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APPRAISING HUMAN RIGHTS IN NIGERIA: THE POLITICAL ECONOMY APPROACH

OMOLEYE Benson O (*LL.M, BL, LL.M*)

Department of Public Law,

Faculty of Law,

Ekiti State University, Ado-Ekiti, Nigeria

ABSTRACT

The paper critically examined the persistent problem of poor human rights situation in Nigeria. It examined issues affecting human rights purely from the angle of the political economy. Accordingly, it considered the general theoretical constructs of political economy as advanced by notable scholars, Marx's economic theory of law and the nature and character of the Nigerian political economy from independence to the present era. The paper attempted to bring out a nexus between the poor human rights situation in terms of the very limited scope of human rights provided by the successive Nigerian constitutions and the weak enforcement capacity engendered by widespread poverty on one hand and the structure of the socio-economic and political formations on the other hand. The conclusion thus reached was that there are grave structural violations of human rights in Nigeria which largely explain the limited human rights provided by the law and the weak economic capacity to enforce them on the part of the populace. The paper calls for a re-engineering of the political economy in way that will make human rights guaranteed by the constitution more realizable and meaningful to the people in general.

Keywords: Constitution, Justice Institutions, Human Rights.

1. INTRODUCTION

Across the globe, there are visible evidence of acute disregard for and sadistic undermining of human rights and fundamental freedoms. Literature is replete with analyses of human rights largely from the prisms of the strengths and weaknesses of human rights norms and their enforcement mechanisms in national legal systems and under international legal instruments. This approach seems to have achieved very little. Some scholars have proposed a more holistic, expansive and all-encompassing method of human rights analysis.¹ The approach essentially underscores the relatedness of the social, political and economic structure of any society to the nature and character of its human rights and the extent to which they can be realized and enjoyed by its citizenry.

¹ See Claude Ake, "The African context of Human Rights" in J. O Ihonvbere (ed). *The Political Economy of Crisis and Under development in Africa*. Selected Works of Claude Ake (Lagos: YAD, 1989) pp. 86-92; Osita Eze Human Rights in Africa: Some selected Problems, Macmillan Publishers, 1984, pp. 7

Against the backdrop of what seems to be an ever-increasing incidence of human rights violations in most part of the world and particularly in Nigeria, this paper critically examines human rights in Nigeria from the perspective of the political economy of Nigeria. It attempts a critical analysis of the social economic and political structure of Nigeria during the colonial and post colonial era, and seeks to evaluate its impact on the nature and character of its substantive human rights and extent to which these rights have been enjoyed by the citizenry.

2. POLITICAL ECONOMY OF HUMAN RIGHTS: THEORETICAL CONSTRUCT

Scholars and Social philosophers have advanced ideas which tend to explain social phenomena such as law and religion and indeed the entire fabric of social institutions from the prisms of the underlying socio-economic and political structure of any given society. Karl Marx and his follower Engels postulated² that the form of economic relations in any society, (ownership structure of the means of production) determines and other social phenomena such as law, religion and even the existing ideologies or 'social consciousness'.³ As Engels put it:

The economic structure of society always furnishes the real basis, starting from which we can alone work out the ultimate explanation of the whole super structure of juridical and political institutions as well as religious philosophical and other ideas of a given historical period.⁴

Karl Marx was even more categorical when he asserted "law can never be more highly developed than the economic structure and the social state or culture caused by it"⁵ From the thesis advanced by the duo, it can be deduced that the entire legal system of any society, its nature and character, including its human rights provisions and the machinery for its enforcement are all dependent on, and indeed, conditioned by the economic relations, 'the base or infrastructure' existing in the society.⁶ Claude Ake pointedly stated that realization of human rights in concrete terms, should be pursued holistically within the whole context of the socio-economic conditions of the peoples for whose enjoyment the rights exist. In an assertion suggesting a subtle condemnation of the dominant tradition of bare human rights agitations often oblivious of the existing underlying social material conditions of the people, he opined:

