



Fundamental Right to Property and Right to Housing in Nigeria: a Discourse

Akintunde OTUBU¹

Abstract: Housing is one of the basic needs of human kind. Given its quintessential relevance to the overall development of man and the State; the question is posed: whether there is a right to adequate housing in the citizen to warrant a demand from the State to fulfill this right; and whether there should be such a right? This paper sets out to examine the concept of Right as it relates to housing and enters into a discourse as to whether there is a fundamental right to housing under Nigeria law. A corollary to the above is to answer the question whether such a right should be cognizable under Nigerian law. In a doctrinal research approach, the paper concedes that housing is a prerequisite to optimal utility of man and the state. Unfortunately, right to housing does not enjoy the same ranking with civil and political rights for obvious reasons enunciated in the paper. The implication is that there is no enforceable right to housing under our law. Notwithstanding, the paper posits that it is desirable for the State to create an enabling environment for the realization of this right because of its multiplier effect on the individual and the State.

Keywords: right to housing, property, housing

1. Introduction

Housing, as shelter, is one of the basic needs of human kind. It is a financial investments and a significant component of the local, regional and national economy.² The importance of housing to man cannot be overemphasized; apart from giving protection from elements of nature and providing storehouse for personal possessions; housing in accordance with contemporary modern standards, must offer such infrastructure and services that would make dwellings conducive.³

1 LLB, LLM M. Phil BL, Lecturer; Department of Private and Property Law, Faculty of Law, University of Lagos, Akoka, 234-01, Lagos State, Nigeria. Tel.: +234(1) 493.2660-1, fax: .: +234(1) 493.2660. Corresponding author: bullet20042003@yahoo.com.

2 The definition of Housing K.O.R.E Enterprises, LLC 9/4/08 available online at: www.koreenterprisesllc.com/Housing_Market.ppt.

3 *Ibidem*.

Housing is fundamentally important to an individual's physical welfare as well as one's sense of self dignity and role in the community. Housing is critically important to the well being and health of children and families. Empirical data has proven the correlation between why certain children do not do very well in school why they lag behind their peers *vis-a-vis* the relationship with stable housing (Boehm & Schlottmann, 1999).

Given the quintessential relevance of housing to the overall development of mankind the question is post here whether there is a right to adequate housing in the citizen to warrant a demand by the citizen from the State to fulfill this right; and whether there should be such a right. An answer to this pertinent question is necessary at this point in order to appreciate the need for State intervention in this area. There are of course practical, cost-benefit reasons to advocate for a right to decent, affordable housing. For those living in inadequate housing conditions they are faced with myriad of problems; these include at a minimum, the multiple health and safety problems that arise from lead poisoning, rat bites, fires, asphyxiation (from poorly ventilated systems), communicable diseases, asthma, other forms of sickness, and electric shock, as well as the occasional dramatic event, such as the collapse of an entire building. Overcrowding, apart from the physical condition of the space, can produce or exacerbate stress and family tensions, as well as disease. Poor neighborhood conditions are often associated with crime and a lack of personal safety (Chester Hartman 1998)¹. A right to adequate housing is therefore a prerequisite to healthy living and the socioeconomic growth of man and the nation.

In the light of the foregoing this paper sets out to examine the concept of Right as it relates to housing and enters into a discourse as to whether there is a fundamental right to housing under Nigeria law. A corollary to the above is to answer the question whether such a right should be cognizable under Nigerian law. The paper thus sets out seriatim.

2. Concept of Right

Rights are entitlements (not) to perform certain actions or be in certain states, or entitlements that others (not) perform certain actions or be in certain states². When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion. According to J.S Mill (2002) “*to have a right, then, is, I conceive, to have something which society ought to defend me in the possession of*” (Mill, 2002, p. 54). Rights dominate most modern understandings of what actions are proper and which institutions are just. Rights structure the forms of our

1 The Case for a Right to Housing, Housing Policy Debate. Volume 9, Issue 2 (1998).

2 The Concept of Rights available at: <http://plato.stanford.edu/>. Accessed 29/01/08.

governments, the contents of our laws, and the shape of morality as we perceive it. To accept a set of rights is to approve a distribution of freedom and authority, and so to endorse a certain view of what may, must, and must not be done.

Discussions of rights are however ubiquitous, it is innate to man and society. One constantly hears things such as: Landlords have a right that their tenants pay their rents, Students have a right to be graded fairly, Animals have a right not to suffer merely to bring pleasure to humans, Abortion violates a fetus' right to life, and we violate the rights of future generations when we pollute the water. These statements assert that landlords, students, animals, fetuses, and future generations all have rights. Landlord, students, animals, fetuses and future generations do not seem to have much in common however. When one presses for clarity, it is very difficult to say precisely what a right is. (Rainbolt, 2006, p. XI)

What is it to have a right? The content of rights is a constantly evolving drama, as those lacking what they perceive as fundamental entitlements, together with their intellectual and political supporters, raise new issues, make new demands, and organize politically to assert and bring into being new elements to society's understanding and acceptance of what everyone should have.¹

