

FUNDAMENTAL OBJECTIVES AND DIRECTIVES PRINCIPLES OF STATE POLICY: A VIABLE ANTI-CORRUPTION TOOL IN NIGERIA*

Abstract

Corruption is a term that is eclectic. It is a global phenomenon that has paired itself with both past and present civilizations. Financial corruption is a variant of this obnoxious ill of modern state, Nigeria not being an exception. The provisions of the Fundamental Objectives and Directive Principles of State policy in the Constitution of the Federal Republic of Nigeria of 1999 are a welcome development. These provisions include objectives on political, economic, social, educational, foreign policy, environmental, cultural, media, national ethics matters and duties of citizens. However, the drawback to the appropriation of these 'dreams' or objectives by citizens as of right is the provision in section 6, sub-section (6), paragraph (c) of the 1999 Constitution which makes the objectives non-justiceable. There is an urgent need to delete the above provision from the Constitution and subject the objectives to binding governmental obligations known as Constitutional Projects which would encourage the use of public fund for common good. This bold step would attenuate inclinations to financial corruption in Nigeria. Constitutional projects should be paired with Constitutional fund or proceed from the Federation Account and constituency projects by Federal Law Makers abolished. Moreover, it is submitted that a new revenue utilization policy should be introduced whereby budgeting should not be made yearly, henceforth, but rather made to cover the life span of an administration at the end of which the administration is subjected to an official probe and that by independent prosecutors.

Introduction

The Universal Declaration of Human Rights of 1948 has in no small way affected the various constitutions of Nigeria, the 1999 Constitution being no exception. What the Nigerian Constitution provides as Fundamental Objectives and Directive Principles of State Policy, the former prescribes as constituting human rights.

The Nigerian executive arm of government is provided for in the Constitution¹. It is saddled with functions which basically revolve around executing the laws made by the legislature. The Constitution of the Federal Republic of Nigeria, 1999 made provision for Fundamental Objectives and Directive Principles of State Policy, under its Chapter Two. These objectives merely provide a guide to any government in power in Nigeria and contain essential needs of the people in Nigeria on political, economic, social, educational, foreign policy, environmental, cultural, media, national ethics matters and duties of citizens.

These objectives and principles², if turned into human rights, would lead to a new Nigeria devoid of the majority of the set backs currently witnessed in the present Nigeria which manifest in the form of socio-economic problems like unemployment, lack of basic amenities at a significant level, low level of social welfare and disunity as evidenced in the current religious, political or tribal disturbances or clashes. Another gain of immense magnitude is that there would be a better rapport between

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¹ The Constitution of the Federal Republic of Nigeria, 1999 CFRN, 1999

² Chap. II, CFRN, 1999.

the government and the governed in the social contract underlying the relations in a modern state. The Social Contract theory of the school of jurisprudence opines that the masses in a given society surrender their freedom to the state for the latter to protect their interests. Difficulties in that relationship should be recognized and confronted rather than ignored³. Again, development plans shall be made based on the recognized needs or difficulties and it has been stated that clarity of development plans is a panacea for underdevelopment⁴.

Good development plans on the economic and educational objectives of the Fundamental Objectives and Directive Principles of State Policy in Nigeria, for instance, would be a basis for building a better Nigeria. Efforts geared at the privatization of public enterprises which is a current policy of government could yield positive results if the whole exercise is done according to law and transparently too. The Bureau for Public Enterprise could blaze the transparency culture into full acceptance of the policy by Nigerians as the names and addresses of the shareholders of governmental parastatals sold to private individuals are published. Any privatization process contrary to law and public concerns as expressed by local authorities⁵ is bound to be unsuccessful. It is the requirement of the 1999 constitution that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group. Shrouding the privatization activities or any part of it in secrecy would not solve the problem identified already and meant to be addressed by this section of the Constitution⁶.

