

THE NIGERIAN CONSTITUTION AND THE PROTECTION OF THE VULNERABLE IN THE SOCIETY

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ABSTRACT

Who a vulnerable person is within a given society depends on several constructions but generally social status and situational or context-specific living conditions shape vulnerability and has made social protection to evolve differently in different socioeconomic and political contexts. With the aim of evaluating the position of vulnerable persons under the Nigeria constitution, this paper identified that national, regional and international obligations reinforce the need to give effect to the constitutional rights of those identified as vulnerable persons. Beyond the human rights provisions in the Constitution, Nigeria has enacted laws to protect identified vulnerable groups, but this research identified some factors that devalue constitutional efforts at protecting the vulnerable within the Nigerian society. The irony of a constitution born from the people and of which the people are in government, yet suffer hunger, unemployment, impoverishment, abandonment, homelessness, violence, economic disability, illiteracy, sexually violations, religious; ethnic and culturally mismanagement, are the characters of a failed state. Taking any transformative approach must be reflected in the core design of social protection interventions and its linkages with complementary programmes and services for vulnerable persons.

Keywords: Constitution, Vulnerable Persons, Human Rights, Social Protection.

INTRODUCTION

According to Justice Elsie N. Thompson, ‘the imperative of Human Rights protection can no longer be ignored or swept under the rug, even as national and international laws and treaties alike push for the preservation of the fundamental human rights of all humans.’ⁱ One of the hallmarks of a human rights approach is the commitment to protecting the rights of vulnerable and disadvantaged individuals and groups. Human rights law is predicated on the fundamental principle of the inherent dignity and equal worth of every human being. Consistent with this norm, the basic law of every human society sets out minimum conditions for a dignified life in the form of rights or entitlements that imply duties for individuals and governments.ⁱⁱ The Nigerian Constitution extends this same responsibility to the government and in favour of the Nigerian people. In preserving and protecting the rights of the people, the constitution recognizes the inadequacies within society, the inequality in resource distribution and the vulnerabilities of special groups and enables efforts to maintain stability and effectiveness of resources.

CONCEPTUAL CLARIFICATION

Human Rights

They are the rights that one has simply because one is human. The word ‘right’ means, that to which a person has a just and valid claim, whether it be land, a thing or the privilege of doing something. Human rights are rights which all persons everywhere, and at all times have by virtue of being mortal and rational creatures.ⁱⁱⁱ Accordingly, human rights can be considered as rights which are inherent in every human creature by virtue of his humanity. These rights embrace a wide spectrum of civil, political, economic, social, cultural, group/solidarity and developmental claims which are considered indispensable to a meaningful human existence.^{iv}

Human rights are of three types: civil and political; economic, social and cultural; and group or people’s rights.^v They are natural, inherent and innate in every individual.^{vi} Human rights are ‘demands or claims which individuals or groups make on society, some of which are protected by law while others remain aspirations to be attained.’^{vii} They are claims, which are invariably supported by ethics, and which should be supported by law, made on society, especially on its official managers, by individual or groups on the basis of their humanity.^{viii}

Vulnerable Person

A vulnerable person is someone who belongs to a group within society that is either oppressed or more susceptible to harm.^{ix} Eagly describes vulnerable persons as persons belonging to populations such as children, senior citizens, low-income workers, and asylum seekers etc. These people are in particularly perilous positions and are a lot less capable of protecting or defending themselves.^x Vulnerable persons are those in society who receive ill treatment over special conditions. They are in positions that make them susceptible to abuse or more specifically susceptible to mistreatment by those who may potentially hold power over them.^{xi}

Vulnerabilities are both structural and situational in nature, caused by lack of access to information, knowledge and technology, in addition to weak or non-existent political representation or power.^{xii} Furthermore, limited social capital, frailty and physical limitations in individuals are seen as situational factors. Other factors like type, quality and age of infrastructure, and lifelines, also count in exposure to vulnerability. Vulnerability can also be attributed to the way lives of different groups of people are structured and shaped by structural patterns based on politics, economics, environmental management practices, race and class relations, the gender-based division of labour, and other factors.^{xiii}