"If rights are to be meaningful in the context of a people struggling to stay afloat under very adverse economic and political conditions, they have to be concrete In the sense that their practical import is visible and relevant to the conditions of existence of the people to whom they apply ... human rights have to be much more than the political correlate of commodity fetishism which is what they are in the western tradition"⁷

He contended that the whole concept of human rights is based on Western cultural bias in which the individual takes precedence over the collective and called for a re-

² K. Marx: *A Contribution to the critique of Political Economy* (New York, 1904) p. 11

³ F. Engels, *Socialism: Utopian and Scientific* (New York, 1935) p. 51.

⁴ Ibid

⁵ Ozita Eze, *Human Rights in Africa*, op. cit. p. 7

⁶ K. Marx, *The Poverty of Philosophy* (New York 1936) p. 152

⁷ Claude Ake, *The African Context of Human Rights*, op. cit.

conceptualization of human rights in a way that would capture the communal nature of African culture and that agitations for the realization of human rights in Africa, nay Nigeria, should factor in the peculiar social-economic conditions of the people.⁸ He also contended that human rights could only be realized in a democratic settings and recommended that democracy be made the minimum condition to facilitate a wholesale advancement of the cause of human rights and personal freedoms.⁹

3. THE STRUCTURE OF THE NIGERIAN POLITICAL ECONOMY AND HUMAN RIGHTS

Nigeria, in Colonial and Post-Colonial Era, operated a political economy that was stepped up in capitalism. The system of production, distribution and exchange has been dominated by a few people while the majority continue to wallow in abject poverty. Colonialism brought about a regime of political domination and economic enslavement. African continent became not only a source of raw materials for the colonialists industries in Europe but a captive markets for industrial manufactures and foreign avenues for the investment of excess capital.¹⁰ The structure of the political authority thus engendered by this arrangement, inevitably, was authoritarian with little regard for the niceties of human rights.¹¹ Human rights granted within this socio-economic and political structure could not be anything but scanty and even then these rights were illusory, given the poor material conditions of the people and their inability to enforce them. Osita Eze, writing on the nature of British Colonial law generally in Africa during the period said: “The very exploitative nature of colonialism itself required a certain measure of repression of the rights of Africans despite the importation of British laws into Africa”¹² This point was again made by Read when he asserted:

Colonial rule was essentially authoritarian and even the introduction of English law as the basis for local legal systems did not result in the colonial subjects enjoying the full rights of liberty, due process, free speech and the rest which the common law is said to guarantee to the English man himself. The convenient although ill-defined doctrine of “Indirect rule” buttressing the powers of traditional rulers, the creation of special “native courts” to administer unwritten “Customary laws” and administrative orders, the exercise of political detention or deportations and the use of laws of sedition and censorship framed more widely than in England – these were significant intrusions upon the rule of law which preserve English liberties”¹³

In British Colonies generally, with white settlers’ regimes, there was widespread denial of fundamental human rights. Ghai and MC Auslan also maintained that colonial administration established and maintained by means of law a government and social system

⁸ Ibid

⁹ Ibid

¹⁰ B. Onimade, *Imperialism and under development In Nigeria: The Dialectics of Mass Poverty* (Lagos: Macmillan)

¹¹ Oluwafemi Mimiko “Political Economy, Human Rights violations and Democritization in Africa” in *Ado Readings in Law*, Vol. 1, Yomi Dinakin (ed.) 1998 p. 50.

