IN SEARCH OF JUSTICE THROUGH THE FUNDAMENTAL OBJECTIVES IN THE NIGERIA CONSTITUTION

Abstract
Justice and fairness ought to be the foundation of every civilized society. Sometimes laws are made with good intentions but without properly evaluating the effects of such laws or may have been deliberately ignored due to certain concealed interests. The fundamental objectives and directive principles of state policy included in chapter two of 1999 Constitution of Nigeria is laudable which if the state and or policy makers align with in policy making the results would be tremendous. In the midst of these laudable objectives are provisions which appear discriminatory and has become an abattoir for injustice against certain of her citizens. Can these citizens ever find justice in the face of these constitutional provisions, moreso when the court is precluded from scrutinizing whether any act or omission or even judicial decision is in conformity with it? Could there be need to amend the constitution in the face of these institutionalized discrimination? Some of these objectives in juxtaposition with justice for the citizens are examined. In gathering and analyzing information doctrinal approach is employed in this work. Statutes, case laws textbooks, articles, treaties and conventions were analyzed. The paper found that discrimination is somewhat institutionalized due to these provisions of chapter two of the constitution and that some of the continued agitations from all quarters of the country is not unconnected with it. The paper further recommends amendment of the constitution relating to the institutionalized discrimination found within the provisions of the fundamental objectives and directive principles of state policy contained in the constitution to provide a level ground for all citizens.

Introduction

Before the inclusion of fundamental objectives and directive principles of State policy into the 1999 Constitution of Nigeria certain set of ideas and beliefs exist within the Nigerian elites. The elites have the single focus of self determination from which all other issues will anchor. In their nationalist struggle their utmost desire was self-determination leading to independence of the state. Despite the divisive tendencies among the nationalists as facts of independence drew nearer the nationalist very desire was not blurred by sectional desires.

It is understood among the elites that with independence there will be justice, equity, equality and that far reaching in-roads will be made economically. This nationalist desire for independence may be viewed on the surface as political and economic ideologies. However, it is far beyond them.

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Legal ideology is far more than political and economic ideologies. Law reflects the ideas of different classes. This includes occupational groups, minority groups, political representation, and even ideologies related to family structures.
[526] It is not surprising that chapter two of the Nigerian constitution deals with such issues as political objectives, economic objectives, social objectives, educational objectives, environmental objectives, national ethics, etc. There was no room for legal or judicial objectives. The only opportunity the court may have to scrutinize or evaluate any action there under was precluded under the constitution.[527]

The fundamental objectives and directive principles of state policy though have been held not justifiable[528] but they are the focal lenses by which, if the political class and policy makers could see through will certainly shape government policies towards achieving every objective of the nation-state Nigeria. This fundamental objectives and directive principles of state policy ought to be the will[529] of the people properly so-called. If indeed it is the will of the people, maters there under should not be precluded from court's scrutiny. Where there is a proper action the court ought to make an order to ensure that state policy is tandem with, and towards achieving the state goals.

The courts have held that matters under chapter II of the constitution are not justifiable. Could this be a bar to bringing another action in a proper course for the court to reconsider? We think not. If it is believed that what has not been done before could not be done even now because it has never been done, then the society cannot progress in the face of such principle.[530] In proper cases court ought to make pronouncement positive enough to spur the executive or government to action with the resources available at its deposal. In *Ukpo V Imoke*[531] – it was stated that the Nigerian Judiciary has a very decisive role to play in order to salvage this nation and therefore earn for herself the gratitude of the people.

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[526] Lord Lloyd of Hampstead and M. D. A Freeman; *Lloyd's Introduction to Jurisprudence*, 5th ed. Stevens & Sons, London, 1985 P. 969
[527] Section 6 (6) (c) of the Constitution
[528] *AG Ondo State v AG Federation & Ors (2002) LPELR 623 (SC)*
[529]The legitimacy of the constitution and whether it is a product of the people as equally stated in the preamble to the
1999 constitution of Nigeria has been exhaustively dealt in *Why the Judicial Annulment of the Constitution of 1999*
is Imperative for the Survival of Nigeria's Democracy by Tunde I. Ogowewo; Journal of African Law, Vol 44 No.2
(2000) Pp. 135-166
[530] *Young V Bristol Aeroplane company Ltd; [1944] 1 KB 718*
[531] (2009) 1 NWLR pt 1121 p 90 CA

The foremost Nigerian nationalist fought for self-determination resulting to independence and they did so with one focus. Soon after independence ethnic tendencies and affiliations dominated the centre stage with religious inclinations on the background. All the efforts of the foremost nationalist in having and pursuing ideological programs together as a nation was soon watered down by ethnic and religious affiliations. Not much has really been done based on Nigeria ideological pursuits.

