

***BEING MY CONTRIBUTION TO THE FESTSCHRIFT IN
HONOUR OF LATE COMRADE (PROF.) ABUBAKAR MOMOH***

RESOURCE PERSON: MALACHY UGWUMMADU ESQ.

***TOPIC: "THE POLITICAL ECONOMY OF
HUMAN RIGHTS IN NIGERIA".***

***ORGANIZERS: DEPARTMENT OF POLITICAL
SCIENCE, LAGOS STATE
UNIVERSITY (LASU)***

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Abstract

This paper critically examines the concept, evolution and developments of human rights from its philosophical and historical perspectives. It recognizes the centrality of rights as an indispensable content of human race towards self fulfilment and actualization. The paper argued however, that in spite of this reality, a sustained counter narratives have been systematically sustained over the decades to undermine and reject this proposition. In consolidation of this distorted version of the realities of rights, numerous variants of human rights and artificial classifications are created to diminish the pivotal place of human rights for humanity.

The paper frown seriously at the unwholesome attempt of neo-liberal proponents to approximate human rights as another object of transaction or negotiation. The paper effectively identified these attempts by agents of capital and market force to subdue human rights as both a travesty and tragedy but warns that the layers of artificial dichotomies created to neutralize the impact of human rights suffered resounding defeats by the informed position of our courts of law and other centers of public opinion. The paper concluded on an optimistic note reaffirming the viability and application of human rights in all circumstances of the society but notes that the extent of its protection and enforcement are proportional to the political economy of the government in power.

Introduction:

Comrade Abu's stature can never be diminished neither will his constructive contributions to public debates, public policies, socio-economic and political deliberations be forgotten. It is for this reason and to this end that I extend my warm felicitations to the "brains" behind this project and wish to be on record in affirming that it is a rare honour to have been invited to contribute in any manner, no less the topic assigned, relating to Comrade Prof. Abubakar Momoh. It is gratifying therefore that years after his exit from this earthly space his works, viewpoints and perspectives have continued to reverberate and shape public discourse on thematic areas of our national life.

For a festschrift in honour of the memory of an iconic scholar cum public intellectual like Late Comrade (Prof.) Abubakar Momoh, one must be intentionally thorough in his or her appraisal of the assigned subject in a manner that is not just consistent and coherent but reflective of the quality of research and perspectives that he would have shared and applied. No doubt, Comrade (Prof.) Abu was reputed for his immeasurable commitments to research, effective strategies of administration and documentations. At all material times, he deployed his best intellect and endeavors in interrogating every issue; inspiring people and raising generations of thinkers to appreciate his view points but, more importantly, to find the courage to challenge the state of affairs, through critical thinking with a view to advancing our "collective cause" in favour of the working class and masses of our country – a task he took on quite diligently till the very end!.

In the event, an inquiry into the **political economy of human rights in Nigeria** would have obviously excited him and certainly agitated his fecund mind for multiple reasons: (i) Comrade would have been interested in the provenance of the concept of human rights; its evolution and (incursion) incorporation into the Nigerian polity. (ii) He certainly would have sought to identify the prevailing factors that necessitated or justified the incorporation of the principles of human rights into the Nigerian legal jurisprudence and

governance structures. (iii) Prof., no doubt, would have interrogated the underlying needs for such inclusion. (iv) He would have been curious enough to know whether it was accepted to moderate the expectations of the citizens in relation to the obligations of the State to them or (v) whether the human rights prescription became a condition precedent to the, often skewed, partnership and collaborations between Nigeria and some donor countries or institutions at any point. (vi) Or whether, indeed, the human rights debate became necessary to distract the people from the ineptitudes and failures of government. (vii) Prof. would not have shied away from measurable and ascertainable benefits of human rights regime within the context of a dwindling economy. (viii) He would have investigated and challenged the legislative framework for the enforcement of socio-economic rights generally referred to as the "second generation rights". (ix) Prof Abu would have courageously championed the cause to prioritize the socio-economic rights above the civil and political rights and would have certainly argued that the so-called "first generation rights" would come to naught without an efficient and effective socio-economic rights. (x) The observed hiccups in the manner of rejections and defeats of human rights advocacies either in public fora or courts of law would have caught the attention of Comrade Abu. (xi) Deliberations around the best strategies of enforcement as a potent component of our liberal democracy would have been examined and reinforced.

In this exercise, I intend to make my submissions along the same lines and concerns but, certainly, not with as much precision and magisterial authority as Prof. Abu would have effortlessly done. Deliberations on the foregoing concerns and fault times will constitute the outline of my presentation. Drawing extensively from other sources and jurisdictions, I will conclude by insisting on the right priority to accord the various generations and categories of rights in relation to the economic imperatives prevalent in our society. I will emphasis the point that whereas human rights issues are often dealt with as an innocuous normative factors of state character, they have been clearly shown to be very potent "objects" of contest for legitimacy among rampaging neo-liberal economic fundamentalists and proponents of liberal democracies.

The Political Economy Of Human Rights

The task of examining the political economy of human rights in Nigeria entails an evaluation of the character of the polity in question and the economic fundamentals of the State in particular. It is the economic super structure that dictates and determines the fate and viability of any policy or programme introduced in a given polity including the principles of human rights as an integral feature of governance.