Typically, human rights bodies deal with vulnerable and disadvantaged communities on an *ad hoc* basis.^{xiv} Women and girls;^{xv} children; refugees; internally displaced persons;^{xvi} stateless persons; national minorities; indigenous peoples; migrant workers; physically challenged persons; elderly persons; HIV positive persons and AIDS victims; mentally-ill persons, prisoners^{xvii} and ex-convicts etc., are often classified as the socially vulnerable.^{xviii} In recent years there has also been a growing awareness that poverty or extreme poverty is an important source of vulnerability and violation of human rights.^{xix} Social status and situational or context-specific living conditions that vary over time might also shape vulnerability. Social vulnerability involves a combination of factors that determine the degree to which someone's life and livelihood are put at risk by a discrete and identifiable event in nature or in society.^{xx}

Social Protection

Generally, social protection has been viewed from three perspectives: as a tool of social risk management; a human right; and an expression of minimum basic need for citizens in any civilized nation. The objectives of social protection are aimed at reducing the vulnerability of low-income households with regard to consumption and access to basic services. In 1948 the

international community acknowledged social protection as a basic human right in the Universal Declaration of Human Rights. In 2001, the International Labour Organization (ILO) General Assembly affirmed social security as a basic human right also.^{xxi}

The term ‘social protection’ has thus evolved differently in different socioeconomic and political contexts. Interventions are increasingly being adopted in low-income countries, as social protection is seen as an effective mechanism to support poverty reduction as well as to protect the poor from falling into worst poverty.^{xxii} A common definition of social protection is one which includes all public and private initiatives that provide income or consumption transfers to the poor, protect the vulnerable against livelihood risks and enhance the social status and rights of the marginalized. The overall objective is to reduce the economic and social vulnerability of poor, vulnerable and marginalized groups and in particular, to support the vulnerable to overcome the demand-side barriers which prevent them from accessing basic economic and social services.^{xxiii}

DOES THE NIGERIAN CONSTITUTION PROTECT VULNERABLE PERSONS IN NIGERIA

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as Amended) is the central law in Nigeria and the supreme law.^{xxiv} It provides for direction and protection of its people through the objectives and principles that should form the basic policy regulating the conduct of government as well as all institutions, organisations and persons towards the protection of laid down rights, privileges and obligations. Oguntade JSC in *Governor of Kwara State and Anor v. Alhaji Issa Ojibara and 6 Ors*,^{xxv} stated that ‘the Constitution is the very foundation and structure upon which the existence of all organs of governance is hinged.’^{xxvi}

Nigeria has signed, ratified or acceded to many important international and regional human rights instruments protecting human rights and especially vulnerable persons. These international and regional Human Rights instruments include the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa 2009; African Youth Charter 2006; Universal Declaration of Human Rights 1948; The African Charter on Human and Peoples’ Rights 1986; African Charter on the Rights and Welfare of the Child 1990; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1987; Convention on the Political Rights of Women 1954; Convention on the

Rights of Persons with Disabilities 2006; International Convention for the Protection of all Persons from Enforced Disappearance 2006; International Convention on the Elimination of All Forms of Racial Discrimination 1969; International Covenant on Civil and Political Rights 1966; International Covenant on Economic, Social and Cultural Rights 1966; United Nations Convention on the Elimination of all forms of Discrimination Against Women 1979; Convention on Rights of the Child 1989 amongst others.

If the purpose of government is the welfare of the people, and the same people are compulsorily involved in governance, then it is only rational that the people protect themselves and positively enhance their lives. In as much as the constitutional rights are not set out for the vulnerable persons in society alone, and that not all rights under the constitution are justiciable,^{xxvii} the fundamental rights in the constitution are afforded all persons irrespective of status, class, ethnicity, tribe, religion, gender, financial standing, profession or age. The privileged and the vulnerable are all entitled to the basic rights to life,^{xxviii} to dignity of human person,^{xxix} to personal liberty,^{xxx} to freedom of thought, conscience and religion,^{xxxi} to expression and press, and also to the economic and social rights under Chapter II of the Constitution.^{xxxii}

Legislative change seems to be one of the most positive developments resulting from the ratification of human rights treaties. The laws of a state must accompany and reflect the advocacy efforts applied in developed societies. While the promotion of the rights of vulnerable persons often requires that a country change its laws to reflect the standards of the international treaties to which it is a party, the implementation of these laws will not take full effect, especially in environments where the government has little or poor control of social structures.^{xxxiii} Social protection interventions which often aim to tackle extreme poverty and inequality in Nigeria are increasingly important to adequately address the multidimensionality of poverty at the intra-household, household and community levels.^{xxxiv}

Nigeria's regional obligations reinforce the need to give judicial effect to economic, social and cultural rights. Beyond the human rights provisions in the Constitution, Nigeria has enacted some human rights laws to protect identified vulnerable groups.^{xxxv} Human rights lack a central theory or framework for identifying vulnerable and disadvantaged populations, and this has led to the establishment of a series of specialized human rights instruments and mechanisms.^{xxxvi} The Nigerian Constitution therefore provides for the rights of vulnerable persons and extends a wider reach to the vulnerable through several local laws and policies deriving authority from it.