In order to address the high level of illiteracy in the country, the Constitution directs that government shall provide free primary, secondary and university education⁷. While this is commendable, it is noted that the implied discrimination against free polytechnic education is disturbing to the mind and discouraging to the students of polytechnic institutions other than those of universities. Equality before the law⁸ is a necessary constitutional principle that cannot be extinguished by the same law that prescribes the equality. If the principle of equality would not be a “utopian fantasy whose hopeless pursuit”⁹ would lead ‘to tyranny’¹⁰.

The Federal Executive led by the President of the Federal Republic of Nigeria is powerful just as in other sovereign states. The budget which is the financial tube that waters every segment of the national life is under his control¹¹ and this does give him great influence over trends in national life¹². However, the trend of making matters contained in the Fundamental Objectives and Directives Principles of State Policy in Chapter Two of the Constitution non-justiceable denies such matters the

³ Adrian Cadbury, “Interaction at the Top Table”, 2002, **Management Today**, p.39.

⁴ N. Carter, T. Brown and T. Abbott, *Progress in Planning*, 1993, Vol.39, pt.1, p.43

⁵ *Ibid.*

⁶ CFRN, 1999, Sec.16(2) (c).

⁷ *Ibid.*, Sec. 18(3), (a) and (c).

⁸ Paul Johnson, *Capitalism as a Moral Force*, 1991, “**Topic**”, Issue No.187, p.3.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Erwin C. Hargrove, **The Power of the Modern Presidency**, New York: Alfred A. Knopf, Inc., 1974, p.31.

¹² *Ibid.*

blessings of the budget and interferes to a large extent with the significant accomplishment of these objectives¹³.

The Concept of Duty without Liability

The 1999 Constitution provides that it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of this chapter¹⁴ of this Constitution¹⁵.

The above provision made it a duty on the part of all persons to observe and apply the Directive Principles and Fundamental Objectives of State Policy. However, the Supreme Court of Nigeria has interpreted the above provision to apply not only to those exercising legislative, executive or judicial powers but also applied to private individuals¹⁶.

The word 'duty', 21. Settlement here means payment of money illegally demanded by natives before a developer is allowed to carryout any development on his or her land despite the fact that such developer must have paid all the necessary fees to the legitimate authorities leading to approval of his or her building plans. According to Black's Law Dictionary¹⁷, is a human action which is exactly conformable to the laws which require us to obey them. In other words, all organs of governments, all authorities and persons of the legislative, executive and judicial arms of government should make their actions conformable to principles and directives of the Chapter Two of the 1999 Constitution.

The Nigerian ideals are reflected in the 1999 Constitution as Unity and Faith, Peace and Progress¹⁸. By the prescription of the basic law in Nigeria, national integration is encouraged on one hand and discrimination which is one of the bedrocks of national disintegration is eschewed. To this end, government is expected to provide adequate facilities for free mobility of people, goods and services; secure full residential rights for citizens in all parts of the Federation; encourage inter-marriage among Nigerians of different ethnic, linguistic, religions or other background and the formation of broad based associations that would accommodate Nigerians irrespective of tribe, religion or language.

It is therefore, the duty of government to introduce mass transit programme which would enhance free motality¹⁹. This in addition would be accentuated vigorously where a good network of motorable roads are put in place in every part of the Federation; bad roads lead to bad consequences with regard to mass transit and

¹³ G. Calvin Mackenzie, **The Politics of Presidential Appointments**, New York: The Free Press, Division of Macmillan Publishing Co., Inc., 1987, p.811.

¹⁴ The Chapter refers to chapter II of the 1999 Constitution which is on fundamental objectives and Directive Principles of State Policy.

¹⁵ Sec. 13, CFRN, 1999.

¹⁶ See **Attorney-General of Ondo State v. Attorney-General of the Federation & 35 ors.**(2002) 27 WRN, 1.

¹⁷ Henry Black, **Black's Law Dictionary**, 6th ed., St. Paul Minn., West Publishing Company, 1990, p.