Theorizing about Rights has a long history spanning more than 500 years (Edmundson, 2004). However, when it comes to contemporary discussions of Right, the beginning of wisdom is widely agreed to be the classification of juridical position developed by Wesley Newcomb Hohfeld (1913). Hohfeld was a legal scholar who sought to clarify the law in general and the concept of rights in particular. He introduced the terminology that has been adopted in virtually all contemporary discussions of the concept of rights. The reason for its virtually universal use is that Hohfeld's relations uncover and remove serious ambiguities in the term "right". They provide an essential pre-condition for thinking clearly about the subject. (Rainbolt, 2006, p. 1)²

Hohfeld noticed that even respected jurists confuse various meanings of the term *right*, sometimes switching senses of the word several times in a single sentence. He wrote that such imprecision of language indicated a concomitant imprecision of thought, and thus also of the resulting legal conclusions. In order to both facilitate reasoning and clarify rulings, he attempted to disambiguate the term *rights* by breaking it into eight distinct concepts. To eliminate ambiguity, he defined these terms relative to one another, grouping them into four pairs of Jural Opposites and four pairs of Jural Correlatives. Hohfeld argued that right and duty are correlative

1 See generally (Kramer, 2001, pp 28-95); (Kramer; Simmonds, & Steiner, 1998); (Louden, 1970, pp. 243-257).

2 See generally American Law Institute. *Restatement of the Law of Property*. St.Paul, American Institute Publishers (1936), (Cook, 1918). (Corbin, 1919), (Cullison, 1967), (Hohfeld, 1946). (Hohfeld, 1978), (Hohfeld, 1913), (Nyquist, 2002), (Perry, 1977), (Perry, 1980).

concepts, i.e. the one must always be matched by the other. If A has a right against B, this is equivalent to B having a duty to honor A's right. If B has no duty, that means that B has liberty, i.e. B can do whatever he or she pleases because B has no duty to refrain from doing it, and A has no right to prohibit B from doing so. Each individual is located within a matrix of relationships with other individuals. By summing the rights held and duties owed across all these relationships, the analyst can identify both the degree of liberty — an individual would be considered to have perfect liberty if it is shown that no-one has a right to prevent the given act — and whether the concept of liberty is comprised by commonly followed practices, thereby establishing general moral principles and civil rights.

His analysis is therefore premised on rights and corresponding duties without which what exist will either be liberty or privilege. Thus to say you have a right means you have a claim against the other party for the respect and enforcement of your rights. Since a right is enforceable at law it apposite to conclude that it is a claim against the whole world subject of course to any legal restriction imposed by the state.

This reasoning is at the foundation of the recognition, respect and enforcement of the fundamental human rights, particularly civil and political rights, found in the constitution of the various nations of the world. Civil and political rights are a class of rights and freedoms that protect individuals from unwarranted action by government and private organizations and individuals and ensure one's ability to participate in the civil and political life of the state without discrimination or repression.

They are usually classified as the first generation of rights which enforcement is premised on the government restraining from interfering with the citizen exercise of these rights.

However, many thinkers and activists argued that these first-generation rights were too narrow to define the scope of free and equal citizenship. They contended that such citizenship could be realized only by honoring an additional set of claims, including rights to food, shelter (housing), medical care, and employment. This second generation of economic 'welfare rights,' the argument went, helped to ensure that the political, economic, and legal rights belonging to the first generation could be made effective in protecting the vital interests of citizens and were not simply paper guarantees¹. (Cranston, 1967, pp. 43-51)

¹ Holmes and Sunstein have made the case that all of the first-generation civil rights require government to do more than simply "restrain the executive's own arm." It seems problematic to think that a significant distinction can be drawn between first and second-generation rights on the ground that the former, but not the latter, simply require that government refrain from interfering with the actions of persons. Moreover, even if some viable distinction could be drawn along those lines, it would not follow those second-generation rights should be excluded from the category of civil rights.

These welfare rights, conceptually known as Economic, Social and Cultural Rights concern how people live and work together and access basic necessities of life. They are based on the ideas of equality and guaranteed access to essential social and economic goods, services, and opportunities. They became increasingly a subject of international recognition with the effects of early industrialization and the rise of a working class. These led to new demands and new ideas about the meaning of a life of dignity. People realized that human dignity required more than the minimal lack of interference proposed by the civil and political rights (Okeowo, 2008).¹ Economic rights are normally thought to include the right to work, to an adequate standard of living, to *housing* and the right to a pension if you are old or disabled. The economic rights reflect the fact that a certain minimal level of material security is necessary for human dignity, and also the fact that, for example, a lack of meaningful employment or housing can be psychologically demeaning to the guaranteed right to life of man. It means therefore that one can only enjoy the constitutional right to life if his right to adequate housing is assured.

3. Right to Property

The right to property is the social-political principle that human beings may not be prohibited or prevented by anyone from acquiring, holding and trading (with willing parties) valued items not already owned by others. Such a right is, thus, inalienable and, if in fact justified, is supposed to enjoy respect and legal protection in a just human community. In the western hemisphere, the United States for example, property is a concept that is more associated with individual entitlement (Friedman, 1966) (Singer, 2005) or private assets that are individually owned, and it denotes group of rights inhering in citizen's relation to physical thing, as right to possess, use and dispose of it. As is commonly understood, the property rights are generally held by individuals, and as such the ownership by a social collective is deemed as something virtually unknown.² Under Anglo-Saxon legal tradition, the right of property, the right of life and the right of liberty are all deemed