The impact(s) of such policy or programme are incidental to the prevailing economic objectives of the State. Thus, in most African countries, and in Nigeria for example, the adoption, sustenance or outright rejection of any policy idea including human rights have a strong correlation with the underlying economic objectives of the State or system even if it is not made prominent or pronounced.

In discussing the political economy of a relatively extraneous topic on **Merger and Acquisition**, Prof. Abubakar Momoh himself issued the following advisory along ideological lines:

“There is no study or understanding of Merger and Acquisition (M&As) that can ignore the contribution of Marx and Lenin. In particular, Marx’s view on the logic of capital accumulation, and Lenin’s view on the development of imperialism”. Marx’s view on the question of “rate of tendency of profit to fall” and the emergence of oligopolies and monopolies culminated in the emergence of imperialism. As Lenin postulates in his seminal pamphlet, *Imperialism, the Highest Stage of Capitalism* Imperialism’s unique features include, among others, the merger of industrial and banking capital to form Finance Capital. This led to the emergence of transnational corporations, the development of colonies, the exploitation of cheap labour in the colonies, the uneven and blocked

capitalist development in the Third World and accumulation on a world scale¹ *Emphasis mine*

By focusing on the twin principles of capital accumulation and development of imperialism as canvassed by Karl Marx and Lenin respectively Prof. Momoh emphasized the point that what determines the introduction, acceptance and or sustenance of any policy of State is largely a function of the economic desires and dictates of the system.

Similarly, Late (Dr.) Arthur Agwuncha Nwankwo, Chancellor, Eastern Mandate Union "(EMU) in his paper titled **"Political Economy of Corruption in Nigeria"**² posited thus:

"A discussion on the political economy of any society is the study of the polity. The basic character of any society is primarily determined by the economic super-structure. This is, particularly so because it is the economic structure that provides the basic matrix upon which other structures are developed"

By political economy, social science is essentially focused on the study of how politics and economics intersect, influencing the allocation of resources and the formulation of policies that shape society.³

The three leading and most influential authorities of political economy of all times, including **Adam Smith, David Ricardo and Karl Marx** are unanimous in their postulations that political economy is concerned with the study of how politics and economics interface and determine the allocation of resources and formulation of policies that shape the society. In their informed views, political economy is not merely a theoretical construct but a

¹ Abubakar Momoh, Ph.D on "Mergers and Acquisition In Industries, Implications And Challenges For The Trade Unions" at 10th Annual Kolagbodi Memorial Lecture

² Dr. Arthur Nwankwo, Political Economy of Corruption in Nigeria. Seminar on Corruption in Nigeria – The Niger – Delta Experience, Port Harcourt 26 – 27 May, 2000

³ politicalsciencesolution.com October, 2023

dynamic force that influences the way governments craft economic policies, regulate markets and address issues of wealth and resource distribution.

Thus, how does this affect an entirely different aspect of our democratic experimentation including human rights? In a moment, I will demonstrate that. But first, let us deal with the meaning, evolution and variants of human rights.

Human Rights, Its Evolution And Variants

The earliest principle of human rights were conceived and formulated by the Greek and Roman theologians and philosophers who interpreted human rights principles as the body of imperative rules imposed upon mankind by nature. The principles of human rights were so intrinsically linked to human nature that human rights were more appropriately termed natural rights which inure to human persons by reason of their humanity. **Prof. Maurice Cranston** defined human rights as a “twentieth century” name for what has always been known as natural rights. Ditto for **F.E Dowrice** who went further to argue that fundamental rights started a part of natural laws.

In all of the definition attempts, a dominant denominator is that human rights otherwise known as natural rights accrue to human persons by reasons of their humanity. Thus, the human person has the human right to movement because he was created *ab initio* with legs to be able to move freely from one point to the other. He has an inalienable human right to express himself because he was created with a mouth and tongue to be able to speak freely and communicate his or her view points. In the same vein, he has the rights to thoughts, conscience because he was created with a mind of his own to conceive his own thoughts and respond to his conscience, sound or otherwise *etcetera, etcetera*.

To underscore this point a leading naturalist, politician and an early Roman lawyer⁴ in espousing the preeminence of human rights which were generally believed to flow from natural laws, said thus:

⁴ **Marcus Tullius Cicero, 106 – 43 B.C.**

“the laws of nature were more important than the laws of men and governments. Any leader who defied natural law was, by definition a tyrant. Natural law is right reason, constant with nature, common to every many, constant, eternal”.

Closely related to this and a second important feature of human right (also referred to as natural law or justice) is its character of universality and superiority which was consider higher than positive or man-made laws and rights. Again, this was promoted by the great philosopher and politician in the Senate of Roman Empire in the 18th Century, Cicero. For him:

“it is for universal application, unchangeable and everlasting It is a sin to try to alter this law, nor is it allowable to try to repeal any part of it and it is impossible to abolish it entirely”.

Valid and sound as his postulations were then, it has been vigorously contested in contemporary times. It is submitted that human rights in contemporary societies are ineluctably linked to selected groups and social interests. Human rights are no longer defined by their earliest attributes of association with human being which were originally known as natural rights with universal application. But now more particularly associated with groups and social interests as a substantial consensus defined by political and economic exigencies of a given entity.

Internationalizing and Globalising Human Rights?