¹² Osita Eze, *Human Rights in Africa*, Macmillan Publishers Limited, 1984, p. 20

¹³ James Read, “Bill of Rights in the Third World-some commonwealth Experiences” In *Verfassung und Recht in Ubersee*, Herber Kruger, (ed), 1. Heft, 1 Quartal, 1973, p. 29

characterized by authoritarianism and racial discrimination in such field as administration of justice, the development of representative institutions and agrarian administration.¹⁴ Describing this era, Mimiko said:

“Thus by its very nature colonialism could not have been anything but a very authoritarian enterprise, with little or no regard for the niceties of human rights. It was characterized by violence, forced labour, physical and mental abuse, and extortion. Over all, colonialism was the very anti-thesis of human rights for its victims”¹⁵

3.1 Post Colonial Era

The immediate Post Independent Nigeria was a neo-colonial state. The structures of the economic and political system operated by the colonialists were simply inherited, as it were by their African counterparts, indigenous bourgeoisie. The structures of colonialism were left intact. This was to facilitate the continued protection of the more important economic interest of the colonial overlords in the former colonies. All the departing colonialists needed to do was to install in their own place local comprador elements. The primary duty was to make the newly independent states conducive for the extraction of surplus value in the interest of foreign capital. The residue of such massive exploitation were enough to compensate the comprador ruling elites for their service to imperialism.¹⁶ The legal order engendered by this kind economic and political system legitimized oppression of the populace, criminalized dissent and out rightly marginalized development criterion¹⁷ Ihonybere summarized the general orientation of this regime type thus:¹⁸

- to convince imperialism of its ability to maintain law and order, and silence opposition forces and thus attract more aid and other concessions.
- to convince transnational capital that investment is safe; and
- to create a general situation that would allow for the implementation of whatever policies IMF imposes in the economic rectification agenda.

Under this system human rights space was constricted as only a token of them were recognized and the capacity to enforce them considerably weakened. Socio-economic and cultural rights,¹⁹ in particular, existed in the world of illusion and labour was brutally repressed. The state, in a nutshell, was the very epitome of oppression of the populace rather than their protection.

¹⁴ Y. Ghari and J.P.W.B MC Auslan, *Public Law and Political Change in Kenya*, Nairobi, Oxford University Press, 1970, p. 407-8

¹⁵ Oluwafemi Mimiko, *Political Economy, Human Rights violations and Democratization in Africa*. Op. cit, p. 51

¹⁶ Ibid

¹⁷ C. Ake, “Rethinking Democracy” *Journal of Democracy*: 2(1)

¹⁸ J. O. Ihonybere, “Introduction: Underdevelopment and Crisis in Africa”, In *The Political Economy of Crisis and Underdevelopment in Africa*, op. cit

¹⁹ Socio-economic and cultural rights would embrace right to own property, the right to work and to choose one’s employment, rights to food, shelter, clothing education and to participate in advances in cultural and scientific development. See Osita Eze, *Human Rights in Africa: Some selected problems*, op. cit. p. 31

3.2 THE CONTEMPORARY STRUCTURE OF THE NIGERIAN POLITICAL ECONOMY AND HUMAN RIGHTS

As noted earlier in this paper, the design of the political economy of most African states was such as to serve the interests of the colonial overlords, and on their exit, a few elites of African descent simply stepped into their shoes. The neo-colonial state was, for all intents and purposes, a replica of the structures left behind by the colonialists. These structures are anti-people and constitute a negativity onto human rights.²⁰ This is the situation in most African countries including Nigeria in the post independent era. The desire to engender development on one hand and the continuing retention and substance of the structures of neo-colonial economy in the service of imperialism on the other hand has been one big contradiction which has constrained economic development in Nigeria.²¹ From the early 70s up to 1988 the policy thrust of successive Nigerian government was to develop the economic base of the economy through the establishment of public enterprise. The idea was to take over the “commanding heights of the economy” through various nationalization policies.²² This policy stemmed from the need to correct the imbalances in the economy which included the predominance of foreign entrepreneur interests in virtually all facets of the economy, low industrialization and near absence of local technology.²³ This led to the promulgation of the Nigerian Enterprises Promotion Decrees 1972 and 1977 (otherwise known as Indigenization Decrees now repealed) The Decrees aimed at limiting participation in specified industries to citizens of the country, and by percentage limitation, defined the extent of foreign participation of specific enterprises.²⁴