The social, economic and cultural rights as well as the civil and political rights of the vulnerable are guaranteed in the constitution,^{xxxvii} and by the provision of s 46 CFRN 1999, any person whose fundamental rights are contravened can seek redress.^{xxxviii} So, even the vulnerable in society have a voice which can be heard in court. But despite the human rights and constitutional commitments to protect the fundamental rights of vulnerable and disadvantaged individuals and groups, certain challenges devalue legislative efforts within the system.

CONTEMPORARY CHALLENGES TO CONSTITUTIONAL PROTECTION OF THE VULNERABLE IN NIGERIA

The Nigerian society runs on the national ethics of discipline, integrity, dignity of labour, social justice, religious tolerance, self-reliance and patriotism.^{xxxix} Concerns about the condition of the vulnerable comes from the realization that certain individuals and groups systematically lack enjoyment of a wide range of human rights. Typically, vulnerable and disadvantaged populations have been victims of violations of human rights, and often, even more severely, of economic, social, and cultural rights. Many of these groups experience discrimination, social exclusion, and deprivation of protections and entitlements on an ongoing basis.^{xl} They may be subject to human rights violations by the state, by others in the society, or from institutions, structural barriers, social dynamics and economic forces. Some identified factors which prevent the achievement of the intentions of the letters of the Constitution in protecting vulnerable persons in Nigeria are:

a) Insecurity and Conflict

In very clear terms, the Nigerian Constitution states that the ‘security and welfare of the people shall be the primary purpose of government.’^{xli} Security is the prime responsibility of the state. Unfortunately, government on this constitutional responsibility has failed to provide a secured and safe environment for meaningful living, properties and the conduct of business and economic activities. The alarming level of insecurity in Nigeria has fueled crime rates and terrorists attacks in different parts of the country, leaving unpalatable consequences for the nation’s growth and against vulnerable groups in various communities.

Vulnerabilities vary according to context and may impact upon different people in diverse ways in conflict and post-conflict environments. People who may be especially vulnerable where insecurity arises in Nigeria are victims of gross violations of human rights; ethnic, religious and racial minorities; groups subject to discrimination; indigenous persons in conflict areas;

internally displaced persons; refugees; former combatants, including women combatants; children and young persons; non-nationals; persons living in rural areas; elderly persons; sick, or wounded persons; persons lacking legal documentation or legal status; migrants or non-indigenes; trafficked persons; and even human rights defenders and civil society activists.^{xlii}

Despite the plethora of security measures taken to address the daunting challenges of insecurity and conflict in Nigeria, government efforts have not produced the desired positive results.^{xliii}

In any conflict or post-conflict context there will be certain groups that are especially vulnerable in the sense that they are marginalized from the mainstream settlement and are susceptible to poverty and other forms of harm and danger. Failure to identify and manage vulnerabilities experienced by these groups may lead to their exclusion from active participation in political, social and economic activities and result in injury over basic human and constitutional rights.^{xliv}

b) Corruption

According to s 15(5) CFRN 1999, 'The State shall abolish all corrupt practices and abuse of power.' Corruption as a crime affects the generality of a society, but disproportionately affected, are vulnerable groups, including the poor, disabled, ethnic minorities, AIDS victims, Covid-19 victims and other sick persons, children and women, the elderly etc. Exorbitant bribes charged by public officers discourage and prevent access to relevant information, education and due processes.^{xlv} The phrase, bureaucratic corruption often referred to as petty corruption is the most frequently practiced type of corruption in our national public life. This acclaimed 'holy crime' exists on a routine basis in hospitals, security stations, administrative offices, educational institutions etc. This negative trend has almost become the cultural affinity without exception.^{xlvi}