¹⁸ See Sec. 15, CFRN, 1999.

¹⁹ CFRN, Sec. 15(3), (a).

any form of mass transit without an adequate attention to the construction and maintenance of asphalted roads would be an exercise in futility.

Moreover, the objective of securing full residential rights²⁰ cannot be effectively implemented by government where it looks away from the activities of some of the natives who insist that before a non-natives Nigerian carried out any developmental project for residential or other purposes in their state, the developer must 'settle',²¹ them first. This illegality if allowed to thrive would soon permeate the fabrics of the socio-political lives of all federating units in Nigeria otherwise known as states. The result of this could be growing lawlessness which in turn affects the national economy negatively.

The objective of encouraging inter-marriage²² among persons from different places of origin, religion, ethnic or linguistic association and that of giving promotion or encouragement to the formation of associations²³ that cut across ethnic, linguistic, religious or other sectional barriers provide a good foundation for a healthy social interaction that promotes peace, unity, stability and facilitates a feeling of belonging and of involvement among the various people of the Federation²⁴.

Section 16(1) of the 1999 Constitution provides in paragraph (a) that:

The State shall within the context of the ideals and objectives for which provisions are made in this constitution harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy.

The above provision is a beautiful representation of the dreamed Nigeria green pasture that the average citizen is waiting to be taken to. A situation where the pasture is greener for the rich and brown for the poor is not within the contemplation of the Constitution. The document-the 1999 Constitution - is willing to bequeath wealth to Nigerians but the will power to bring it into reality is just simply lacking or inadequate.

Other directives contained in the 1999 Constitution relate to equality of rights, obligations and opportunities before the law and other social objectives;²⁵ the protection improvement and safeguard of the Nigerian environment²⁶ with regard to water, air and land, forest and wildlife of Nigeria; promotion of national interest,²⁷ African integration and support for African Unity, integration cooperation as regards consolidation of universal peace and elimination of all forms of discrimination; and

²⁰ 20. *Ibid.* Sec. 15(3) (b.)

²¹ Settlement here means payment of money illegally demanded by natives before a developer is allowed to carryout any development on his or her land despite the fact that such developer must have paid all the necessary fees to the legitimate authorities leading to approval of his or her building plans.

²² CFRN, op. cit., sec. 15(3), (c).

²³ *Ibid.*, Sec. 15(3), (c).

²⁴ *Ibid.*, Sec. 15(4) *Ibid.*, Sec. 17.

²⁵ *Ibid.*, Sec. 17.

²⁶ *Ibid.*, Sec. 20.

²⁷ *Ibid.*, Sec. 19.

the protection, preservation and promotion of the Nigerian cultures²⁸ which enhance dignity and agree with the fundamental objectives.

Responsible Governance: A Constitutional Liability

The word liability is explained in **Alexander Marine Management and ors. v. Koda International Limited**²⁹ as follows:

The word “liability derived from adjective “liable” connotes or denotes legally bound as to make good any loss or damage. In other words, it is almost every character of hazard or responsibility, absolute, contingent or lively – all character of debts and obligations either absolute or contingent express or implied, conditions which create a duty to perform an act immediately or in the future, duty bound to pay money or perform some other service.

The debt the ‘governors’ of Nigeria both at federal, state and local government levels which is the vertical axis of governance or the legislative, executive and judiciary, the horizontal axis of governance owes Nigerians is principally to govern with a sense of responsibility which is practically reflected in carrying out people oriented projects, and programmes.

Making the fundamental Objectives and Directives Principles of State policy justiceable would create an absolute duty on government to go for their realization both immediately and in the future. This will in turn give rise to an era of responsible government.

Moreover, this is the best way not just to fight, but to cage corruption in any nation with such a noble design because governance will now be less attractive to election riggers, do-or-die politicians, political thugs, god fatherism, money launders and investors in politics who hope to reap a significant portion of the financial fortunes of the states of their beneficiaries when such persons win election(s).