The reason is that the relevant standard for inclusion as a civil right is whether a claim is part of the package of rights constitutive of free and equal citizenship. There is no reason to think that only those claims that can be "readily secured by legislation" belong to that package. And the increasingly dominant view is that welfare rights are essential to adequately satisfying the conditions of free and equal citizenship. (Holmes & Sunstein, 1999, p. 75)

¹ Electronic copy available at: <http://ssrn.com/abstract=1320204>. Accessed 12/10/09. See also: (Eide, 2008, pp. 299-318), (Yozo, 2008, pp. 8-30), (Sepulveda, 2003), (Mashood, 2007), (Baderin & McCorquodale, 2007, p. 5). Council of Europe, *European Social Charter (Revised)*, 3 May 1996. ETS 163. Available Online at: <http://conventions.coe.int/treaty/en/Treaties/Html/163.htm>[accessed 15/10/09].

² See *Cereghino v. State by and Through State Highway Commission*, 230 Or. 439, 370 P. 2d 694, 697.

fundamental, which are brought with people, as their inheritance, and no government could rightfully impair and destroy. (Siegan, 2001)

The right to property means a right of ownership¹ and ownership involves a bundle of rights – the right to use, sell, pledge, bequeath, and subject to some limitation, the right to destroy (Udombana, 2005). The concept of ownership could be likened to the Roman doctrine of dominion under which the *dominus* was entitled to the absolute and exclusive right of property in the land. (Burns, Cheshire & Burns, 1982, p. 26)

Primordially, the right to own private property is well recognized and acknowledged throughout the world. Many philosophers, jurists and commentators have highlighted the primacy of property rights for the orderly development and growth of the state². According to a commentator (Enshaw, 1973, p. 73) the right to private ownership of property is the most honorable of all fundamental rights in point of antiquity as the philosophical and economic theories on the origin and justification of the right are legion. Most religious thinking, to a varying degree, accept that private ownership of property is essential for the full expression of personality under the conditions of this life and therefore regards it as one of the basic personal rights³. In the words of Lord Camden C.J⁴,

“By the Laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence. If he admits the fact, he is bound to show by way of justification, that some positive law has empowered or excused him.”

The right to private property is recognized and acknowledged under International law, Regional laws and Treaties and National laws. The Universal Declaration of Human Rights Instrument⁵ provides that *“everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of*

1 Osborn Concise Law Dictionary.

2 The primacy of private property right is so much appreciated that it is believed that without this right the liberty of the citizen is meaningless.

3 The Anglican position may be seen in Article 38 of the Articles of Religion which reads “The Riches and goods of Christians are not common, as touching the right, title, and possession of the same, as certain Anabaptists do falsely boast. Notwithstanding every man ought, of such things as he possesseth, liberty to give alms to the poor according to his ability”. Modern Roman Catholic doctrine is largely reflected in Article 43 of the constitution of Eire based on the teaching of Aquinas “*Sic habet homo naturale dominium exteriorum rerum quia per nationam at voluntatem potestuti rebus exterioribus ad suam utilitatem quibus propter se factis*” (Thus has man natural authority over external things because through reason and will he can use external things to his benefits as if he had made them for himself).

4 Carrington, 1765, 1030-1067.

5 See Universal Declaration of Human Rights adopted Dec 10 1948, G.A. Res. 217 A (III) GAOR 3rd session (Resolutions, Part 1) of 71, UN Doc. A/810 (1948) Reprinted in 43 A.J. I.L. 127 (Supp. 1949)

his property”¹. The African Charter on Human and People’s Right² also recognized the existence and preservation of private rights to property. In Article 14, it is provided that the right of individual to property shall be guaranteed and it may not be encroached upon except in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

At the national level, the 1999 Constitution of Nigeria³ provides that “*subject to the provision of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria*”⁴. Section 44 provides further that no such private property shall be compulsorily acquired by the state except on payment of prompt compensation and a right of access to court or tribunal for the determination of his interest in the property and the adequacy of compensation paid.⁵

It is obvious from the foregoing that the right to own property including housing is not in doubt and same can be enforced against the state and any other person; but does this also translate to an enforceable right to adequate housing in the citizen against the state? This question is addressed in the next segment of this thesis.

4. Right to Housing

The right to housing is a component of the right to property. As said earlier, having a secured place to live is one of the fundamental elements for human dignity, physical and mental health and overall quality of life, enabling one’s development (Udombana, 2005, p. 79). The human right to adequate housing, which is a derivative of the right to an adequate standard of living⁶ and human dignity⁷, is of central importance for the enjoyment of all economic, social and cultural rights⁸.

1 Ibidem. Art.17 of The American Declaration of the Rights and Duties of man 1948. Art 23 providing that every person has a right to own such private property as meets the essentials needs of decent living and helps to maintain the dignity of the individual and his home.

2 Adopted June 27 1981 and came into force on October 21 1986 OAU Doc. AU/CAB/LEG/67/3/Rev 5 reprinted in 21 I.L.M 58 (1982)

3 Cap C23 Laws of Federation of Nigeria 2004. The text of the Constitution is available online: ICFNL, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> accessed on 24/07/09.

4 *Ibidem*, section 43.

5 The provision of the Land Use Act 1978, an existing law of constitutional status has curtailed the immutability of this provision on compensation and access to court. Further discussion on this issue is reserved to later part of this thesis when discussing Land use policy.

