation the solution is to harmonize the individual

³⁰ Kelson, I. “*General Theory Of Law And State*” California University Press 1967. P.1

³¹ Chukwumaeze U.U (SAN), *The Right To Rebel. “An Evaluation Of The Recent Events In North Africa*, (2012) *Journal Of Commercial And Contemporary Law*(Vol. 3), 10

³² Dike, S. *Energy Challenges And Insecurity In Nigeria: A Sectoral Perspective, Reading In Law And Policy Current Issues And Trends Imo Zubic Infinity Concept* 2017. P. 15

³³ Lloyd And Freeman M.D.A *Op cit.* 810

³⁴ *Ibid*

³⁵ Aluko, M. A. O., “*The Institutionalization of Corruption and its impact on political, culture and behaviour in Nigeria*”. *Nordic Journal of African Studies* (2002) (Vol. 11) 393.

and his personality with the collective good and social justice³⁶ for all in order to enhance economic development.³⁷ Be that as it may, and since this theory is futuristic in its presentation, one is still hopeful that something must happen either to uphold the theory or to sing its final requiem. Whichever way, we must bear in mind the wise counsel that “extreme individualism forgets the social functions of the state and extreme socialism forgets the sanctity of the human person. Both offend against justice and stiffer economic development.”³⁸

The only solution to making these rights meaningful is to remake the material conditions and usher in a new social order where socio-economic justice will be for all so that the pre-condition of economic developed for all, will be secured because a situation where citizens are conferred with an aura of sacrosanct and inviolability of such formal rights as are designated fundamental rights and relegating directive principles to insignificance, creates a situation where manifest public good and substance is sacrificed to private interest and obeisance to empty forms.³⁹

JUDICIARY: A CALL TO HARMONIZE THE CONSTITUTION

The problem is and always has been, as to how much contribution the judiciary can make towards making the restructuring as painless as possible. There is economic inequality existing in the society thus, the society can not develop without exploring its institutional and economic foundations by assessing their impact upon the prevailing ideas. In fact things have to be arranged in such a way that there will be greater benefit of the least advantage by giving them equal opportunities through adequate economic development⁴⁰.

Nigerians cannot afford to continue like this, the best thing to do is to harmonize the constitution for the collective goods of all by accommodating the directive principles and emerging it with other provisions of the constitution. To this end therefore, the Supreme Court cannot get away with it merely because these Directive principles are non-enforceable in nature. The need of the moment is that all the three arms of government executive, legislature and the judiciary must fly together in order to satisfy the needs and aspirations of our teeming millions. Anything short of this will run counter to the declaration to provide for a constitution for the purpose of promoting economic development in Nigeria. It is further submitted that in spite of this provision, the courts should interfere and adjudicate on those issues relating to fundamental objectives and directive principles of state policy otherwise it will become a white elephant for Nigerians.

³⁶ Wacks, R. “*Understanding Jurisprudence*” *An Introduction To Legal Theory*, Oxford University Press, 2005, p. 85

³⁷ *Ibid*

³⁸ Elegido, J.M. *Jurisprudence*, Spectrum Law Publishing Ltd, 2010, P. 20

³⁹ Pansy, T. *Model Law African Commission On Human And Peoples Rights Available At* www.Achpr.Org.Files/News/2013/04/D84/Modellaw.Pdf Accessed On 4-2-2024

⁴⁰ David S., “*Modern Positivism culled from Kelson Pure Theory Of Law*”, In Penner, J. Et Al *Jurisprudence And Legal Theory*: London Butherworths 2002, P. 190

⁴⁰ Chukwumaeze, U.U., “*Law Enforcement Agency And Administration Of Justice In Nigeria: An Appraisal In* Nwebo , S.O (Ed) *The Political Economy Of Administration Of Justice In A Developing Society*, Owerri Versatile Publishers, 2004, P. 30.