The effects of corruption in Nigeria have been very significant and caused poor governance, misuse of natural resources, mediocrity, high unemployment rates, the widening of the gap between the rich and the poor etc.^{xlvii} In a 2015 study, ActionAid reported that a significant proportion of the respondents said they often or always paid for admission, employment, utilities, medical attention and avoidance of problems with the police. As a result, the poor, who need these services most, are sometimes excluded from accessing them because they do not have money to bribe officials and they fall into worst conditions as a result of these corrupt practices.^{xlviii}

c) Poverty, Deprivation and Socio-Economic Inequality

Inequality in income and asset distribution, unequal access to basic infrastructure and services and social-cultural norms are key drivers of poverty, vulnerability and inequality in Nigeria.^{xlix} Illustrating with the recent Covid-19 pandemic management, as of 25th May 2020, Nigeria reported 7,839 confirmed cases of COVID-19.¹ The pandemic increased the number and class of vulnerable persons and the level of poverty and inequality in the country was clear for all to see. The economic assistance that the government announced in response to the virus exposed inadequacies in Nigeria's social protection systems and risked exposing the country's poorest and most vulnerable people into deeper vulnerability.^{li}

Vulnerability mirrors the dynamic stages in resilience and applies to multiple stages of inter-linked social-ecological systems.^{lii} The elderly; with pre-existing health conditions and compromised immune systems were particularly vulnerable to serious health consequences when infected by the corona virus. Other groups remain at greater risk of contracting the virus without due care. Several categories of workers who could not take advantage of digital technology to work during the lockdown were faced with job and income deprivation. The Covid-19 pandemic deepened gender inequalities as the burden of caring for children at home, the sick or elderly fell disproportionately on women who were also vulnerable to domestic violence, health and maternal conditions and emergencies without necessary help.^{liii} Disadvantaged children were not left out. Those in socially, economically, and politically insecure households where human rights are undermined were mentally and emotionally injured, self-confidences were shattered, and street violence multiplied.^{liv}

d) Government's Low Regard and Non-Justiciability of Rights under Chapter II of the Nigerian Constitution

With the class of persons identified as vulnerable persons, it largely seems that a greater section of these vulnerable persons relies on protections and justice afforded under the provisions of Chapter II of the Constitution which have been portrayed as non-justiciable rights. The question as to the justiciability and enforceability of rights under chapter II CFRN seems to stem from the provisions of sec 6 (6) (c) CFRN and item 60 (a) of the Exclusive legislative list.^{lv} With rights as emancipating and protective as for instance under s 17(3) CFRN that the State shall direct its policy towards ensuring that all citizens have the opportunity for securing adequate means of livelihood; and welfare of all persons are paramount etc., it seems on paper and in speech, that the vulnerable persons in Nigeria are secured, but that is far from truth.

Despite the socio-economic rights which protect vulnerable citizens expressed as ‘principles and objectives,’ stated within sections 13-23 CFRN 1999, there is no provision that provides that these rights and duties are enforceable.^{lvi} Acts or omissions that violate ‘Fundamental’ political and civil rights contained in Chapter IV are redressed in accordance with section 46(1) CFRN 1999,^{lvii} but no corresponding enforcement provision supports chapter II rights. The Constitution thus approbates and reprobates by setting standards and obligations which are merely imaginative.^{lviii}

It is unfortunate that these unenforceable provisions that would have guaranteed utmost welfare for a large section of vulnerable persons is conquered under a grund norm that conveniently relegates the rights that protect the better parts of human living to non-justiciable rights.^{lix} This is the irony of a Constitution born from the people and of which the people are in government.^{lx} Can the vulnerable in society truly live above levels of dignity in Nigeria without constitutional liability over government’s inactions to protect social and economic rights?^{lxi}

CONCLUSION

Whether it is the problem of insecurity, conflict, corruption, social and economic deprivation and segregation, or the continuous disregard of human rights to favour politics and power struggle, Indeed the Judiciary bears an ultimate role. Taking a transformative approach towards the welfare of the vulnerable cannot be effective without the presence of the unwavering voice of justice through the courts, the establishment and effective implementation of practicable policies to curb corruption, reduce poverty, manage tribal conflicts, and ensure equitable resource allocation among the citizenry, as well as core designs of social protection interventions.

Again, social protection is an inevitable social measure in Nigeria. Maximizing the effectiveness of social protection requires a healthy and functioning state system which ensures an effective and enabling environment to achieve social protection objectives. There should be all round political will and commitment by the various stakeholders on rights to genuinely safeguard, enforce and ensure compliance with the constitution and relevant international and regional laws, and the justiciability of Chapter II provisions under the 1999 Constitution should be critically reexamined.

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