NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

10TH ANNIVERSARY LECTURE

SOCIAL SECURITY IN NIGERIA

Prof Ben. O. Nwabueze

NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

10TH ANNIVERSARY LECTURE

SOCIAL SECURITY IN NIGERIA

Prof Ben. O. Nwabueze

First Published 1989 by
Nigerian Institute of Advanced Legal Studies,
P.M.B. 12820
University of Lagos Campus,
Lagos, Nigeria.

Printed by Intec Printers Limited, Ibadan

Foreword

Annual Lectures are a routine in the Institute but the one for this year is of special significance. It is to commemorate the 10th Anniversary of the Institute. The Institute was formally inaugurated on March 17, 1979.

It has been our policy to alternate our annual lectures between foreign and local lecturers. This year, however, because of the unique nature of the occasion we have opted for a local talent.

We have picked on Professor B.O. Nwabueze, himself a Fellow of the Institute, to give the lecture. The subject chosen, "Social Security in Nigeria" is little known in the country because no government whether federal or state has seriously addressed itself to the issue as a conscious policy of eradicating want, poverty, destitution and disease from amongst the people. The author has carefully analysed Social Security, its meaning and the necessity for its implementation in a society that is ridden with hunger and disease.

One cannot but be impressed by the depth and characteristic thoroughness with which the author has treated the subject. He has interlaced his analysis with practical examples as well as statistics of happenings in other jurisdictions particularly developing countries such as Brazil, Uruguay, Ghana, Egypt, Ecuador, the Phillipines and Gabon to mention a few.

It is to be hoped that this lecture, by Professor Nwabueze, will draw new agencies such as the National Directorate of Employment (NDE) established in the wake of the country's Structural Adjustment Programme (SAP), into the realisation of the need to vigorously intensify social security, in all its ramifications, in order to alleviate the sufferings of the poor, the sick, the destitute and the unemployed in our society.

Lagos, Prof. M.A. Ajomo
August 28, 1989. *Director-General*

SOCIAL SECURITY IN NIGERIA

By

Ben. O. Nwabueze
Fellow, Nigerian Institute of Advanced Legal Studies

Being the Institute's 1989 Anniversary Lecture Delivered on 7th September, 1989

What Social Security is About

In this country, we hear so much about state security - a network of state security organisations (with frightening names like SSS) spread all over the place, large numbers of people detained without trial for reasons of state security and vast sums of money appropriated and spent to maintain it. State security looms so large not so much because the Nigerian state, its ordered existence, safety and territorial integrity, faces any real threat of danger, either from within or without, as because the personal safety of those in control of the state and the security of their offices are regarded by them as synonymous with the security of the state.

On the other hand, little or nothing is known, said or done about social security, about how to secure the individual against want, poverty, destitution, disease and idleness which may be thrust upon him by the varied hazards and vicissitudes of social life, notably loss or suspension of income or means of sustenance resulting from sickness, maternity, accident injury, invalidity, old-age, death of breadwinner or unemployment. There is no clear statement of policy regarding it and little is spent on it by the state, except in its capacity of employer. This neglect manifests itself in the hordes of blind people and other disabled persons who infest our cities, all begging for alms, in the lack of proper and adequate maintenance for children, and in the hunger and disease that constantly afflict the masses. Without protection from the state, the individual is left largely to his own devices in the fight against the risks of social life, a situation made worse confounded by the insecurity of life and property and by a harsh economic environment.

The pre-occupation with state security and the neglect of the economic security of the individual clearly manifest a distortion in our priorities. The economic security of the individual is or should be of far greater concern to the government and society than the security of the state, for, as the Constitution solemnly proclaims, "the security and welfare of the people shall be *the* primary purpose of government" (s.14(2)(b). Paradoxically, whatever threat of danger that faces the Nigerian state today stems more from the absence of economic security, particularly economic insecurity arising from mass unemployment. "Full employment", the Minister of Employment, Labour and Productivity, Abubakar Umar, has said, "is . . . our guarantee of stability, security and balanced economic development."[1] Our efforts should therefore be directed more at fighting the root causes of whatever threat there is to the security of the state.