The major steps towards an international consensus on human rights was after the two world wars in the 20th century. The United Nations Charter in 1945 following the collapse of the European Empire recognized, in the first article, the collective rights of a people to self-determination which rights were later written into the twin covenant of the Bill of Rights namely the **International Covenant on Civil and Political Rights (ICCPR)** and the

International Convention on Economic, Social and Cultural Right (ICESCR) both adopted in 1966. Equally of note was the subsequent **Genocide Convention of 1948** which was created as part of the world's response to the horror of racial extermination. As nations of the world increasingly congregated under the United Nations and voluntarily seceded from the European Empire, they took concrete steps to assert and activate their collective rights to self-determination and escalated same to colonized people seeking independence in that era and subsequently to indigenous groups seeking self-governance and redress for dispossession of lands.

Incrementally, human rights have evolved beyond the circumscribed confines of individual liberalism to becoming a conditions (measure) for creation of new and dynamic world politics. But it is not all about the political order of a society but also the economic aspirations and dictates of a given polity. By this, I mean that there is a noticeable correlation between the human rights of citizens and the rising contestation of the same space of freedom by multinational corporations and other formations with pure economic interests carefully (if not surreptitiously) promoting liberal economic theories, including "free market economy, deregulation, privatization, globalization" but posing, at the same time, as institutions with considerable degree of respect for individual and collective rights.

In this regard, liberal economic entities associate themselves with broader human rights objectives. For instance, the World Bank, International Monitoring Fund (IMF), International Finance Corporation, the World Trade Organization (WTO) and other Bretton Woods Institutions project their respect for and compliance with the principles of human rights but, at the same time, maintain a clear focus on capital liberalism, industry rationalization and privatization of productive public assets. In consequence, unsuspecting working masses of our societies are encouraged to remain vigilant and circumspect on proper identification of socio-economic and class interests in all circumstances relating to human rights.

In mid-19th century both Karl Marx and Engels warned that identified dominant class interests in capitalist society effectively reduced all charters

of freedom to one single freedom of free trade⁵. These postulations were authentic then as they remain valid today. In the event, very deliberate efforts must be made to mobilise opposing subordinate class interests and groups with a view to consolidating on alternative vision of a future in which **“the free development of each becomes the condition for the free development of all”**. A vision of a future in which the vestiges of class domination are eliminated and in its place, the enthronement of an egalitarian society for collective achievement that boasts of free and quality education for all, free and accessible health services for all, affordable and functional transport services for all become the reality of our time and the object of prevailing contest.

This proposition for a vision of the desired future has become imperative because the views have been vigorously canvassed that the social forces necessary to guarantee equality and human rights cannot possibly emerge from a capitalist class society which is effectively “captured” by private interest investors. The continued subjugation of these human rights, despite all the pretences, remains an enduring strategy for the perpetuation of the domineering forces of such class interests. For this reason, it has been consistently argued, by proponents of socialist ideology, that the State ought to be organized and structured in a way that guarantees the availability and access to basic conditions of survival including, but not limited to, food security, housing (shelter), health, clothing and transport services. The Fundamental Objectives and Directives Principles Of State Policy of Nigeria under Chapter II⁶ of the 1999 Constitution, Sections 15, 16(2)(d), 16(A)(1) and 17 clearly supports this proposition and made similar provisions to those effects. When juxtaposed with the capitalist insistence that everyone should individually pursue and provide these services themselves, you would immediately appreciate the contradictions inherent in that recommendation particularly when the objective conditions for the access and acquisition of

⁵ Karl Marx and Engels 1848: 36

⁶ Constitution of the Federal Republic of Nigeria 1999 (As amended).

those services remain non-existent. The provenance and subsequent evolution of human rights in Nigeria is not exactly traceable to the Greek and Roman theologians who espoused the earliest principles of human or natural rights. It is traceable to the common political and legal heritage we share as integral members of the Common law countries where we co-heir in some of the earliest legal frameworks granting liberty to human persons including the **Magna Carta of 1215, Petition of Rights, 1628 and The Bill of Rights, 1689** to mention but a few.

As one of the most celebrated legal theorists, philosopher and jurist of our time, Hon. Justice Chukwudifu Akunne Oputa J.S.C (as he then was) puts it:

“One of Britain’s legacies to the Commonwealth is the liberation tradition of the Common law and its system of justice”

Despite the lofty provisions of civil liberties enshrined in the foregoing legal documents, the British Colonial Masters who partook in the partitioning of the African continent and appropriated Nigeria as part of the spoils of their “wars and conquests” never inculcated human rights in any of the numerous constitutions with which Nigeria was administered all through the colonial dispensations. On the contrary, they promulgated numerous draconian legislation like the **Public Order Act** with which they continued their acts of repression against rights and nationalist agitators, the media and workers who campaigned vigorously for self-rule but eventually got **“flag independence”**. This continued until the 1957 Constitutional Conference, when the Action Group political party mobilized multiple minority groups to essentially demand recognition away from dominant regions as ethnic minorities and also insisted on the incorporation of the their Bill of Rights into the Constitution. In response, the Colonial Secretary, constituted a Minority Commission of Inquiry under the Chairmanship of Sir Henry Willink. He was charged with the responsibility to come up with a Bill of Rights patterned along the European Convention on Human Rights to be incorporated into the Independent Constitution. Whereas, the main agitation for state creation was not recommended, the Commission’s recommendation

on human rights was accepted and clearly became the provenance of fundamental rights in Nigeria constituting the Chapter III in both the 1960 Independent and 1963 Republican Constitutions respectively. Thus, unlike its character of universality, accessibility and availability as evidently seem in Europe, America and other jurisdictions, it was a very serious contestation in Nigeria before they became recognized, fundamental and enforceable in Nigeria.