6 See International covenant on Economic Social and Cultural Right, adopted 16/12/66 G.A Res 2200A (XXI), UN GAROR 21st session Supp. No. 16 UN Doc. A/6316 (1996) U.N. T.S. 993 came into force 3/01/76 (ICESCR).

7 Section 34 Constitution of Federal Republic of Nigeria 1999.

rights¹. It connotes the right to live somewhere in security, peace and dignity². The right is enjoyed without any form of discrimination and assured to all persons irrespective of income or access to means of production³.

The right to adequate housing is recognized internationally. Adequate housing is enshrined as a fundamental element of the right to an adequate standard of living and as a basic human right in several international instruments. These include the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), International Convention on the Elimination of All Forms of Racial Discrimination (1965), International Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention on the Rights of the Child (1989), Convention relating to the Status of Refugees (1959), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)⁴. The issues related to housing rights have also received wide attention over the last half century since the proclamation of the Universal Declaration of Human Rights in 1948, in a number of other international declaration and policy recommendations. These include the Declaration of the Rights of the Child (1959), International Labour Organisation Recommendation No. 115 concerning Worker's Housing (1961), Declaration on Social Progress and Development (1969), Declaration on the Rights of Disabled Persons (1975) Vancouver Declaration on Human Settlements and Action Plan (1976), UNESCO Declaration on Race and Racial Prejudice (1978), ILO Recommendation No. 162 concerning Older Workers (1980), Declaration on the Right to Development (1986), the Global Strategy for Shelter to the Year 2000 (1988), Agenda 21 (1992), Vienna Declaration and Programme of Action (1993), Copenhagen Declaration and Programme of Action (1995), Beijing Declaration and Platform for Action (1995), and most importantly, the Istanbul Declaration on Human Settlements and the Habitat Agenda (1996)⁵.

Article 25 of the Universal Declaration on Human Rights declares that "*every man has the right to a standard of living adequate for the health and wellbeing of*

1 Committee on Economic, Social and Cultural Rights: "The Right to Adequate Housing (Art. 11 of the covenant). "General comment No 4 in committee on economic, social and cultural rights: Reports on the sixth Session. ECOSOC official records 1992.

2 *Ibidem*, art. 23.

3 See ICESCR Art. 2 (2) providing that states parties must guarantee the right enacted in the covenant without discrimination of any kind.

4 UNCHS (Habitat) Position Paper on Housing Rights March 2001.

5 Centre on Housing Rights and Evictions (COHRE). 1998. "Forced Evictions", September Housing Rights Page 3 of 21 28/03/2001.

himself and his family, including food, clothing, housing¹ and medical care and necessary social services².

In the International Convention on the Elimination of All Forms of Discrimination Against Women, Article 14(2)(h) states:

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right; (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.³

The Refugees rights to housing is also recognized and respected at international level as Article 21 of the International Convention Relating to the Status of Refugees⁴ states:

1 Emphasis supplied.

2 See also Principle 7(6) of Agenda 21, which recognize that access to life, health and shelter is essential to a person's psychological and economic wellbeing and should be a fundamental part of the national and international action. See also Article 11(i) of the international covenant on Economic Social and Cultural Rights (1996) which provides that parties to the covenant shall "recognize the right of everyone to an adequate standard of living for himself and his family including----clothing and housing.

3 International Convention on the Elimination of All Forms of Discrimination Against Women (1979) Adopted by United Nations General Assembly resolution 34/180 on 18 December 1979, entered into force on 3 September 1981. State compliance with the Convention is monitored by the UN Committee on the Elimination of All Forms of Discrimination Against Women.

4 International Convention Relating to the Status of Refugees (1951) Adopted on by United Nations General Assembly resolution 429(V) on 28 July 1951, entered into force on 22 April 1954. See also; Istanbul Declaration (1976) Adopted by the second United Nations Conference on Human Settlements in 1996 Paragraph 8 of which states: We reaffirm our commitment to the full and progressive realization of the right to adequate housing as provided for in international instruments. To that end, we shall seek the active participation of our public, private and non-governmental partners at all levels to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families. Habitat Agenda (1996) Adopted by the second United Nations Conference on Human Settlements in 1996, particularly Paragraph 61 which states that: Since the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing has been recognized as an important component of the right to an adequate standard of living. All Governments without exception have a responsibility in the shelter sector, as exemplified by their creation of ministries of housing or agencies, by their allocation of funds for the housing sector and by their policies, programmes and projects. The provision of adequate housing for everyone requires action not only by Governments, but by all sectors of society, including the private sector, non-governmental organizations, communities and local authorities, as well as by partner organizations and entities of the international community. Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing. These actions include, but are not limited to: --- (c) Adopting policies aimed at making housing habitable, affordable and accessible, including for those who are unable to secure adequate housing through

“As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.”

At the regional level the African Charter on Humans and Peoples Right provide in Article 14 that the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws, and in Article 16 (1) that *“Every individual shall have the right to enjoy the best attainable state of physical and mental health”*¹. Though the provision on right to adequate housing is not given explicit recognition in the African Charter on Humans and Peoples Right, but the African Commission gave a robust and extremely important interpretation to the provision of the charter to include a right to adequate housing. In the *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights V Nigeria*.²

it was held that,

“Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family, forbids the wanton destruction of shelter because when housing is destroyed, property, health and family life are adversely affected. It is thus noted that the combined effect of Article 14, 16 and 18 (1) reads into the Charter a right to shelter or housing...”

