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AN APPRAISAL OF THE FUNDAMENTAL HUMAN RIGHTS AND THE FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY PROVISIONS OF THE 1999 CONSTITUTION

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Abstract

The Fundamental Objectives and Directive Principles of State Policy and Fundamental Human Rights provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) have been subjects of discussion for several decades. Discussions on the two principles, without doubt, will continue to attract attention owing to their importance to the life, dignity as well as well-being of the citizens. This paper is yet another effort at finding the synergy between the two principles. It should be noted right from the outset that opinions express in this paper is not meant to be exhaustive, however, they will provide platform for further legal exposition on the beneficial relationship between the Fundamental Objectives and Directive Principles of State Policy and Fundamental Human Rights. This paper seeks to establish the synergy between the two principles. In this regard, this paper traces the origin of the fundamental human rights, the

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difference between fundamental rights and human rights. Furthermore, it itemizes the rights protected under the Fundamental Objectives and Directive Principles of State Policy. Importantly, the paper examines the legal framework for its enforcement and conclusively recommends that Fundamental Objectives and Directive Principles of State Policy should be placed in the same pedestal with Fundamental Human Rights to make its provisions justiciable in the Nigerian Courts.

Introduction

The starting point of discussion on any provisions of the Constitution is to examine the nature and source of the Constitution as legal instrument in a given country. Although, the history of constitution-making process in Nigeria dates back to colonial era.[1] This is however, not but the aim of this paper rather is to examine the provisions of Chapters II and IV of the 1999 Constitution.[3] Nevertheless, where it is absolutely necessary, reference shall be made to other provisions in the Constitution or other Statutes to illuminate the subject under discussion.

According to Professor Nwabuese,[4] 'the nature of constitution is determined essentially by the source of its authority. That is, whether or not it is original act of people, and secondly, by the justiciability of its provisions. That is, whether it is a law enforceable in the court or merely a political charter of government unamenable to judicial enforcement. One distinguishing feature of a Constitution is that it is always an act of the people made by them either directly in a referendum or through a convention or constituent assembly popularly elected for this specific purpose, subject or not to formal ratification by the people in a referendum.[5] Testifying to this fact, the preamble to the 1999 Constitution declared thus:

> WE THE PEOPLE of the Federal Republic of Nigeria: HAVING firmly and solemnly resolved: TO LIVE in unity and harmony as one indivisible and indissoluble

> Sovereign Nation under God dedicated to the promotion of inter African solidarity, world peace, international co-operation and understanding:
> AND TO PROVIDE for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principle of Freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people:
> DO HEREBY MAKE, ENACT AND GIVE TO OURSELVES the following Constitution.

The implication of the above declaration presupposes that the people of Nigeria through their representatives, who wrote the Constitution, provided clearly a Constitution for the country, by which they also spelt out the structures for a good government in the atmosphere of unity, harmony and welfare of all persons. Central to good government in the preamble to the 1999 Constitution is the principles of freedom, equality and justice.

A constitution is therefore a collection of the fundamental principles dealing with the organization of government, the distribution of powers among the organs of government and the rights of the citizens of a state. It is a body of fundamental principles according to which a state is organized. This, according to Nwabueze, emphasizes its character as essentially a political act, that is, political charter of government, consisting largely of declarations of objectives and directives principles of government and descriptions of the organs of government in terms that import no enforceable legal restrictions. Due to the non-justicable characteristics of some provisions of constitution, a new approach has been introduced into the Constitutions of most countries of the world, notably Cyprus, India, Pakistan, the Soviet Union, the French speaking African countries and Nigeria, making their provisions a combination of judicially enforceable restraints and the legitimation of needed non-justiciable governmental powers.

The importance of the Constitution as a political act is to direct and inspire governmental action and to bestow upon them the stamp of legitimacy in the atmosphere of unity and harmony'.[6] Accordingly, section 14 (1) (b) of the 1999 Constitution provides that '[t]he

security and welfare of the people shall be the primary purpose of government'. To this end, Melami[7] posited that government exists for the people, and not the people for the government. Any government that is not providing the primary needs of the people in terms of security and welfare has lost its constitutional rights to continue to stay in power and it should resign.