So much as the fundamental objectives and directive principles of state policy are laudable, it contains provisions which are discriminatory and appear to expressly contradict certain sections of the constitution. Though some of those provisions are discriminatory, certain citizens of Nigeria will not get justice on the sole ground that such policies are not justifiable. This is nothing but institutionalized discrimination. In this search for justice through the very fundamental objectives and directive principles of state policy some of the objectives set out in the constitution of Nigeria will be discussed to ascertain whether polices being pursued by government is guided by the objectives and whether the State has employed all or any of the objectives in her just administration of government.

2. Political Objectives

The political ideology before independence was nationalism with equality in pursuit of self-determination leading to independence and sovereignty.[532] The idea is that through political independence economic, social and other related issues bordering on the nation state will also be achieved. It then follows that with nationalistic outlook from every part of Nigeria people will be self-less and seek national development and gain thereof, over and above self or sectional interest. This nationalistic idealistic view was not actually widespread and characteristic of all the nationalists. It was peculiar to late Dr. Nnamdi Azikiwe. Other nationalists in Nigeria do not have such ideas embedded in them. This was very glaring on the formation of Political Parties. For instance, Northern People's Congress was formed with its Motto, "One North, One people, irrespective of religion, rank or tribe?[533] The motto of the party is the very characteristic of her outlook. The outlook is limited to the northern part of Nigeria only with respect to all ranks and tribes thereof. The nation state Nigeria was not in the agenda initially. The party just wanted control of the north only so that outsiders will not bring any form of influence upon the north.

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[532] Nathniel C. Obiagba; *Ideological Bases of the Nigerian Presidential Constitution*. Ed. by E.O.C Obidimma *et al,* Great- M Prints & Ideas, Anambra P.16

[533] Ibid. p. 21

In the same vein the political objectives of Nigeria are set out in Section 15 of the Constitution. It provides as follows:

Section 15:

(1) The motto of the federal republic of Nigeria shall be unity and faith, peace and progress.

(2) Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

(3) For the purpose of promoting national integration, it shall be the duty of the state to:

(a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation;

(b) secure full residence rights for every citizen in all parts of the federation;

(c) encourage inter-marriage among persons from different places of origin, or different religious, ethnic or linguistic association or ties; and

(d) Promote or encourage the formation of association that cut across ethnic, linguistic, religious or other sectional barriers.

(4) The state shall foster a feeling of belonging and of involvement among the various peoples of the federation, to the end that loyalty to the national shall override sectional loyalties.

(5) The state shall abolish all corrupt practices and abuse of power.

It is obvious that national integration is encouraged among other courses. Has the government of the State of Nigeria presently and even before now encouraged national integration? During the colonial administration there was a deliberate effort not to integrate the north and south of Nigeria. This gap has widened today due to several dichotomies.

Section 15 (5) of the Constitution concerns itself with abolition of corrupt practices and abuse of power. In *Kalu V FRN*[534] the Court of Appeal stated that Section 15 (5) of the Constitution is intended to instigate the governments to embark on, and wage war on corruption that has become endemic in this country. The question remains, how many persons have been convicted on the basis of corrupt practices and abuse of offices? The rate of conviction is quite infinitesimal

[534] (2014) 1NWLR 189 p. 479

compared to the nature of corruption in Nigeria. The case of *FRN v Dariye*,[535] is one out of many cases of corruption and abuse of office in Nigeria.