It is worthy to note that the pronouncement in the above case would exert a strong persuasive flavor on Nigerian courts, particularly with the preeminence status

their own means, by, *inter alia*: (i) Expanding the supply of affordable housing through appropriate regulatory measures and market incentives; (ii) Increasing affordability through the provision of subsidies and rental and other forms of housing assistance to people living in poverty; (iii) Supporting community-based, cooperative and non-profit rental and owner occupied housing programmes; (iv) Promoting supporting services for the homeless and other vulnerable groups; (v) Mobilizing innovative financial and other resources — public and private — for housing and community development; (vi) Creating and promoting market-based incentives to encourage the private sector to meet the need for affordable rental and owner-occupied housing; (vii) Promoting sustainable spatial development patterns and transportation systems that improve accessibility of goods, services, amenities and work.

1 African charter on human and people’s rights. Adopted by the eighteenth Assembly of Heads of State and Government, June 1981 - Nairobi, Kenya.

2 Reported in 15th Annual Activity Report of the African Commission on Humans and People Rights 2001-2003 available at [http:// ww.archpr.org/15th_Annual_Actiitiy__ Report _____AHG. pdf](http://ww.archpr.org/15th_Annual_Actiitiy_Report_____AHG.pdf).

accorded the African Charter within Nigerian law as espoused in the case of *Fawehinmi V Abacha*¹.

5. Right to Housing in Nigeria

It is trite that the 1999 Constitution of Federal Republic of Nigeria recognized, within legal limits, the individual private rights to property particularly land and its resources². It provides in section 43 that, “*Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria*” and goes on to protect the sanctity of the right by providing in section 44 that “*No movable property or any interest in immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for purposes prescribed by law that among other things: requires the prompt payment of compensation and ensures parties access to the court for the determination of his interest in the property and the amount of compensation payable*”³. The constitution did not however extend such right to include a right to adequate housing.

It is true that the constitution recognized the need to provide houses and shelter for the citizen as it provides in Chapter II of the Constitution bothering on the Fundamental Objectives and Directive Principles of State Policy⁴ that “*the state shall direct its policies towards ensuring -----that suitable and adequate shelter,---- are provided for all citizens*”⁵. This is a laudable and unprecedented provision in the anal of constitutional law making in Nigeria, as it sets specific agenda and policy directives to the operators of the constitution and other State agencies. The Directive Principles are just like a polestar that provides direction. Their basic aim is to persuade the government to provide social and economic justice in all spheres of life, keeping in view its limited material resources. The provision aggregates the feelings, aspirations and expectations of the citizens in governance and affords a measure against which government actions can be tested.

1 (1996) 9 NWLR (Pt 475) 710 CA.

2 Section 43 1999 Constitution of Nigeria.

3 Section 44 1999 Constitution of Nigeria.

4 Directive Principles of State Policy are in the form of instructions/guidelines to the governments at the center as well as states. Though these principles are non-justiciable, they are fundamental in the governance of the country. The idea of Directive Principles of State Policy has been taken from the Irish Republic and Indian constitutions. They were incorporated in our Constitution in order to provide economic justice and to avoid concentration of wealth in the hands of a few people. Therefore, no government can afford to ignore them. They are in facts, the directives to the future governments to incorporate them in the decisions and policies to be formulated by them.

5 Section 16(2) d the 1999 Constitution of Federal Republic of Nigeria.

However, laudable as the provision was, it is non-justiciable and cannot be subject of an enforceable right before the courts¹. In fact the same constitution confirmed the non-justiciability of the provision when it provides in section 6(6)(c) that

“the judicial powers vested in accordance with the foregoing provisions of this section 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 judicial decision is in conformity with the Fundamental Objectives and Directive Principle of State policy set out in Chapter II of this Constitution”²

The non-justiciability of this provision has therefore made nonsense the acclaimed right to shelter as provided by the United Nations Charter on Universal Declaration of Human Right 1948 and other international Treaties and conventions on human right to housing within the Nigerian Corpus Jurisprudence. The only positive purpose of this provision lies in its altruistic value as a reminder to the state of the need to provide shelter for the citizen, and perhaps a measure of performances of government policy in the area of providing shelter for the people³.

It should be appreciated that the right to housing does not mean and should not be taken to mean that the government must provide houses for every citizen; that will be a near impossibility, since a state’s resources are limited relative to social needs (Udombana, 2005, p. 77). The right to housing however, means that the government must provide the socio-economic and political environment adequate for the realization of that right and must adopt legislative and other measures to prevent any violation to individual’s right to adequate housing (Onyekpere, 1997, pp. 44-45).

Given the present state of the law in Nigeria vis-à-vis international legal regime on the subject and the primary importance of housing to effective and efficient enjoyment of other fundamental rights, should there be clamor for the creation, enjoyment and enforcement of right to adequate housing under Nigeria law? Put

1 See Section 6(6) C of the 1999 Constitution of Federal Republic of Nigeria. See also (Olubunmi, 1881, p. 218). See generally Akande, 1999 with Introduction to the Nigeria Constitution.