Social security, then, is about the *social* protection, organised collective protection, of the individual against the economic consequences - loss or suspension of income, poverty, want, destitution, etc. - arising from certain social risks of life, viz

(i) sickness, i.e. a morbid condition due to non-occupational disease or injury which causes temporary or short-term abstention from work;

(ii) maternity, i.e. childbirth necessitating absence from work during prescribed periods before and after;

(iii) invalidity, i.e. "permanent or long - continuing and more or less total disablement resulting from non-occupational injury or disease";

(iv) death resulting from non-occupational injury or disease;

(v) old-age, i.e. the attainment of an age, varying from country to country, at which people commonly become incapable of efficient work and are therefore required to retire from regular employment;

(vi) employment or occupational injury or disease, i.e. injury or disease arising out of an employment, which results in death or in temporary or permanent incapacity to work;

(vii) unemployment, i.e. loss of employment for a person who, while capable of and available for regular employment in some occupation, is unable to find suitable employment.

The concept of social security is predicated upon a vision of a fairer arrangement of society in which the state assumes a general responsibility to ensure that the individual is secured by organised collective action against the risks of social and economic life. "It is based on solidarity (one of Africa's traditional fundamental values), which gives greater protection against certain social risks than individual effort to provide for the future. It works by pooling resources to provide benefits and services to the persons protected when a prescribed contingency takes place."[2] It is a matter to be tackled by general policy and under a general national scheme. The least required of the state is to regulate by law the way social security is organised and administered, but its responsibility should extend beyond this to involvement in its administration and, in appropriate cases, its funding in whole or in part.

Social security should be differentiated from social welfare services (including public health services). The latter are amenities provided by the state, either free or at a fee, for the population at large as part of its social responsibility to cater for the well-being of its citizens but no individual can claim them as an entitlement or right legally due to him from the state. In a situation, such as exists in Nigeria, where "there is one doctor for every 43,500 inhabitants and one hospital bed for every 1,580 inhabitants,"[3] one cannot begin to talk of individual medical care under the public health system as a right. Social security, on the other hand, is founded on the notion of individual right whereby cash benefits or medical care can, in the cases covered by it, be claimed as an individual entitlement. But the fact that social welfare services cannot, for reasons of limited resources, be claimed as an entitlement suggests that the range of persons and contingencies that can be covered by social security is necessarily limited, at any rate in countries whose economy is insufficiently developed. Social security and social welfare services need, however, to be co-ordinated for them to be able to complement one another.

Since we, all of us, must inevitably get old and must inevitably die some day, protection against these two risks is the most crucial one in determining whether or not social security exists in a country. It is not determined by the availability of protection against employment injury or disease, sickness, maternity and invalidity, important as protection in such cases undoubtedly is. This is because none of these latter has the inevitability and (apart from permanent total invalidity) the finality, the irreversibility and the long-term incapacitating effect of old-age or death. The majority of people go through life without ever suffering employment injury, invalidity or any serious illness such as will keep them away from work for more than a day or two while maternity is peculiar to women, and not even all women. A sick or injured person can get well again, perhaps, after a matter of days or weeks, a pregnant woman will deliver after nine months or so, but an old man cannot become young ever again nor can a dead person be brought back to life. Old-age also raises a presumption of invalidity, i.e. with advancing age, a person's capacity for work diminishes and the incidence of sickness increases. There is also the consideration that at a certain age, after many years of work, a person earns a right to rest on a pension as compensation for having worked hard in the past. It is for these reasons, among others, that in many countries, beginning with Denmark in 1891, old-age pension, financed exclusively by the state, is established by statute as a right for all persons, subject to various qualifying conditions, in particular a means test (universal pension as it is called).

It is appropriate to say something here about method of financing as this is important for an understanding of what social security is. Social security is financed from three main sources, viz. contributions by workers and employers based on wages or earnings and state financing. Usually, financing is by a combination of all three methods, a combination of workers' and employers' contributions or a combination of employers' and state financing; sometimes it is financed by the employer alone or by the state alone.

Financing by each of these methods is rationalised on different grounds. Workers' contribution is said to ground entitlement to benefits as a right and to participation in the management of a protection scheme; it forces upon workers an awareness about the uncertainty of the future and their responsibility to provide for it by compulsory saving. The employer's contribution is rationalised by reference to his part in the chain of causation of some of the risks against which protection is needed, particularly occupational injury or disease, unemployment, illness or invalidity associated with exertions at work and their wear and tear on the human system, as well as his responsibility for the maintenance of the human resources that sustain his enterprise and its profitability. There is also the gain from good labour relations with the resultant improvement in the quality of work and the stability of labour.