However indigenous private enterprises could not, for lack of financial capacity, actually take over these businesses hitherto dominated by foreign firms. Consequently, the idea of government becoming an investor gained currency. A good number of public enterprises (PE) already privatized or being privatized/commercialized were acquired under the indigenization scheme.²⁵

It must be noted that the economic policy of nationalization of major enterprises did not alter radically the liberal capitalist economy of Nigeria. the ownership of the enterprises, though supposedly controlled by the public, in the final analysis, only a few members of the ruling elites actually control them. Parenti²⁶ commenting on this point in respect of American economy maintains that:

Although the decisions of government are made in the name of the entire society, they rarely benefit everyone with equal effect. No government represents all its people. Some portion of the populace frequently a majority loses out on government decisions. What is considered national policy is usually the policy of dominant social groups and what is called public policy is not formulated by the public but by those sectors of the public that are most strategically located within the political

²⁰ Ibid

²¹ Ibid

²² EIK Sule, *An Overview of the Concept Commercialization of Public Enterprises*, a paper delivered by the Nigerian Institute of Advanced Legal Studies (NIALS) at Abuja, (March 20-21, 1989) p. 3

²³ Ibid

²⁴ Ibid

²⁵ O. Iyanda and O. Oladeji, “Commercialization of Public Enterprises In Nigeria” paper presented at the National Conference of commercialization on Public Enterprises, organized by Nigerian Institute of Advanced Legal Studies (NIALS) (March 20-21 1989) pp 3-4

²⁶ M. Parenti, *Democracy for the Few*, New York, St Martin’s Press, 1974, p. 57

system” the present political system may regulate but it does not equalize and its overall effect is to advance rather than redress the inequalities of capitalist society”

The above observation by the learned author, though made in respect of American political economy many years ago very much reflects the Nigerian political and economic structure. It is interesting to also note that 1979 constitution of Nigeria appears to promote the fallacy of public enterprises being for the benefit and enjoyment of the populace when it provided in section 16(1) that the state shall:

- control the national economy in such a manner as to ensure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.
- manage and operate the major sectors of the economy

The constitution went further to stipulate 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 means of production and exchange in the hands of a few individuals or a group.²⁷ The constitution further required the legislative organ to set up a body which shall have power to review from time to time the ownership and control of businesses operating in Nigeria and make recommendation to the president.²⁸ The above constitutional provisions would have been apt in a socialist-oriented constitution, not one in which the political and economic architecture is clearly of capitalist mould; and in which the root cause of inequality stands as a major obstacle to the promotion and protection of human rights.

In 1988, Privatization and Commercialization Decree No. 25, 1988 was promulgated. The Nigerian government backed down on the nationalization policy, citing inefficiency, waste and downright fraudulent practices perpetrated in such enterprises.²⁹ By this legislation, government intended to hand off or relinquish part or all of the equity or interests in enterprises to be commercialized by making them profit making ventures without subventions from government.

Privatization agenda continued into the present era in Nigeria, though in various moulds.³⁰ The questions that are apposite in the light of this form of economic structure of the Nigerian state is that what has been the response of the people generally, what impact has it on the Nigerian populace, the workers in particular and how has it affected their rights – socio-economic especially. On December 23, 1983 the Senior Staff Association Companies, issued in part, the following state which, in my view, answer these questions:

“The result of the firming out can only be a social and economic debasement of the masses of this country. It is an attempt to alienate the masses from the public wealth of this country while concentrating trading it in the hands of a few capitalists who do not care if the rest of us and our unborn children remain in serfdom perpetually We abhor the plan to sell out the parastatals and therefore reject it most vehemently and

²⁷ Section 16(2)(c) 1979 Constitution of Nigeria

²⁸ Section 16(3)(a), Ibid

²⁹ E.I.K Sule, op cit p. 4

³⁰ Key parastatals such as National Electric Power Authority, (NEPA), Nigerian International Telecommunication (NITEC) have soon been privatized.