2 Constitution of Federal Republic of Nigeria 1999.

3 See however the opinion of Solomon T. Ebobrah in *The Future of Economic, Social And Cultural Rights Litigation In Nigeria* CALCALS Review of Nigerian Law and Practice Vol. 1(2) 2007 where he contends that even though it ousts the jurisdiction of the courts with respect to its Chapter II, the Nigerian Constitution does not prohibit justiciability of social, economic and cultural rights and such rights can be litigated upon, depending on the normative basis chosen by a prospective litigant. And further submitted that that the African Charter on Human and Peoples’ Rights constitutes a veritable normative framework for the realization of certain socioeconomic rights in Nigeria and that a claim brought under this Charter can be vindicated either before the national courts in Nigeria or the ECOWAS Community Court of Justice.

differently, can section 16(2) of the Constitution of Nigeria 1999 be made justice able and or should it be made justiciable in our courts?

On the first leg of the question, the cases of the *Social and Economic Right Action Centre and the Centre for Economic and Social Right V Nigeria*, and *Fawehinmi V Abacha* would seem to answer the question as to justifiability of the right to housing in the affirmative. While the former case extended the rights provided under the African Charter to include right to housing, the latter case highlighted the superiority of international instrument over local legislation where there is conflict in their provisions. However, whether the foregoing argument is immutable when the conflicting legislation in question is the constitution of the country remains a moot point. That is, can the provisions of an international instrument to which a state party subscribe over-ride the express constitutional provision to the contrary? Our humble submission on this is negative; this is premised on the fact that the constitution remains the grundnorm to which all other laws in the State must be subjected for their validity. The conclusion, that, the constitution is superior to any other law and therefore not subject to it, is well founded in international law and practice.

It is however arguable that the provisions of the Chapter II of the constitution though not in the nature of positive, rights it has close affinity and relationship with fundamental rights. This is because fundamental Rights and Directive Principles are complementary and supplementary to each other. Whereas the Fundamental Rights establish political democracy, the Directive Principles establish economic and social democracy.

No government can afford to ignore them while formulating its plans and policies as it is responsible for all its actions to the people in general. Although there is no legal sanction behind these principles, the ultimate sanction lies with the people. The people with their opinion will never let the ruling party acquire power again if it fails to adhere to these guiding principles. Thus, our Constitution aims at bringing about a synthesis between Fundamental Rights and Directive Principles of state policy. Together, they form the core of the Constitution.

It has also been argued that the constitution does not preclude the enforcement of the socio-economic and cultural rights (including right to adequate housing) or the enactment of legislations to enforce these rights. In the words of Ebobrah (2007, p. 48): “*the most essential argument in favour of justiciability of socio-economic rights in Nigeria is that contrary to the widely held belief, a clear reading of the relevant provisions of the Constitution will show that the courts are not prohibited from entertaining cases claiming socio-economic rights. Section 6(6)(c) does not appear to remove the right of the legislature to make laws to translate the contents of chapter II into law subjective rights. And if the legislature should do so, nothing in the Constitution removes the right of access to a court for the enforcement of*

such a right just as nothing removes the competence of a court from entertaining such a case”.

Citing Uwaifo JSC¹ he submitted that ‘the Constitution itself has placed the entire Chapter II under the Exclusive Legislative List. ... It simply means that all ... Principles need not remain mere or pious declarations. It is for the Executive and the National Assembly, working together; to give expression to any one of them through appropriate enactment as occasion may demand.’ This is a sound academic view-point but since no law has been enacted ‘to give expression to any one of them’, the enforceability of these rights today remains with future legislations.

However, should that be the end of the clamor for a justiciable right to housing? Shouldn’t there be minimum benchmark or standards for the recognition of this right under our law? It has been argued by Viljoen that rights of a socio-economic character may be hidden in what we know as civil and political rights and it is possible to interpret civil and political rights in a manner that enhances the realization of socio-economic rights.² This reasoning is at the root of the decision in the Indian case where the Supreme Court elaborated at great length on the right to adequate housing, shelter and livelihood as part of the all-encompassing Right to Life under Article 21 of the Constitution³.

The argument in this case is faultless as it has long been established that there is a correlation between adequate housing and the right to life and healthy living. Thus so far as the right to life is constitutionally guaranteed anything that will assure the realization of this right ought and should be protected and guaranteed.

The best example of the recognition of the right to adequate housing as a fundamental right is to be found in Section 26 of the constitution of South Africa, which provides that: “*Everyone has the right to have access to adequate housing, the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right, and that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.*”

The South African constitution also provides that the government has the obligation to respect, to protect and to realize the right to adequate housing, which applies to the executive, legislative and judicial branches and to all levels of

1 A.G. Ondo State v A.G. Federation, (2002) 9 NWLR (Pt 772) 222 at 391.

2 Your paper is “The justiciability of socio-economic and cultural rights: Experience and problems”, unpublished paper presented at the 2006 Good Governance Programme at the University of Pretoria). On file with the present author.

3 The landmark case of *Olga Tellis v. Bombay Municipal Corporation (BMC)* 1985 (3)SCC 545 where J. Chandrachud held that the eviction of the pavement or the slum-dweller not only means his removal from the house but the destruction of the house itself. And the destruction of a dwelling house is the end of all that one holds dear in life.’

government¹. The current South African land law promotes greater security of tenure by subjecting evictions of land occupiers to rigorous due process qualifications. Moreover, instead of the previous common-law rules that had traditionally upheld eviction suits in favor of owners and other formal rights holders, current jurisprudence is much more context-specific, balancing the substantive interests of the respective parties, and explicitly taking into account considerations of social, economic, and historical fairness and equity².