In *Olafisoye v FRN*[536], where the appellant was challenging the power of the National Assembly to make enact The Corrupt Practices and Other Related Offences Act, 2000 and that the Act was in fact unconstitutional and *ultra vires* the power of the National Assembly, the Supreme Court has this to say, "The breathtaking possibilities created by this provision have sadly been obscured and negated by non-observance. This is definitely one avenue that could be meaningfully exploited by our legislature to assure the betterment of the lives of the masses of Nigerians, whose hope for survival and development in today's Nigeria have remained bleak, and is continuously diminishing. The utilization of this power would ensure the creation of requisite bodies to oversee the needs of the weak and often overlooked and neglected in our society. It would also provide a unique and potent opportunity for our legislators to monitor and regulate the functions of these bodies, where the Executive, for reasons best known to it, fails or neglects to priorities and implement the provisions of Chapter II, and by extension, the welfare of all Nigerians."[537] The Supreme Court further referred to the Indian case of *Mangru v. Commissioner of Budge Bude Municipality*[538] where the Indian court held that the Directive Principles require to be implemented by legislation, and so long as there is law carrying out the policy laid down in a Directive neither the State nor an individual can violate any existing law or legal right under colour of following a directive.

Our concern with due respect, is that there is a misconception of the import of the provisions and its application to individual courses in the court. The concern is that an individual cannot bring an action to enforce the provisions thereof where such individual feels that he has suffered discrimination as a result thereby. Even so, where the National Assembly enacts laws and an individual brings an action for non-implementation of such law as made which he may argue would have inured to his benefit if such law had been implemented and or enforced, he will still be found to be caught within the precinct of interest over and above that of the general public. Our further contention is that certain express provisions of the Chapter two of the constitution are directly discriminatory on the face of it and that even if laws are made to ensure that policies are made towards implementation of provisions of the Chapter, such laws cannot by any stretch of

[535] 2011 LPELR -4151
[536] (2004) LPELR 2553 (SC)
[537] This quotation was adopted for a Paper titled "*Fundamental Objectives and Directive Principles of State Policy: Possibilities and Prospects*", Uwais, M., at page 179:
[538] (1951) 87 CLJ 369

act of legislation amend such provisions of the Constitution from which its authority is derived.

Considering the provisions of section 15 of the constitution and what has been achieved and what is the expectation of the public from the government, it appears that no positive serious steps have been taken to fight corruption in Nigerian. The citizens desire that justice be done with respect to the persons who have looted the treasury or alleged to have looted the treasury. On May 28, 2018 the EFCC announced that it has successfully secured conviction in 603 cases on corruption charges.[539] How many of these convictions are connected with the political class in Nigeria? Nigerians want to see justice done in all these political cases.

Similarly, the provision of adequate facilities for and to encourage free mobility of people, goods and services throughout the federation is also laudable. In the face of attacks in Nigeria how many persons have been arrested and prosecuted for unprovoked attacks on other persons and properties. Nigeria has not enjoyed any form of harmony in the face of the herdsmen and *boko haram*. More than ever before the North and South dichotomy in Nigeria is well pronounced and the gaps seem to be increasing daily. Despite several attacks on the people by herdsmen and *book haram* some of whom have been described as bandits, no person has been arrested and or convicted for any form of violence or attack on any community? Wherein lies the harmony and promotion of good governance and welfare of all persons in a country as Nigeria and as prominently pronounced in the Preamble of the country's Constitution or as provided under Section 15 (3) (a) of the constitution respecting provision of adequate facilities for and to encourage free mobility of people, goods and services?

Between July 2009 and March, 2018 there were total of 184 attacks of varying degrees in different parts of Nigeria by different groups resulting in loss of 9,093 lives and a total of 1,459 people were injured.[540] Despite these attacks no positive steps have been or seem to have been taken by the government. The government is rather negotiating with the attackers against her citizens. Could this be the end of social contract theory of Thomas Hobbes in Nigeria? The security of lives and properties in Nigeria seem constantly under threat.[541] When will justice be found

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[539] LHPS//www.cfr-org.cdn.ampproject.org

[540] *Boko Haram Terrorism and the Impact on Human Rights in Nigeria*. Michael D Hanson, JPLCI. II.2 920190. P.204 @Pp. 206 - 218

[541] In recent times the police formations in south east Nigeria has been under constant attacks beginning from Imo state on 5th April 2021. Before then, there was attack in Orlu Community on 25th January 2021. The attack on Anambra police headquarters was on 19/4/2021;

for the dead and many whose lives have been maimed and properties destroyed?