The Characterizations and Variants of Rights in Its Evolution.

The natural rights otherwise referred to as human rights continued to develop through centuries. With the advent of political systems, constitutional arrangements and modern governments, jurists, scholars, political scientists and statemen began to promote the idea that natural and human rights should be enshrined in Constitutions in order to accord them constitutional protections and force as fundamental rights by way of codifications. Thus, by the Constitutions of the Federal Republic of Nigeria 1979 and subsequently 1999, the entire **Chapter Four (IV)** were dedicated to the fundamental rights of citizens and persons in Nigeria. I have noted earlier that in both the Independent and Republican Constitutions of 1960 and 1963 respectively, the fundamental rights provisions were contained in Chapter Three (3).

Why are they Fundamental and not Human Rights?

The rights are said to be fundamental when they are entrenched in the organic constitutions of countries. Thus, all the rights under **Sections 33 to 43 of the 1999 Constitution⁷** dealing with the **fundamental rights to life (S.33); Dignity of human person (S.34); personal liberty (S.35); fair hearing (S.36); private and family life (S.37); freedom of thought, conscience and religion (S.38); freedom of expression at the press (S.39); peaceful assembly and association (S.40); freedom of movement (S.41); freedom from discrimination (S.42); right to acquire and own immovable property anywhere in Nigeria (S.43)** are properly documented and known as fundamental rights. They

⁷ S. Chapter IV of the Constitution of The Federal Republic of Nigeria 1999 (As Altered)

are fundamental because they are inalienable and enforceable. To be sure, **Section 46 (1)⁸** provide thus:

46 (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to a high Court in that state for redress.

The same exact words are used and to the same effect in the Fundamental Rights Rules⁹. In effect, Fundamental Rights are rights which imposes limitations on the government, especially on the executive and, they are accordingly, justifiable and justiciable in courts of law. It is important to observe, as we proceed to examine the political economy of these rights, that the Constitution of the Federal Republic of Nigeria 1999 never really used the word human rights but fundamental rights in the provisions of the Chapter (IV) under review. It is in contradistinction with the rights referred to at the United Nations Declaration in 1948. It was in respect of Human Rights in the sense of its application to all human beings regardless of their citizenship, race, religion, creed etc. The Charter of the United Nations, (1945) began in its preamble by reaffirming:

“faith in the fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women and of nations based on respect for the principle of equal rights and self-determination of people and to achieve international cooperation and encouraging freedom and justice for all without discrimination as to race, sex, language or religion”¹⁰.

In many respects the numerous international legal instruments were crafted to bridge the gap between human and fundamental right since they are used

⁸ S. 46 (1) of the Constitution of The Federal Republic of Nigeria 1999 (As Altered)

⁹ Ord. II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules; 2009

¹⁰ Kris Gledhill, Human Rights Acts. The Mechanisms compared, Hart Publishing Ltd 2015, P. 23.

interchangeably¹¹. They reference fundamental rights even when they focus on human rights as rights with global applications. A leading author on human rights in Nigeria made the following submission in his book.¹²

“Human rights remain so, whether they occur in the International plane or within municipal confines and whether they are called “human rights” or “fundamental rights” or “fundamental human rights”. It should be noted that the international bills of rights – Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political rights”.

Similarly, Prof. Chidi Odinkalu at the lecture in honour of Femi Falana SAN¹³ argued further:

“It would be convenient to approximate human rights to fundamental rights and use them interchangeably. But that would be lazy. It would diminish the conceptual integrity of human rights, limiting its horizon to the extent of its cognitive or jurisprudential affirmation irrespective of any error or impairment of logic that such cognitive processes may suffer”.

It would seem inconsequential as though these characterizations are of no moment but they pose considerable ambiguities in the minds of trial courts as per which path to follow in comprehending appropriately the character of rights in the human rights advocacies generally.

¹¹ The United Nations Declaration of Human Rights 1945. The International Covenant on Economic, Social And Cultural Rights (ICESCR)1966 And The International Covenant On Civil And Political Rights (ICCPR) 1966 And Optional Protocol 1999.

¹² Osita Nnamani Ogbu, Human Rights Law And Practice In Nigeria. An Introduction, CIOJAP Press, Enugu (1999) P.31.

¹³ Chidi Anselm Odinkalu, Ph.D; The Imperative of Justiciability of Social-Economic Rights In Nigeria (Ed.) Bayo Aborisade Centre for Labour studies; P.43.

My Lord **Justice Naisir (P.C.A)** (as he then), wasn't completely persuaded that they mean exactly the same thing when he made the following statements in the case of **Uzoukwu & Ors Vs. Ezeonu II & Ors.**¹⁴

"Due to the development of Constitutional Law in this field, distinct difference has emerged between "fundamental Rights" and "Human Rights". It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. These were termed human rights. When the United Nations made its declaration, it was in respect of "Human Rights" as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race and religion and so on. This has now formed part of International Law. Fundamental Rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country; that is the constitution".
Emphasis mine.