In France, the right to adequate housing was first recognized in the 1990 law on the right to adequate housing. This law, in its first article, stipulates that “guaranteeing shelter constitutes a duty of solidarity for the entire nation”. A law against forced evictions adopted in 1998 also incorporated the right to adequate housing as a fundamental right, and the Constitutional Council, the highest French court, has recognized that the right to adequate housing is a goal having constitutional status³.

In view of the enormous importance and relevance of housing to the overall development of the individual and the nation generally, the law in Nigeria should provide some regulatory and administrative mandatory provisions and directives towards giving teeth to the provisions of section 16(2) d of the 1999 constitution.

While it is agreed that the state cannot directly provide houses for every citizens, efforts should be geared towards addressing those issues that impedes delivery of houses to the majority of the citizen. In particular, the state should evolve a legislative regime that ensures and enhances availability of and access to land. A good, efficient and effective land policy will not only make land available and accessible, but would also engender the development and growth of a robust mortgage financing system in the economy.

Also, a good land policy administration would facilitate the growth in other areas of housing sector of the economy particularly the building materials industries. Short of recommending the creation of an enforceable right to housing, because of its impracticability in a capitalist economy, the law should provide a foundation towards realizing the constitutional aspiration expressed in section 16(2) d. This the law should do through the provision of a robust policy and administrative goals in the housing sector of the economy and taping from the experiences of other countries cited above, particularly the South African provision that no one can be

1 See Sections 7 & 8 of Constitution of the Republic of South Africa, 1996.

2 See AJ van der Walt, *Exclusivity of Ownership, Security of Tenure, and Eviction Orders: A Model to Evaluate South-African Land-Reform Legislation*, 2002 J. South African Law 254, 255.

3 THE RIGHT TO HOUSING a fundamental human right affirmed by the united nations and recognized in regional treaties and numerous national constitutions brochure prepared by christophegoly, advisor to the united nations special rapporteur on the right to food and meliközden, director of the cetim's human rights programme and permanent representative of the cetim to the united nation.

evicted or displaced without an order of the court¹. With such provision in the constitution of Nigeria the onus is placed on the government to justify before the court *a-priori*, any action tending to encroach on citizens right to housing by assuring their rights and accessibility to land.

6. Conclusion

It is conceded that housing is a prerequisite to optimal utility of man and the state, particularly with respect to the socioeconomic well-being of the individual, family and the state. However irrespective of this importance, the right to housing does not and cannot possibly enjoy the same ranking equal to the civil and political rights for obvious reasons as enunciated in the paper. Be that as it may, it is desirable for the State to create an enabling environment for the individual realization of this right because of its ripple and multiplier effect on the wealth and health of the State. It is therefore recommended that the State should endeavor to provide the enabling environment in line with the spirit enshrined in chapter 2 of the 1999 constitution of Nigeria as amended in order to ensure the realization, enjoyment and enforcement of this right to housing as envisaged in all international treaties on the subject. Towards this end the State should put in place a law against unjustifiable eviction and wanton destruction of dwellings.

7. References

Books

- Akande, J (2001). *Introduction to the Nigeria Constitution 1999*. Lagos: Spectrum.
- Baderin, M. A. (2007). *Economic, Social and Cultural Rights in Action*. NY: Oxford University Press.
- Bird, R. Osborn Concise Law Dictionary.
- Cranston, M. (1967). "Human Rights: Real and Supposed," in D.D. Raphael (ed.), *Political Theory and the Rights of Man*. Bloomington, Indiana U.P.
- Burns, E.H. (1982). Cheshire & Burns *Modern Law of Real Property*. London sweet & Maxwell
- Edmundson, W. (2004). *An Introduction to Rights (Cambridge Introductions to Philosophy and Law)* Cambridge.
- Enshaw, E. (1973). *The Right to Private ownership in Fundamental Rights*. A volume of Essays Edited by J.W Bridge all Sweet and Maxwell.
- Hohfeld, W. (1946). *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, Yale University Press

¹ Brian Ray: Occupiers of 51 Olivia Road v City of Johannesburg: Enforcing the Right to Adequate Housing through "Engagement" available at <http://hrhr.oxfordjournals.org/cgi/content/full/ngn025?ijkey=WhA0qNJYpLZZAp&keytype=ref>. accessed 27/06/2008

- Hohfeld, W (1978). *Fundamental Legal Conceptions*. Arthur Corbin, ed. Westport, Conn., Greenwood Press.
- Holmes, St. & Sunstein, Cass (1999). *The Cost of Rights*. Norton New York.
- Kramer, M. (2001). *Getting Rights Right in Rights, Wrongs, and Responsibilities* ed. Kramer. M London: Macmillan.
- Kramer, M.; Simmonds, N. & Steiner, H. (1998). *A Debate Over Rights*. Oxford University Press.
- Mill, J. (2002). *Utilitarianism*. Sher, G. (ed.), Indianapolis: Hackett.
- Rainbolt. G. (2006). *The concept of Rights*. Springer (The Netherlands)
- Singer, J. (2005). *Introduction to Property (2nd ed)*. Aspen.
- Udombana. J. (2005). Weighted in the Balances and Found Wanting. "Nigeria's Land Use Act and Human Rights" in Smith (ed.) *Land Use Act 25years After* Unilag Press.
- *** Centre on Housing Rights and Evictions (COHRE). 1998. "Forced Evictions", September Housing Rights 28/03/2001.
- *** American Law Institute (1936). *Restatement of the Law of Property*. St. Paul: American Institute Publishers.
- *** Constitution of Federal Republic of Nigeria 1999
- *** Constitution of the Republic of South Africa, 1996.