Without making the realization of these objectives legally binding on the government the governed will continue to suffer gross neglect by those in government. There are two major areas of emphasis in order to let people get the best from government:

- a) defining the fundamental objects and Directives Principles of State Policy to mean our green pasture, that is the Nigerian green pasture and making the objectives and principles legally binding on the Nigerian government;
- b) getting shepherds, not hirelings, to lead the nation to our “green pasture”.

Constitutional Green Pasture: A Myth or Reality

The 1999 Constitution has packaged a parcel of good for Nigerians but by one stroke of sluggishness has kept the parcel without the reach of those for whom it has been made. Free education at all levels, for instance, is a constitutional apple that is hanging on a height too far away from the reach of Nigerians. It is not because of lack

²⁸ *Ibid.*, Sec. 21.

²⁹ 1999, I.N.W.L.R. (pt. 585) p.44.

of ability to appropriate this tantalizing dream by the citizens but because the responsibility is not legally placed on the shoulders of government as an obligation which makes derogation from them to amount to a gross misconduct³⁰. The legal placement of responsibility as enunciated above is to be made by making the Fundamental Objectives and Directives Principles of State Policy feature as human rights and made justiceable as envisage by the Universal Declaration of Human Rights of 1948.

Meanwhile, the beautiful benefits inherent in the provisions of those objectives and directives are often appropriated through enactments on Federal or State level. Acts in the form of Universal Basic Education Act put single objective and make it obligatory on government to carry it out. This is an unnecessary duplication of legislation. A thing is either to be or not to be. If the set of matters contained in the 1999 Constitution as objectives and directives are not serious in nature, enough as to bind government to provide them for the governed, then, they are better removed from the Constitution pending the time that governance will go with sufficient will power to use public fund for the common good of the people. This era will be ushered in where the trend of pursuing personal benefits at the expense of the citizens, while using public office, public fund, and State paraphernalia of authority will give way to a government truly responsible to the people.

By the above constitutional provisions, Nigerians have a dream³¹ that one day in the Nigerian soil there will be free mobility of goods and services throughout the Federation³², a feeling of belonging and of involvement among the various peoples of the Federation, to the end that loyalty to the nation shall override sectional loyalties³³, abolition of all corrupt practices and abuse of power³⁴ maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity³⁵; harnessing and distribution of material resources as best as possible to serve the common good,³⁶ suitable and adequate shelter, suitable and adequate food, reasonable minimum living wage, old age care and pensions and unemployment, sick benefits and welfare of the disabled (which) are provided for *all citizens*³⁷; adequate medical and health facilities for all persons³⁸; free compulsory and universal primary education³⁹, free secondary school education⁴⁰, free university education⁴¹ and free adult literacy programme⁴².

³⁰ Gross misconduct is an impeachable offence in Nigeria. A President or Governor could be removed from office based on it.

³¹ This is taken from the famous American Civil Right Activist, Martin Luther King Jnr, 'I have a dream'.

³² Sec. 15(3) (a).

³³ Sec. 15(4)

³⁴ Sec. 15(5)

³⁵ Sec. 16(1) (b)

³⁶ Sec. 16(2) (b)

³⁷ Italics Mine, Sec. 16(2)(d)

³⁸ Sec. 17(2)(d), Note that phrase 911 persons' clearly shows that the Constitution contemplates that aliens shall benefit from the provision. Since it is only a persuasive legal provision, it is not binding on Nigerian Government.

³⁹ Sec. 18(3)(a).

⁴⁰ Sec. 18(3)(b).

⁴¹ Sec. 18(3)(c).

⁴² Sec. 18(3)(d).