It is safe, in the circumstance of this exercise and from the view point of the foregoing analysis to emphasize that the distinction between human rights and fundamental rights have been largely closed in that fundamental rights are generally regarded as part of human right but recognized specially as those entrenched in the Constitution.

Other Categories Of Rights classified through Generations.

The French Jurist Karel Rasak classified human rights into generations.

The **first generation** rights are generally regarded as the civil and political rights which are believed to have arisen from the epic English, American and French revolutions. They are primarily focused on securing the liberties of

¹⁴ (1991) 6 NWLR Pt. 2001 708 @ 761; see also Femi Falana, *Fundamental Rights Enforcement In Nigeria* (2nd Ed.); Legal Text Publishing Ltd 2010, Pg7.

individual against the arbitrary actions of the State. We refer to **Articles 2 – 21 of the Universal Declaration of Human Rights, 1948¹⁵**, the **African Charter on Human and Peoples’ Rights** and of course **the entire provisions of Chapter (IV) of the Constitution of the Federal Republic of Nigeria 1999 (As Altered)**. These categories of rights are referred to as **negative rights** in the sense that they entail negative obligations on governments not to interfere with the exercise of these rights by individuals.

The **second generation rights** are the socio-economic and cultural rights. These category of rights emerged from the Russia Revolution and founded on welfarist principles and concepts associated with the West, but also in response to the use and abuses of capitalism rooted in the exploitation of the working class and colonized people. Unlike the first generation rights, these rights entail positive obligations on governments to provide the living conditions without which the negative rights cannot be enjoyed. They can be found in **Articles 22 – 27 of the Universal Declaration of Human Rights¹⁶**, **Chapter II of the Constitution of the Federal Republic of 1999¹⁷**; **the African Charter on Human Peoples’ Rights and the International Covenant on Economic, Social and Cultural Rights, 1966**. I shall return to discuss the robust arguments around the justifiability and enforcement of rights in this category contrary to widely-held view that they are neither justifiable nor enforceable. But first what are the Third Generation Rights?

The **3rd Generation Rights** could be termed **“solidarity or group rights”** in response to the emerging progressive global independence otherwise known as globalization. They are essentially the functions of the rise and fall of Nation States and the general notion of inter-dependence of nations for survival. The Universal Declaration of Human Rights proclaims that:

¹⁵ Resolution 217(iii) of 10th December, 1948; www.urg/en/documents/cdhr/.

¹⁶ Ibid.

¹⁷ See also Sections 16, 16A, 17, 18 and 20 of the Constitution of the Federal Republic of Nigeria, 1999 (As Altered).

“Everyone is entitled to a social and international order in which the rights set forth in the Declaration can be fully realized including some third world nationalism and its demands for a global redistribution of power, wealth and other important values e.g rights to developments, clean and healthy environment; international peace and security”.¹⁸

The Political Economy And Justiciability Of Socio-Economic Rights.

Nothing approximates greater insights and clarity to the political economy of human rights in Nigeria other than the heated debate around the justiciability or otherwise of the socio-economic rights in Nigeria. They are categorized as the 2nd generation rights otherwise known as the “positive rights” and domiciled, in Chapter II of the 1999 Constitution. What are the socio-economic rights?

They consist of the socio-economic and cultural rights of Nigerians including but not limited to: **adequate shelter; right to food and food security; reasonable national minimum living wage; old age care and pensions and unemployment; sick benefits and welfare of the disable.**¹⁹ They are essentially the rights of citizens to the economic activities of the State. **Citizens also have rights to equality of opportunities within the State²⁰; rights to the exploitation of human and natural resources²¹; adequate right and opportunity for securing adequate means of livelihood as opposed to adequate opportunity to secure suitable employment; just and conducive condition of work; adequate medical and health facilities; equal pay for equal work;²² equality of educational opportunities and eradication of literacy including provision of free and compulsory education at all levels.²³**

¹⁸ Art. 28 of the UDHR.

¹⁹ Sections 16(2)(d); Constitution of the federal republic of Nigeria 1999 (As Altered).

²⁰ Ibid; S.17(2)(a)

²¹ Ibid; S.17(2)(d)

²² Ibid; S.17(3)

²³ Ibid; S.18(1)-(3)

The foregoing characterizations and categorization of rights in Nigeria is a smokescreen, non-existent but largely ideological in the sense that liberal democracy itself adopts the concept of rights (whether human or fundamental) more as a legitimizing factor than a measure for improving the quality of human life. A Senior Advocate of Nigeria and a leading advocate of citizen's rights in Nigeria had observed that:

"The fundamental objectives enshrined in Chapter II of the 1999 Constitution include socio-economic rights which have been made non justiciable by the ruling class".²⁴

Similarly, Prof. Chidi Odinkalu made the following profound statements:

"We cannot negotiate among these different clusters of rights. We need all of them as full members of the human race....."

Continuing, he said:

"In Nigerian context, it is safe to say that human rights provisions are contained in both Chapter II and IV of the Constitution. There is no dispute that the rights contained in the Chapter IV are judicially enforceable. The distinction between Chapters II and IV of the Nigerian Constitution is essentially ideological"²⁵

The Fundamental Objectives and Directive Principles of State Policy under Chapter II of the 1999 Constitution remain ideas towards which the Nigerian State aspires to attain. To the extent that they remain ideals of state policies,

²⁴ Femi Falana SAN, Nigeria Law on Socio-Economic Rights Legaltex Publishing Co. Ltd; 2017: Pg 1.