The state's contribution is predicated on its social responsibility to ensure that the individual, in particular the needy - the aged, the invalid, the blind or mothers with dependent children - and the economically weak class, is protected against the risks of life. Moreover, its actions and policies or lack of them are often a major contributory factor in the causation of some of the risks, e.g. unemployment and sickness. Also the financial intervention of the state is viewed as "a practical necessity where funds were insufficient or where low contributive capacity of certain categories of workers had to be remedied."[4]

Tripartite financing, while it is, and remains, the usual method of financing, raises the difficult question concerning the share of the cost to be borne by each of the three social partners. The guiding principle embodied in ILO Income Security Recommendation, No 67 of 1944 stipulates that "the cost of benefits, including the cost of administration, should be distributed among insured persons, employers and taxpayers, in such a way as to be equitable to insured persons and to avoid hardship to insured persons of small means or any disturbance to production."[5] This broad principle is then spelt out into specific stipulations which require that employers should be made to bear the entire cost of compensation for employment injury, that they should contribute not less than half the total cost of the other benefits and that the community should bear the cost of benefits which cannot be met by contributions, i.e. for example, the contribution deficits resulting from bringing persons into insurance when already elderly, the contingent liability involved in guaranteeing the payment of basic invalidity, old-age and survivors' benefits and the payment of adequate maternity benefit, the liability resulting from the extended payment of unemployment benefit when unemployment persists at a high level and subsidies to the insurance of self-employed persons of small means.[6]

The Social Security (Minimum Standards) Convention 1952 (No. 102) re-affirms the guiding principle in its article 71(1) which provides that the cost of benefits, including the cost of administration "shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected," but without going into specifics except only to say that the total contribution borne by workers must not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their wives and children.[7] But most important of all, it puts on the state the "general responsibility for the due provision of benefit," as well as responsibility to "take all measures required for this purpose."[8]

The specifications in ILO Income Security Recommendation (No. 67) have been considerably modified in the practice of different national systems. A 1984 ILO study reveals, for example, that in many countries the system imposing exclusive liability on the employer for occupational injury or disease is being replaced by joint financing from employers' and workers' contributions while in other cases workers' contribution is being reduced or altogether abolished. On the whole, payroll contributions (mainly employers') remain "globally the predominant source of social security financing."[9] At the same time, quite apart from the traditional forms of state participation, "there has been a significant development of the public financing of either the entire expenditure of one or several branches or of a specific class of benefits, in particular basic pensions. . . or benefits granted to certain categories of persons. . . or benefits granted subject to a means test."[10] Furthermore, instead of self-employed persons paying the combined employer's and worker's contributions as is envisaged by the Income Security Recommendation (No. 67),[11] their contribution is at a much reduced rate in many countries, with the state making up the difference.

Objectives of Social Security

Modern social security seeks to fulfil at least six objectives. The foremost, and one with which it began, is income security, that is to say the maintenance of income by cash benefits in the event of its loss or suspension caused by any of the contingencies mentioned above, with the object of creating among individuals and families "the confidence that their level of living and quality of life will not, in so far as possible, be greatly eroded by any social or economic eventuality."[12]

The machinery of social security thus seeks, irrespective of social contingencies, to make it possible for "the entire population, or at least the great majority, to benefit progressively from the same guaranteed maintenance of their standards and ways of life," which for long had been the privilege of a small minority.[13] It seeks to ensure that those who are well-off do not become poor, that the poor do not become destitute and that generally want is alleviated. The objective covers everybody earning an income - employees as well as self-employed workers, although in Africa and other developing countries it has largely been restricted to the former. With the exception of family allowances and other social assistance schemes, all social security cash benefit schemes - sickness benefits, maternity benefits, compensation for employment injury, old-age, invalidity and survivors' pensions, and unemployment benefits - are directed towards income maintenance.

A guaranteed maintenance of the individual's standard of life must include a guaranteed access to medical care, this being a basic need for human existence. Social security seeks to satisfy this need by providing for "protected persons the right, in fact and not merely in theory,"[14] to free or inexpensive individual health care covering medical attention by a doctor, essential pharmaceutical supplies, hospitalisation and, additionally, in case of employment injury, attention by a dentist, medical, surgical or dental supplies (other than pharmaceutical supplies), including prosthetic appliances and eyeglasses.[15]

It performs this role by means largely of social insurance. By pooling the risks and resources of persons covered, it is able to generate funds to provide these services for them. It meets the cost either by paying it direct to the source of medical care (which may be publicly or