3. Economic Objectives

Following closely to section 15 of the constitution is section 16 dealing with matters of economic objectives. Before then the economic ideology of Nigeria has been that of capitalist ideology. The policies have been to encourage private investment. The government in doing this has been granting reliefs to attract foreign investments. Besides, the section provides for freedom to own and acquire property anywhere in Nigeria. This is the highest level of expression of capitalist ideology.

Section 16 provides as follows:

16 (1) The state shall, within the context of the ideals and objectives for which provisions are made in this constitution:

(a) Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy for every citizen on the basis of social justice and equality of status and opportunity;

(b) 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

(c) Without prejudice of its right to operate or participate in areas of the economy other than the major sectors of the economy, manage and operate the major areas of the economy;

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

(2) The state shall direct its policy towards ensuring -

(a) the promotion of a planned and balanced economic development;

(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;

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https/www.vanguard ngr-com.cdn.amproject.org (accessed 23/4/2021), and in Enugu State on 21/4/2021. In Abia State two police formations attack on 20/4/2021 https/www.gaurdian.ng (accessed 23/4/21). The attacks seem well coordinated and we are not aware of any investigations or panels of Inquiry set up save for assertive statement by erstwhile police IG that it was ESN that carried out the attacks which statement was vehemently denied.

(c) 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; and

(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old care and pensions, and unemployment, sick benefits and welfare of the disable are provided for all citizens.

The combined effect of Section 16 (1) (b) and (d) presupposes that government should promote freedom and happiness and the right of every citizen to participate in every area for economic development and growth of Nigeria. The government has systematically aided[542] some invertors against others in Nigeria. The government has also failed to protect lives and property of citizens across Nigeria in the face of several attacks in Nigerians. In *Velasquez Rodriques V. Honduras*[543], the inter American Court of Human Rights held that when a State allows private persons or groups to act freely and with impunity to the detriment of the rights of its citizens it would be in clear violation of its obligations to project the human rights of those citizens. Similarly the African Commission on Human and People's Rights sitting in Banjul, Gambia indicted Nigeria for violating similar provisions under the African Charter on Human and Peoples' Rights where it held that the right to shelter (which) obligates the Nigerian government not to destroy the housing of citizens and also not to obstruct efforts by individuals or communities to rebuild lost houses.[544]

The case of Republic of South Africa v Grootboom[545] is very incisive on economic objectives of State's policy. The court held in that case that the state is obligated to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.[546] A holistic examination of the capitalist ideology in Nigeria *vis-a-viz* its economic objectives will simply show that Nigeria has failed to harness the resources of the nation to promote National prosperity. The environmental degradation in Niger Delta region of Nigeria cannot be over emphasized. Since the end of Nigeria/Biafra civil war in 1970 the policies of the government towards the Igbo ethnic nation

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[542] The government of Nigeria is systematically aiding Dangote Group against the interest of other investors and Nigerians generally

[543] (1988) Sevie C. No. 4 delivered on 19/7/88 cited by St. Hon (SAN) in Constitutional and Migration Law in Nigeria. Pear Publishers 2016 P. 232

[544] *The Social and Economic Right Action Centre V. FRN* (2002) 2 CHR 537

[545] 2001 91) SA 46 CC

[546] Http://www.safhi.irg/za/cases/zacc/2000/19

has been to strip them of any economic substance in their hands. From the implementation of policy on finance after the war to indigenization policy and many more, the pattern has remained the same. The programme of rehabilitation, reconstruction and reconciliation after the war were mere political and economic rhetoric that could not find place in the nation state's policy for real implementation.

4. Educational Objectives

There can be nothing to be called or pointed at as the states' educational ideology. Before independence many individuals in Nigeria embraced western education depending on their wealth disposition and proximity to the city where such education can be acquired. In the same vein every region was allowed to develop at its own pace educationally. While western education is widely embraced in the south of Nigeria, it appears the general public is restricted to Islamic education in the north part of Nigeria. The level of education also affects the level of awareness and development of the people of the region.

However S. 18 of the constitution provides for educational objections of the state or government. Section 18 provides:

Section 18

(1) Government shall direct its policy towards ensuring that there are equal and adequate education opportunities at all levels.
(2) Government shall promote science and technology.
(3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide-
(a) Free compulsory and universal primary education;
(b) Free university education; and

(c) Free adult literacy programme.