All of the above are the contents of the constitutional subjects which, by panic measure, the drafters of the 1999 Constitution refused to package under the fundamental human rights provisions which are contained in Chapter Four of the said Constitution. Even now, transforming them into human rights formal provisions has no complex challenge for the National Assembly. The singular approval to such drafting would be to insert the phrase 'right to' before any of those beautiful benefits either as it relates to adequate food, reasonable minimum living wage, free primary education or any of those benefits.

There are few decided cases that reflected on the matters contained in Chapter Two of the Constitution because of the fact that they are non-justiceable according to the Constitution⁴³. The ideology behind clothing such objectives and directives with the cloak of constitutional recognition, and only to present them as a mere guide to government at the full glare of helpless citizens and aliens is a questionable ideology. It is a trite fact that such mockery of responsibility as reflected in the non-justiceability of the objectives and directives broods corruption. It could amount to a contradiction of fact whenever the legislature rolls out a legislation against corrupt enrichment and float a body staffed with people paid with tax payers money to checkmate corruption which could have its existence greatly attenuated by virtue of making the objectives and directives to crystallize into legal obligations which are binding on government. Government obligations to the people not made in a written form might encourage political leaders to embark on a voyage of fantasy and make believe in order to force into the psyche of the citizens the belief that they are enjoying the dividends of democracy.

Revenue Allocation and Constitutional/Constituency Projects

The Constitution proves as it relates to constitutional revenue, as follows:

The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigerian Police Force, the Ministry or Department of Government charged with responsibility for Foreign Affairs and the Residents of the Federal Capital Territory, Abuja.⁴⁴

The above provision on revenue mobilization in Nigeria is a clear indication that generation of fund for use by the whole tiers⁴⁵ of Government in Nigeria is a constitutional concern. It has been observed that:

The issue of revenue sharing in Nigeria came to a strong focus under the Richard's Constitution of 1946, which granted internal autonomy to the Regions. This was necessary

⁴³ See Sec. 6(6)(c), 1999 Constitution of the Federal Republic of Nigeria. This austere clause is unnecessary in a setting where responsible governance is the panacea for credibility of and reliability on government.

⁴⁴ Sec. 162(1), 1999 Constitution.

⁴⁵ Sec. 162(3).

to enable the national and regional governments to undertake their functions and responsibilities. Subsequently, Nigeria witnessed the setting up of various ad-hoc revenue allocation commissions/committees to determine and recommend acceptable principles and formula for revenue sharing in the country to reflect exigencies in the Federation⁴⁶.

The revenue allocation commissions/committees that have existed in Nigeria before the coming into force of the 1999 Constitution have been chronologically listed as the Phillipson Commission⁴⁷; Hicks-Phillipson Commission⁴⁸; Chicks Commission⁴⁹; Raisman Commission 1964⁵⁰, Dinna Interim Review Committee⁵¹, Aboyade Technical Committee⁵² and Okigbo Commission⁵³.

Presently, the 1999 Constitution provides⁵⁴ for the establishment of the Revenue Mobilization Allocation and Fiscal Commission which is saddled with responsibilities which include the monitoring of revenue accruals into and disbursement from the Federation Account⁵⁵; preparing a new revenue allocation formula⁵⁶; fixing remuneration of political office holders⁵⁷; advising Federal and State Governments on fiscal efficiency and revenue generation⁵⁸.

The Constitution of Nigeria in its present form has painstakingly laid a solid revenue generation foundation for the government of Nigeria at whatever level: Federal, State or Local Government. However, it has adversely failed to promote the culture of responsibility whereby the governments by way of being directed by it provides certain essential amenities to the people to whom belongs the sovereignty⁵⁹. Leaving such essential provisions to the whims and caprices of whosoever is in authority to decide on whether or not those essential amenities should be provided leaves out a lacuna which accommodates corrupt practices in all the three arms of government.