⁴⁰ *Ibid*

⁴⁰ *Ibid*

⁴⁰ Chukkol K.S. “*The Law Of Crime In Nigeria*, Ahmadu Bello University Press Limited, Zaira Revised 2010, P. 186

According to Oxford Dictionary⁴¹ a 'White Elephant' is defined as a burdensome or unwanted possession. Does this apply to chapter II of the constitution? And what can the judiciary do with it? It is believe that chapter II is an attempt to introduce into the constitution some ideas and concepts in a manner that looks like it is speaking, of Natural Law of a bye-gone era. There is of course no room for any concept of Natural Law as a yardstick to measure the rightness or otherwise of any legislative act along the lines in which Natural Law was conceived during its hegemony.

On the other hand, any concept of unadulterated positivism can have no other result than to reduce the law and its practitioners both the lawyer and the judge to a mere computer without room for the examination of the soul, and this must not be allowed to be in the constitution otherwise the issue of economic development will become an ill wind that will blow no good development in Nigeria.

CONCLUSION

It has been argued that the conflict in society has arisen because of underdevelopment. If the society and the economic sectors are developed then there will no longer be any conflict. The only institution that can control the excesses of the politicians apart from the electorate whose decision in the Nigerian context may in a vast majority of cases be based upon ethnicity and sentiments. The judiciary so far is being controlled by government and politicians rather than being independent. That does not mean however, that the judiciary is completely impotent but if what we have seen of it in the past few years is anything to go by, not much of salvation of the ordinary citizens from tyranny of the executives can be expected from that quarter. Therefore, the judiciary is the most inevitable and easily available recourse to check such fundamental right abuse in area of economic development. It is particularly disturbing to observe that things have not changed significantly, except that we keep substituting one government to the other, as such only a negligible corner of some Nigerian court can be relied upon for independency and impartiality because most of them are blind supporters of their political friends. Nevertheless, Nigerian would be satisfied that such freedom as it is guaranteed by the constitution under Chapter two if sufficiently implemented will become so potent and make Nigeria a force to reckon with.

To this end, the question as to whether or not there is sufficient freedom guaranteed for development under the constitution depends to a large extent on the judicial interpretation of the derogation clause as it affects Chapter two of the constitution. In effect, the judiciary has a very great responsibility to the nation in sustaining good government. The derogation clause is taking too narrow a view of the provisions, for it must be justifiable in a democratic society to take reasonable precautions to preserve public order and may involve the prohibition of acts which if unchecked and unrestrained, might lead to disorder, even though those acts would not themselves do so directly. The court must be the arbiter of whether or not any particular law is reasonably justifiable⁴².

⁴¹ Hornby A.S. *Oxford Advanced Learners Dictionary Of Current English*. Oxford University Press 8th Edition, 2015, P. 1697

⁴² *Many Of These Theories Were Extensively X-Rayed In The Revered Articles Of Scholars Which Include: Steven L. Charles W. and Mooney, J. A Property-Based Theory Of Security Interests: Taking Debtors' Choices Seriously'* [1994] (80) (8) *Virginia Law Review* [Http://Www.Jstor.Org/Stable/1073551](http://www.jstor.org/stable/1073551) Accessed 29 March 2020.

⁴² Paton, G. W. *On Jurisprudence*, 3rd Edition, Oxford University Press 1972, P. 505.

Whilst we would unhesitatingly accept the proposition that the court should be the arbiter, in the final analysis, as to whether or not any particular law is reasonably justifiable, it hardly can be doubted that the combined effect of sections 16(1)(a) (c) and (2) of the constitution is to whittle down considerably the freedom and right to development as guaranteed by the constitution. This is contrary to ideas of democracy founded upon a government whose action should be open to criticism. For it is common knowledge that the careful and constructive criticism of certain government actions may cause fear and alarm to the public – and yet these are necessary for the sustenance of democracy as contemplated by our constitution. Hence government should take reasonable precautions to preserve public and order.

⁴² Chukumaeze U.U. (SAN), “*Law Enforcement Agency And Administration Of Justice In Nigeria: An Appraisal*” In Nwebo O.S. (Ed) *The Political Economy Of Administration Of Justice In A Developing Society*, Owerri, Versatile Publishers , 2004; Also In Nnabue U.S.F, *Understanding Jurisprudence And Legal Theory* Owerri, Bon Publishers, P.26