²⁵ Chidi Anselm Odinkalu, Ph.D; Lecture In Honour Of Femi Falana (San); Akanni Iromini Maximum Publicity 293, Pg. 46.

it is believed that the jurisdiction of the courts to hear and determine them are ousted pursuant to the 1999 Constitution.²⁶

To be sure, **S. 6(6)(C) of the 1999 Constitution** provides thus:

S. 6(6)(C) "The Judicial power vested in accordance with the foregoing provisions of this section

(c) shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objective and Directive Principles of State Policy set out in Chapter II of this Constitution". *Emphasis mine*

On the surface and without a rigorous interrogation, it would seem that it represents what it simply communicates. In fact, a foremost Constitutional Lawyer, Senior Advocate of Nigeria and Chairman of the Committee of the Constitution Drafting Committee (CDC) on the Fundamental Objective and Directives Principles of State Policy in 1978 lent credence to this viewpoint when he argued in the first instance that:

"Chapter II provisions do not confer on any individual a corresponding entitlement to demand the amenities as a right and no machinery is provided by the Constitution for ensuring such compliance, the use of the courts for the purpose being explicitly excluded"²⁷

He contended further that:

".....a Constitution operating as a law and imposing judicially enforceable restraints upon government should not abandon its other functions as a source of legitimacy for those political

²⁶ **S. 6(6)(C) of the Constitution of The Federal Republic of Nigeria 1999 (As Amended)**

²⁷ Ben Nwabueze, *Judicialism and Good Governance in Africa*, Abuja/Lagos NIALS (2009), P. 54.

concepts and governmental powers and relations that are, by their very nature, non-justiciable. Nor should it renounce its roles in the affirmation of fundamental objectives and ideas or directive principles of governmental actions along desirable line”.

It is without doubt that the erudite Prof. Ben Nwabueze (SAN) was a leading constitutional scholar around the globe. Yet, on this particular score, his postulation has been vigorously contested in order to test its validity and accuracy. I am afraid that the verdict weighed heavily against his views but in favour of the justiciability of socio-economic rights.

First, **J. Nickel** continues to argue that Human rights are basic moral guarantees that people in all countries and cultures allegedly have because they are humans. Continuing he said:

“calling these guarantees “rights” suggests that they attach to particular individual who can invoke them, they are of high priority, and compliance with them is mandatory rather than discretionary”²⁸

While **K. H. Federie** agrees with his colleagues that human rights (whether civil and political or socio-economic) protect human dignity and integrity, they are essentially entitlements and justifiable claims.²⁹ He however, contends that:

“Right must never be regarded as an exercise of *noblesse oblige* or an act of generosity, a favour or a gift. Gift can be withdrawn by the benevolent, but rights are permanent”

Finally, and as though, the learned author was responding directly to Prof. Nwabueze’s postulations above, he concluded as follows:

²⁸ J. Nickel, *Making Sense of Human Rights* (2nd Ed; 1997)

²⁹ J. Feinberg “The Nature and Value of Rights” (1970) 4 *Journal of Value Enquiry* 234 - 527

“Human rights are related to each other. They are interdependent and indivisible”

For **H. Arendt**:

“The right to life is inextricably linked to the right to food, shelter, clean water etc Human rights – all human rights – are essential if individuals are to have integrity and security and to be treated with decency and respect. The most important rights is the rights to have right”³⁰

Thus, the two cardinal points to note from the foregoing interventions are that human rights are not mere donations or gifts. As rights, whether political or socio-economic, they impose a duty on the State to respect and protect those rights, the violation of which activates the power of the bearer to contest its abuse. This is the technical difference between a right and a privilege.

Nevertheless, the views of Prof. Nwabueze and others remained dominant and influential within local judicial cycles through their decisions. In **Archbishop Olubunmi Okogie (Trustee of Roman Catholic School & Ors. V. Attorney General of Lagos**³¹, the Court of Appeal held that:

“while Section 13 of the Constitution makes it a duty and responsibility among other organs of government, to conform to and apply the provisions of Chapter II, Section 6(6)(c) of the same Constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directives Principles of State Policy. It is clear therefore that Section 13 has not made Chapter II of the Constitution justiciable”

³⁰ H. Arendt, *The Origin Of Totalitarianism* (1951); see also M.D.A Freeman (Emeritus Professor of English, University College, London); Lloyd's Introduction to Jurisprudence; 9th Edn) Sweet & Maxwell; 2014 Pages 1287 – 1288.

³¹ (1981) 2 NCLR 337 @ 356.