What is interesting in this provision is in its section 18 (1) to the effect that government shall ensure that there are equal and adequate educational opportunities at all levels. This is another political rhetoric. Issues like "educationally less developed" catchment areas' and such has appeared in Nigerians educational systems and polices. These "phrasal policies" have deprived certain citizens of the Nation State Nigeria of opportunity to study a particular course of choice at university of choice on the sole ground that such a person is not or is from a particular section of the nation state Nigeria. This is discrimination arising from race or ethnic group contrary to Section 42 of the constitution. These phrasal policies' have deprived Nigeria of certain ingenuity the country would have benefitted as a result of this institutional discrimination in

educational policies. In *University of Abuja v Ogunsakin*[547] it was held that all that the government is enjoined to do pursuant to section 18 is to ensure that there are equal and adequate opportunities at all levels of the society. Even so, it is just another rhetoric that found no place for implementation.

The supposed equal and adequate opportunities have been stripped off the constitution through these 'phrasal policies'. These 'phrasal policies' so called are clearly inconsistent with the provisions of Section 42 of the Constitution. The makers of such policies it is believed derived their powers from the constitution. If indeed the power is derived from the constitution, can laws or rules or regulations or policies made thereunder be seen to be inconsistent with the (enabling law) constitution? To allow such will be an aberration. It is contended and strongly too that the government has failed to provide equal opportunities for all her citizens. Certain persons are favoured based on the supposed phrasal policies in violation of rights of others as enshrined in the constitution. These and many more may not be unconnected with several demands for self-determination within the nation State.

The holding of the court has also made the government to design and implement policies without regard to these directive principles which ought to be a guide in pursuit of all objectives in Nigeria as a Nation State. These are institutional discriminations via the Constitution of Nigeria and affirmed by the courts against certain of her citizens. As long as these institutional discriminations continue to exist there shall continue to be agitations for self determination in Nigeria and every other part of Africa where such institutional discriminations exist. The provisions of the fundamental objectives and directive principles of state policy made a great number of citizens to suffer discrimination and could not have redress in the court. It has been contended that its retention is justified to determine how well a particular government has performed. We posit that no performance will ever justify institutional discrimination in any nation. Further, if the court is restrained as it were from scrutinizing acts and or omissions under this principle under review, how then will personnel in the institutions of governance be held to conform to, observe and apply the provisions of chapter two of the constitution? The holding of the court in *Ogan v NLNG Ltd*[548] was another political and or judicial rhetoric. In that case the court stated that it was the duty and responsibility of all organs of government and all authorities or persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of the constitution, most especially chapter two thereof.

[547] Unreported Appeal N0. CA/A/614/2011
[548] (2001) All FWLR 535 p. 293

Where there is failure to so conform the court lacks the power to order sanctions in the circumstances.

5. Conclusion

Generally, while the ideologies legal, political and socio-economic remain, the government has been an instrument in not implementing its fundamental objectives as incorporated in the constitution. The government swore to uphold the constitution and defend it. The courts have aided the government in avoiding her responsibility to her citizens by tenaciously holding that these objectives and directive principles of state policy are not justifiable. Though it is provided under Section 6 (6) (c) of the constitution that it is not subject to scrutiny by the court, can citizens make laws for themselves and still preclude the court from scrutinizing whether the acts or omissions or judicial decisions made thereunder are in conformity with such a law? Of what importance is the holding of the court to a man who suffers discrimination and further had his hope of redress dashed when court upholds the discrimination by holding that such acts are not justifiable? There is urgent need to amend these sections of the constitution in relation to the fundamental objectives and directive principles of state policy to ensure that this institutionalized discrimination against certain of Nigerian citizens is put to a stop forthwith. Government should further strengthen her institutions to further ensure that policies of the government are fully implemented. The complete autonomy of the judiciary is a welcome development which will enhance the sanctity of the judiciary in determination of courses before it irrespective of whether it is against the executive. Implementation of these and many more will enhance delivery of substantial justice to the citizens.

PRACTICAL ISSUES BORDERING ON THE DELOCALISATION OF INTERNATIONAL COMMERCIAL ARBITRATION AND THE ATTITUDE OF LOCAL COURTS TOWARDS DELOCALISATION OF INTERNATIONAL COMMERCIAL ARBITRATION.