⁴⁶. A.K. Bashir, *Minimizing Inter-governmental Conflicts in Taxing Powers and Distribution of Revenue in Nigeria*, unpublished, presented at the National Training Workshop on Revenue Mobilization Management and Budget Reforms/Implementation Issues for Sustainable National Development jointly organized by the Revenue Mobilization Allocation and Fiscal Commission and the Institute of Chartered Accountants of Nigeria (ICAN) Jos District at the Modotel, Enugu, July 8 – 11, 2008, p.14.

⁴⁷ *Ibid.*, 1946.

⁴⁸ *Ibid.*, 1951.

⁴⁹ *Ibid.*, 1951.

⁵⁰ *Ibid.*, 1964

⁵¹ *Ibid.*, 1966

⁵² *Ibid.*, 1977

⁵³ *Ibid.*, 1979

⁵⁴ See Sec. 153(1) (n)

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ S. 14(2)(a), 1999 Constitution.

Recommendations

Constituency fund should be paired with constitutional project and not with the emerging trend of giving money to legislators at whatever level for constituency project⁶⁰.

A comprehensive approach to development entails that a general development plan by the Federal government, State government or Local government with the attendant cost is made. Such a development plan shall, for example, make provisions for the construction of specified number of asphalt roads with certain diameter, distance and lifespan, pipe borne water; free education at all levels, specified number of boreholes for harnessing water, to mention but four. Then release of fund shall be made by the appropriate authorities to the relevant governments saddled with the responsibility of transforming the dreams into reality in their respective areas of authorities. A monitoring group comprising the legislators from the part of the Federation where the constituency project is to be cited, the traditional rulers of the area and some officials of the State and Local Governments should be set up by the Federal Government to closely monitor the execution of the project. This body shall be held responsible for the success or failure of such a project.

Conclusion

The 1999 Constitution of Nigeria on one hand laid a duty on the shoulders of all organs of government and all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of the Constitution on the Fundamental Objectives and Directives Principles of State Policy in Nigeria; on the other hand, by the provisions of section 6, sub-section (6) paragraph (c) removed the legal responsibility that is correlative of the legal duty. This constitutional stroke is the cause of irresponsibility and corruption in governance.

It is self-contradictory for a legal document to empower organs of government to collect revenue from a common pool known as the Federation Account but fails to state that expenditure of the revenue will include the categorization of major projects so essential to the people that without them government will mean little or nothing to the people with whom government has entered into a social contract.

Failure in carrying out a duty amounts to liability which could be remedied by payment of compensation or an act of specific performance. Where the liability is made to constitute gross misconduct, it then amounts to an impeachable offence which shall serve as an avenue of getting rid of those who have made their entrance into government an avenue to embezzle public fund meant for the common good of the people, which is a public dream. Therefore, it is long over due to remove the protection of section 6, sub-section (6), paragraph (c) of the 1999 Constitution in order to make Chapter Two of the said Constitution on Fundamental Objectives and Directives Principles of State Policy, justifiable. Presently, revenue allocation is

⁶⁰ Constituency project is not a constitutional term. It is a coinage that maintains a distance gap from the provision of the Constitution. This new phenomenon has no legitimacy whatsoever because it is not enabled either by the 1999 Constitution or an Act of the National Assembly. Even where such Act is floated, its survival of litigation is doubtful because it will go counter with the provisions of the Constitution on separation of powers and amounts to interference with executive functions.

settled by the Constitution; however, revenue utilization is not as settled. The only means of checking government expenditure is through Appropriation Acts or Budget Empowerment Acts which may or may not reflect the provisions of Chapter Two of the said Constitution and from which presently, derogation attracts no liability or sanction. A new revenue utilization policy is essentially needed to be provided by the Constitution whereby Chapter Two of its provisions shall be made justiceable; constitutional projects introduced; constituency projects abolished; budgeting not made yearly, henceforth, but made once to cover the life span of an administration and derogation from constitutional projects or budget provisions should be made a gross misconduct, except in a proven case of scarcity of fund. The consequence of this is that such gross misconduct shall be a legal basis for impeachment.