Articles

- Akande, J. (2000). Fundamental Objectives and Directive Principles of State Policy within the Framework of a Liberal Economy 2000; Vol. 4, *THE ADVOCATE: A Journal of Contemporary Legal Issues*.
- Baderin, M. A. & McCorquodale, R. (2007). The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development in *Economic, Social and Cultural Rights in Action*. New York: Oxford University Press Inc., p. 5.
- Boehm, P. & Schlotmann, A. (1999). Does Home Ownership by Parents Have An Economic Impact on Their Children? *Department of Finance*, University of Tennessee, Knoxville.
- Cook, W W. (1918). Hohfeld's Contribution to the Science of Law, 28 *Yale Law Journal* 721.
- Corbin, A. (1919). Legal Analysis and Terminology, 29 *Yale Law Journal* 163.
- Cullison, A. (1967). A Review of Hohfeld's Fundamental Legal Concepts, 16 *Cleveland-Marshall Law Review* 559.
- Ebobrah S. T. (2007). The Future of Economic, Social and Cultural Rights Litigation in Nigeria *CALCALS Review of Nigerian Law and Practice*. Vol. 1(2).
- Eide. A. (2008). Economic, Social and Cultural Rights as Human Rights, *Human Rights: Critical Concepts in Political Science*, Vol. 2, pp. 299-318.
- Emelonye, Test of progressive realization of economic, social and cultural rights in Nigeria (1990-1999 Budget Analysis) (2001) *HURILAWS*, Lagos.
- Feinberg, J. (1970). The Nature and Value of Rights in *Journal of Value Inquiry*, 4: 243-257.
- Friedman, L. (1966). The Law of the Living, the Law of the Dead: Property, Succession and Society. *Wis. L. Rev.* 341-342.

- Hartman, C. (1998). The Case for a Right to Housing' *Housing Policy Debate*, Volume 9, Issue 2.
- Hohfeld, Wesley (1913). Some Fundamental Legal Conceptions as Applied in Legal Reasoning in *Yale Law Journal* 16.
- Ibe, S. (2007). Beyond justiciability: Realising the promise of socio-economic rights in Nigeria'1 *African Human Rights Law Journal* 225.
- Idowu, A. A. (November, 2008). Human Rights, Democracy and Development: The Nigerian Experience, Issue 8: *Research Journal of International Studies*.
- Louden, R. (1983). Rights Infatuation and the Impoverishment of Moral Theory in *Journal of Value Inquiry*, 17: 87-102.
- Nyquist, C. (2002). Teaching Wesley Hohfeld's Theory of Legal Relations, *Journal of Legal Education*.
- Okeowo A. Economic, Social and Cultural Rights: Rights Or Privileges? Electronic copy available at: <http://ssrn.com/abstract=1320204>. Accessed 12/10/09.
- Okere, O. (1983). Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution. *International & Comparative Law Quarterly*, 32, pp. 214-228.
- Omote, R. (2009). The 1999 Constitution and the Nigerian polity in *The Guardian Newspapers* Tuesday, December 29.
- Onyekpere, E. (1997). The Right to Adequate Housing – The Concept of Legal Security of Tenure 5(2) *Hum Rts. L & Practice* 44-45.
- Perry, Thomas (1980). Reply in Defense of Hohfeld. Vol. 37 *Philosophical Studies* 203.
- Perry, Thomas (January 1977). A Paradigm of Philosophy: Hohfeld on Legal Rights, 14 *American Philosophical Quarterly* 14.
- Sepulveda, M. (2003). The nature of the obligations under the International Covenant on Economic, *Social and Cultural Rights*, Vol. 18, Antwerp Intersentia Publishers.
- Singer, J. (1982). The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld, *Wisconsin Law Review* 975.
- Viljoen, F. The justiciability of socio-economic and cultural rights: Experience and problems. Unpublished paper presented at the 2006 Good Governance Programme at the University of Pretoria.
- Walt, A. J. van der: Exclusivity of Ownership, Security of Tenure, and Eviction Orders: A Model to Evaluate South-African Land-Reform Legislation, 2002 *Journal South African Law* 254, 255.
- Yozo, Y. (2008). Reflections on the future of economic, social and cultural rights, Human Rights: *Critical Concepts in Political Science*, Vol. 2, pp. 8-30.

Cases

- A.G. Ondo State vs A.G Federation, (2002) 9 NWLR (Pt 772) 222.
- Cereghino vs State By and Through State Highway Commission, 230 Or. 439, 370 P.2d 694, 697.
- Entick vs. Carrington (1765) 19 86, Tr 1030.
- Olga Tellis vs Bombay Municipal Corporation (BMC) 1985 (3)SCC.
- Olubunmi Okogie V Attorney General of Lagos State (1981) 1 NCLR 218.