unequivocally as otherwise the selling or firming out can only materialize over our dead bodies".³¹

On her part, the Nigerian Labour Congress reacted thus: "..... the sale of public companies and corporations would inevitably lead to economic slavery and pauperization of the nation To want to reorganize under private control is to ensure that the accruing profit goes into private pockets and this will lead to retrenchment in the public sector and bring hardship to the working people of this country".³² The fears of the workers then were not misplaced as it was a known fact that in capitalist economies, conflict of interests between labour and capital is inherent. It is one of the side-effects of the disequilibrium in the employment relations where one side is the bearer of power and the other side not a bearer, the latter in a position of subordination and submission, and the former in a position of command.³³ Professor Adeogun³⁴, writing on this point, was more categorical:

The presumption of equality between the parties tends to ignore other social and economic considerations which may make this equality and the underlying freedom fictitious and hollow Indeed, the so-called bargaining power of the individual worker is of little importance in practice especially in a country like Nigeria where there are more workmen than the jobs available and where the employer can choose freely whom to employ and under what conditions they are to be employed"

4. CONSTRICTED RIGHTS AND NEAR-ABSENCE OF ENFORCEMENT CAPACITY

The concentration of economic and political power in the hands of a few has not created the material foundations for the progressive promotion and protection of human rights in Nigeria.³⁵ Socio-economic rights have thus remained mere aspirations and ideals under successive Nigerian Constitutions since independence.³⁶ This is borne out of the political and economic structure that is skewed against the workers and which a learned scholar called 'structural violation of human rights'.³⁷ He asserted further:

In respect of such body of rights, socio-economic in orientation, constitutional guarantees are meaningless as long as the wherewithal of actualization are non-existent. For it is one thing to have a constitutionally guaranteed right of decent living, it is another thing to be able to actualize such rights in the face of debilitating economic reality".³⁸

Only a few rights are thus recognized by the successive Nigerian constitutions. The right to life, liberty, human dignity, freedom of worship, freedom to participate in the political

³¹ The Guardian, Friday December 23, 1983 at pp 10-14

³² National Concord, November 11, 1983

³³ M. T. Okorodudu Fabara, *The worker & Privatization of public Enterprises: A Legal Perspective*, Adepagba Printing Press, Ile Ife, 1988, p.2

³⁴ A. A. Adeogun: "The Legal Framework of Industrial Relation in Nigeria", (1969) *Nigerian Law Journal*, Vol. 3 at p. 13

³⁵ Osita Eze, *Human Rights In Africa, Some selected Works*, op. cit. p.63

³⁶ Sections 13-18 of the 1999 Constitution for example

³⁷ Oluwafemi Mimiko, *Political Economy, Human Rights and Democratization in Africa*, op. cit. p. 53

³⁸ Ibid

process, provided for instance, are largely illusory because of the near-absence of the capacity to enforce them by the populace whenever they are infringed upon. The recourse to self-help is thus rampant and in some cases, people in frustration, simply accept their fate as product of divine providence.

The state machinery or agencies established to enforce human rights and civil liberties are but of little use in this respect. This is because as part of the super structures' they are designed to promote the interests of the bourgeoisie who control the levers of power. The judiciary for instance though often carry the tag "Independent", the question as argued by Osita Eze is "Independent to do what? The substance of the laws including the constitution that are supposed to protect human rights is not investigated. To all intents and purposes, it may be fascist, neo colonial, may entrench antagonistic class interests and so on..."³⁹ In other words judiciary within the context of capitalist economy operates rather mechanically; it applies the law in most cases without considering the quality of the law⁴⁰ and as it has been shown earlier, the law is just a reflection of the socio-economic structure in the society. The police, as part of the apparatus of state does not fare better. They function basically to enforce the law; again, consideration of the nature and character of such law is outside their duty.