To the Intermediate Court, it was not only a retrogressive decision then, it remains, unfortunately very backward even till this moment. We are glad that subsequent judicial decisions both domestic and foreign have departed from that restrictive decision to embrace the freedom and the full latitude of rights that this section of the Constitution has accorded citizens. In this regard, I reference the **Ariori v. Elemo**³² decision just four (4) years after the Okogie's case where the Noble Lords of the Supreme Court of Nigeria Per, **Justice Eso** made the following profound pronouncement:

"Having regards to the nascence of our constitution, the comparative educational backwardness, the socio-economic and cultural background of the people of this country and the reliance that is being placed and necessarily have to be placed, as a result of the background of the Courts, and finally, the general atmosphere in the country, I think the Supreme Court has a duty to safeguard the fundamental rights in this country The courts in this country, especially this Court being court of last resort has a duty to safeguard fundamental rights. They have that duty for the reasons I have already given, and in particular the reason relating to the stage of development of this country"

It could be argued by conservative pessimists and reactionary elements that the above decisions under review was specifically in respect of fundamental rights and not on the socio-economic rights that came before the court in Okogie's case. Then, the position of **Hon. Justice Niki Tobi JSC** (as he then was) in **Olafisoye v. Federal Republic of Nigeria**³³ delivered decisively on the vexed topic of socio-economic rights becomes handy as an effective rebuttal while relying on the progressive stances of Hon. Justices Kayode Eso and Chukwudifu Oputa:

³² (1984) 5 NCLR 1 @ 14

³³ (2005) 51 WRN 52; (2004) 4NWLR (864) 580

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

This is completely consistent with well-known cannon of statutory interpretation. With profound respect, it was disingenuous for the Court of Appeal in the **Olubunmi Okogie’s** case to ignore the purport and implication of the phrase **“except as otherwise provided in the Constitution”** in Section 6(6)(c) of the Constitution which provide thus:

Section 6(6)(c) The Judicial powers vested in accordance with the foregoing provisions of this section

(c) shall not “except as otherwise provided by this Constitution; extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directives Principles of State Policy set out in Chapter II of this Constitution.” *Emphasis mine.*

The refusal of the Court of Appeal to discover whether or not there is in any other section(s) of the Constitution such provision that renders Chapter II justiciable pushed it (i.e Court of Appeal) into a grave error in arriving at a very restrictive interpretation of Section 6(6)(c). Thus, to be sure **Section 13 of the 1999 Constitution** provides thus:

Section 13 It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive and judicial powers,

to conform to, observe and apply the provisions of this Chapter of the Constitution.”

In fact, sufficient studies have shown that it is highly doubtful whether the courts can actually decline jurisdictions to entertain matters bothering on the enforcement of rights under Chapter II of the Constitution because by virtue of the Oaths of Office which every public officer in the three arms of government must mandatorily subscribed to, they are obligated and infact undertake to preserve the fundamental objectives and Direction Principles of State Policy.³⁴ The following questions and answers have therefore become germane: (i) is there any other Constitutional provisions that render Chapter II justifiable? The answer is Yes! that is **Section 13 of the 1999 Constitution** spelt out above. (ii) the second question is whether Section 13 being the first and introductory part of the entire Chapter II of the Constitution is not caught by the non-justiciability of the Fundamental Objectives and Directive Principles of State Policies?. The simple answer is No! in that Section 13 of the Constitution is a later and subsequent provision of the same Constitution and clearly would have taken into account the provisions of Section 6(6)(c) which makes its operation and applications subject to the overriding effect of another section, in this case, **Section 13** as well as the Oath of Office set out in the Seventh Schedule to the 1999 Constitution requiring that all members of the legislative, executive and judicial organs of government are wily nilly expected to subscribe to an oath of office and undertake to “Preserve the Fundamental Objectives and Directive Principles of State Policy.

Towards a more inclusive right regime!

The African Charter on Human and Peoples’ Rights as well as the Universal Declaration of Human Rights remain two regional and international legislations rectified by Nigeria and duly incorporated into our laws with copious provisions of social-economic rights (and even more rights) contained in Chapter II of the 1999 Nigerian Constitution. They remain very

³⁴ Seventh Schedule to the Constitution of the Nigeria 1999 (As Altered)

enforceable without constraints from the standpoint of those legal instruments.

As we battle with the self-imposed restriction including the inexplicable fragmentation of these rights into clusters within our municipal jurisprudence, it is worthy of note that the international communities have moved on by adopting a more liberal and inclusive approach and emphasizing the role of the judiciary in breathing life into the socio-economic rights of citizens. In India, Botswana and South Africa, the Courts have taken a more proactive position in this regard. Even known opponents of the justiciability of the socio-economic rights like **Lord Lester and Colm O' Cinneide** acknowledge the indisputable fact that:

"The judiciary has an important role to play where there exists a sufficiently gross failure to uphold basic socio-economic rights. Where the other two branches have comprehensively failed to fulfill their responsibilities, then "the least dangerous branch" has a duty to intervene³⁵

Similarly, the Chief Justice of India had an ample opportunity to intervene in these unhealthy bifurcation of rights along positive and negative divides when he made the following statement³⁶

"The role of the Courts in protecting constitutional values goes beyond the enforcement of clearly defined civil-political rights that can be litigated by individual citizens and incorporates a continuously evolving understanding of "group rights which necessarily have socio-economic dimensions as well. To appreciate the transformation in the substantive nature of justiciable rights, it is necessary to reiterate the

³⁵ Lord Lester of Herme hill GC & Colm O' Cinneide "the effective protection of socio-economic right". Yash Ghai and Jill Cottrel Eds, Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights. 17, 20 (2004): see also The imperative of Justiciability of Social-Economic Rights In Nigeria (Ed.) Bayo Aborisade Centre for Labour studies P.43.