The main purpose of codification of the Fundamental Objectives and Directive Principles of State Policy and Fundamental Human Rights into the Constitution is to achieve the above objectives. However, lack of understanding of this purpose and intendment of these principles have led to several agitations and opinions when there appears to be derogation from their observance either by government or between individual *inter se*. To bring into fore the synergy between the Fundamental Human Rights and Fundamental Objectives and Directives Principles of State Policy provisions of the 1999 Constitution, this paper appraises Chapters II and IV of the 1999 Constitution starting with Chapter IV. Also for legal exposition, the paper discusses the different between fundamental human rights and human rights. The paper thereafter discusses the rights protected under the Fundamental Objectives and Directives Principles of State Policy. As a logical corollary, the paper examines the legal frameworks for the enforcement of the Fundamental Human Rights and concludes with suggestions on how to enhance the full realization of Fundamental Objectives provisions.

The Origin of Fundamental Rights

Fundamental rights have been called different names and at different times in history, these include divine rights, natural rights, natural justice, moral rights, human rights, democratic freedoms, constitutional rights, civil liberties and so forth.[8] The evolution of the concept of natural rights is traceable to the activities of the Greek and Roman philosophers of the Stoic school. The natural or human rights enunciated by these early philosophers have in the modern day been enacted and given prominent position in the Constitutions of many States as Fundamental Human Rights. The origin of the concept of Fundamental Human Rights as

understood in the modern day, for ease of reference, is examined in this paper under two periods namely: Early Period and Modern Period.

Early Period

According to Finch,[9] the history of the law of nature (natural law) begins as do many other fields of study, with the Greeks. In ancient Greece, the ideal of law had root in the affairs of man. Before Socrates (470-399BC), the Greek Philosophers were influenced by mystical and theological attitude. Their main objective was to explore the world of nature in order to discover the principles governing the universe, which explain its structure and operation. Natural law concept during the classical period benefited greatly from the input of Cicero. He described the universality and superiority of natural law, natural justice or human rights to positive law or man-made law in the following terms:

> It is for universal application, unchangeable and everlasting .... It is a sin to try to alter this law, nor is it allowable to try to repeal any part of it, and it is impossible to abolish it entirely. [10]

The Stoic philosophy believed in the equality of man given by the fact of their common possession of reason and of the capacity to develop and in attaining virtue notwithstanding differences in learning and ability. Another Greek writer, Seneca contended that virtue can be attained both by the slave and by the free, and that slavery affects the body only while the mind is of necessity the Slave's own and cannot be given into bondage. This line of thought is found in the work of many Roman Jurists at the height of absolutist imperial rule. Ulpian, another Greek writer, like Cicero, thought that no man is free unless he has a share in political authority. It was Ulpian, who, in company with other Roman Lawyers of the Empire, fought that whatever may be the position of the Slave in civil law; this is not so by natural law, for by it, all men are equal.[11]

In similar vein, Greek philosophers like Plato and Aristotle spent their lives reflecting on the problems of society and on how best to secure internal peace and stability for the ultimate protection of the individual in his quiet enjoyment of rights, liberty and freedom.[12] The

focus of Plato was the enthronement of government based on egalitarian society. However, when he failed to achieve the vision, he modified his original idea and conceived of a state ruled not by man but by law. His new line of thought emanated from the popular view of the Greeks that law is the strongest foundation upon which state stands and the manifestation of the people's ideas of justice and morality. As a people, the Greeks saw and hailed law as the strongest cohesive force in society, the great store house of community's past experiences and wisdom, and the surest measure of people's level of civilization and development.

During the early period, theory of natural law held sway. According to natural law theorists,[13] by natural law is meant objective moral principles which depend on the essential nature of the universe and which can be discovered by natural reason, and ordinary human law is only truly law in so far it conforms to these principles. At the close of the dark ages which followed the fall of Rome in 476 AD came the establishment of the Holy Roman Empire. From this period, the theory of natural law entered a new phase - middle. The early middle or medieval era was dominated by Christendom, which combined Christian ethics with the traditions of imperial Rome, and the philosophy of Greece. Among the philosophers of this period are Saint Thomas Aquinas,[14] Marsilus of Padua[15] and Bracton.[16]