5. THE IMPERATIVE OF STRUCTURAL REFORM

The political economy approach to human rights issues in Nigeria has enabled a holistic understanding and appreciation of its dynamics, beyond the narrow and restrictive analysis of the normative provisions in the legal system. With the control of political power and economy in the hands of a few capitalists, human rights of the larger society, the populace are largely unrealizable. Capitalism, economic and political ideology which most African states imbibe is the very anti-thesis of human rights. It imposes great obstacles to internalized growth, but more fundamentally, from the point of view of promotion and protection of human rights, it negates the very basis of equality, or even equality of opportunity⁴¹ As already noted, socio-economic rights have remained mere aspirations and ideals under successive Nigerian constitutions and that even civil and political rights are 'structurally' violated, given the nature of the political economy. Onimode and Osagie⁴² shedding more light on this observed thus:

"It has been argued that if the state may not be able to provide free medical care, these should not be justifiable rights. But surely in the past freedom of expression, the press, assembly etc. were justiciable even when the majority of our population was submerged in a 'culture of silence' through illiteracy which denied them freedom of expression in official English when the press was officially gagged and peaceful assembly denied. We know that one-third of the world under socialism today, these so-called non-justiciable rights are basic justiciable and enforced rights of citizens. That is how it should be in Nigeria"

³⁹ Osita Eze, op. cit. p. 64

⁴⁰ Akin Oyebo, *Law and Nation-building. In Nigeria: Selected Essays*, Published by Centre for political and Administrative Research (CEPAR) Ogba, Ikeja Lagos, p. 134

⁴¹ Osita Eze, op. cit. p. 26

⁴² B. Onimode and E. Osagie, *Economic Interpretation of Nigeria's Draft Constitution*, an unpublished paper, p. 18 quoted in Osita Eze, *Human Rights in Africa: Selected Works*, op. cit p. 32

The observation and opinion of the learned authors were made decades ago. The conditions, socio-political and economic of the world, have since changed particularly with regard to socialism. What remains opposite is the need to re-engineer the political economic structure in a way that will allow the realisation of the socio-economic rights of the populace. Unfortunately, the economic and social realities in contemporary Nigeria seem to be one that is stepped-up in capitalism Economic inequality is on the increase. A notable social critic and legal practitioner, Femi Falana observed recently “The national planning has been abandoned for market forces by those who control our economy You must know that their campaign now is that you must devalue the currency, you must private NNPC (Nigerian National Petroleum Companies) of all institutions”⁴³ Privatization and commercialization of key enterprises has gained more momentum. The implication is that social inequality becomes accentuated. This trend needs to be reversed. Laissez-faire economic philosophy has always advanced the interests of a few elites while pauperizing the majority. In efficiency, waste, corruption, administrative bottlenecks and other reasons given for dumping government control of key enterprises and for embracing privatization are not tenable. They are mere symptoms of incompetence and maladministration on the part of the government. Privatization policy will continue to deepen social inequality and ultimately undermine socio-economic rights and indeed other rights.

The present socio-economic and political structure of the Nigerian state which has been described as welfarist needs a complete over hauling. Although Nigeria currently operates a form of liberal democracy, it is oppressive as it alienates the majority of the people. It is estimated that more than 10% of the annual budget is used to pay the emoluments of members of the National Assembly. Members of the ruling class, the executive also receive huge salaries and allowances. Yet the salary of public workers is currently peg at eighteen thousand naira monthly (N18,000). It is obvious that this amount is ridiculously low such that it cannot afford average Nigerian a decent living, not to talk of being empowered to enforce their basic rights. Thus, it is only by operating a political economy that reduces social inequality and enhances the economic welfare of the populace that poverty, ignorance and disease could be significantly reduced and meaningful realization of human rights and fundamental freedoms attained.

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⁴³ See the Nigerian Newspaper, The Nation, Tuesday July 28, 2015 p. 56, under the caption: Falana: “Buhari under pressure to allow cabal control Economy”