³⁶ K.G Balakrishnam, "Judicial Activist Under The Indian Constitution." Address by the Chief Justice of India at the Trinity College, Dublin, 14 October, 2009 P. 10; see also Chidi Anselm Odinkalu, Ph.D; Lecture In Honour Of Femi Falana (San); Akanni Iromini Maximum Publicity 293, Pg. 46.

theoretical distinctions between their “negative” and “positive” dimensions. The classification of enumerated rights can be based on who they are directed against and whether they involve a “duty of restraint” or “a duty to facilitate entitlements “.....” The Indian Courts have responded to this hierarchy between “negative” and “positive” rights by trying to collapse the distinction between the same”. *Emphasis mine.*

The foregoing critics of the notion of non-justiciability of socio-economic rights were even charitable to proponents of that narrative. For the foremost and leading scholar Late Prof. Claude Ake, his intervention in this discourse was more brutally frank and blunt. He argued that this whole debate is actually a contest between the further aspirations of the developed western world and the struggles for survival by citizens of third world countries. Accordingly he submitted as follows:

“The western notion of human rights stresses rights which are not very interesting in the context of African realities. Even when they are interesting, their salience is questionable. There is much concern with the rights of peaceful assembly, self-determination, free speech and thought, fair trial etc. The appeal of these rights is sociologically specific. They appeal to people with a full stomach who can afford to pursue the more esoteric aspects of self-realization. The vast majority of our people are not in this position. They are facing the struggles for existence in its brutal immediacy. Theirs is a totally consuming struggle. They have little or no time for reflection and hardly any use for free speech. There is no freedom for hungry people, or those eternally oppressed by diseases. It is no wonder that the idea of human rights has tended to sound hollow in the African Context.”³⁷

³⁷ Claude Ake, *The Political Economy of Crisis and Underdevelopment in Africa*, (Ed.) Julius O. Ihonvbere Lagos: JAD Publishers Limited, 2013, P. 84.

Conclusion

In this Festschrift in honour of our departed Comrade hero, Prof. Abubakar Momoh, a public intellectual, activist scholar, a professor of political theory and, by all standards, an accomplished dialectician, I seized the opportunity, as he would have effortlessly done, to xray the political economy of human rights in Nigeria. The choice of juxtaposing the concept and evolution of human rights in other climes with the struggles and developments of human rights in Nigeria was deliberately made to underscore the chequered experiences of the human rights community in Nigeria against the backdrop of neo-liberal economy within a purely capitalist super structure designed to appropriate human rights as a mere feature of democratic credential rather than an index of human freedom and fulfillment. The concept and evolution of human rights was traced within the historical time frames when the changes and contestations occurred to show that what become a subject of multiple manipulations ought to evolve seamlessly and be available and accessible to citizens of this country.

The contestations for its general application/accessibility and the attendant restrictive State responses to issues of human right by way of court decisions and State policies exposed the inherent contradictions driven by economic interests and consideration. It was literally inconceivable that the Nigerian human right community and activists would experiences all that they went through in a country where all the regional and international legal instruments that guarantee virtually all the human and fundamental rights have been ratified and domesticated. Besides, the extant Constitution itself makes an elaborate provision for the protection of the rights in questions. The only logical conclusion that can therefore be drawn from this contradiction is the ideological underpinnings that problematized what were otherwise simply State issue. What did we subscribe to as a community and country? How does a faithful compliance with the dictates of a human rights regime obstruct the political economy of a state designed for private accumulation against public good and service. What is the premium and priority placed on the issues of human rights in a country that is easily susceptible to imperialist dictates of currency devaluation, subsidy removal,

budgetary and fiscal funding based on borrowing? It is in this context that human rights became first casualties and symbols of state 'disintegration'. How else can one rationalize recent developments in which demonstrators of bad governance in Nigeria were arbitrarily arrested, unlawfully detained and charged with terrorism and treasonable felony for embarking on demonstration against bad governance. Even their detentions were extended by Courts of law pursuant to Acts of the National Assembly on terrorism contrary to the express provision of the Constitution. Sections 1(3) of the Constitution suddenly becomes inconsequential for the State to survive even through the liberties of citizens are compromised.

By what yardstick can one justify the incessant invasions of labour centres and civil society offices apparently to extinguish the voices of dissent? It has remained very curious and regrettable that the only response of the State to acts of civic engagements and protests are repression and crackdown well after the battle had been won against military hegemony in Nigeria? The paper examined the raging debate of rights along the bifurcated corridors of human versus fundamental rights, civil, political rights versus socio-economic and cultural rights and concluded that those artificial dichotomies are unnecessary for the fulfilment of mankind which human rights seek to achieve. The paper inquired into the utility of the fundamental rights of citizens to dignity of human person and privacy where they are scarcity and access to houses and shelter. To what extent would citizen's right to freedom of expression be useful to persons who were never educated? In fact, what manner of life would a citizen have when he has no access to job, living minimum wage and health care? e.t.c.

My paper, in consequence, concluded by vigorously contesting the notion that the second generation rights otherwise known as the socio-economic rights are not justiciable and landed safely at a juncture where it's now empirically established that neither the Constitution of Nigeria pursuant to S.6(6)(c) nor other international instruments sought to oust the jurisdictions of Courts to entertain questions over the enforcement of rights under Chapter II of the 1999 Constitution.