The concept of natural law became popular in the middle ages for its conservatism, liberalism, religion and political convenience. With the fall of Rome, Europe was tearing apart between the dangers of tyranny, and anarchy. Man then sought for a law that was based on something more enduring of unity and as bullwark against chaos and arbitrariness of the sovereigns. The search for a principle by which the power of the state could be justified led to the evolution of the theory of the social contract which later became of greater practical importance. According to the notion of social contract, individuals had no right prior to the formation of organized society. Most of the propounders of the doctrine of social contract thought that power of the state is not only on account of the terms of the contract, but also for the simple reason that some rights, because of

the nature of man, are inalienable. The predominant medieval compromise was that the sovereign was above positive law but was bound by natural law.

From the 17th century, natural law assumed a more secular aspect. The period was marked by the 30 years war (1918-1948) in Europe, which was ended by the Treaty of Westphalia in 1648. Among the theorist of this time was Hugo Grotius, a Dutch. The main value of his idea of natural law this time was the value of individual as a human being. Grotius met the challenge by applying his own idea of the social contract, which has varied from one stage of history to another. He then used the social contract for a dual purposes namely – to found a basis for the doctrine of sovereignty, that is, to justify the absolute duty of all the people to obey the state and to create also a basis for legal bindingness in relations among states.

Under the social contract, the individual who make up a state are deemed to have surrendered some of their fundamental rights to the rulers in consideration of the latter's providing them with the benefits of an organised political life. That is, security and the basic amenities of life. By implication, if a stage reached when the ruler breaks the social contract, thus violating the rights of the individuals, the latter is deemed to be naturally entitled to revolt and rescind the social contract. In this sense, the new theory of natural law (i.e. the social contract) turned out to be a theory of revolution and produced the initial impulse for the political revolutions of the 18th century in America (1776), and in France (1789). This was aptly captured in the American Declaration of Independence of the 14th July, 1776 in following term:

> We hold these Truths to be self-evident, that all men are equal, that they are endowed by their Creator with certain inalienable rights e.g. right to life, right to liberty and the pursuit of happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed, that whenever, any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them

> shall seem most likely to affect their safety and happiness.[17]

Social contract viewed in this regard, presupposes that government functionaries hold power in trust for people, they are delegates of power and in line with the salient objective of the concept of delegation of power government is not in a stronger position than the people that appoint it. It is submitted that a donor of power, as a general rule, has the power to control the donee of power or delegate in the use of power delegated.[18]

The principle of natural law grew and developed from the medieval period and with the advent of political systems and modern government graduated into fundamental human rights now enshrined in the Constitution of most civilized countries of the world.

Modern Period

As mentioned above, fundamental rights or natural rights started as part of natural law conceived and formulated by Greeks and Roman philosophers of the Stoic school, Theologians and other through ages. The principle of natural law or natural rights, which later metamorphosed into social contract was recognized by the philosophers of the early period. Its codification as part and parcel of constitutional provisions received wider acceptance in the nineteenth and twentieth centuries when it became part of the law of nearly all European States. For instance, Sweden adopted it in 1809; Spain in 1812; Norway in 1814; Belgium in 1831; Russia in 1847; the kingdom of Sardinia in 1848; Denmark in 1849; Switzerland in 1874. The Constitution of Liberia in 1847 opened with a Bill of Rights in the following words in its Article 1. "All men are born equally free and independent, and have certain natural, inherent and inalienable rights". The French Constitution of 1848 recognised 'rights and duties anterior and superior to positive laws". After the World War I, it was adopted by Germany and most of the new European States.[19]

The All-Russia Congress proclaimed in January, 1918, 'a declaration of the rights of the toiling and exploited peoples' which was incorporated as part I of

the constitution of 5th July, 1918. That declaration was considerably extended in the Constitution of 1936. Other states which subsequently succumbed to the wave of totalitarianism did not engross in their constitutions – Poland of 1935 and Romanian of 1938 – a list of fundamental rights. The Latin American states followed in the nineteenth and twentieth centuries the general trend practically without exception. They amplified the scope in the social and economic spheres and by adding considerably to the guarantees of their enforcement. States on the Asiatic continent followed suit. For instance, within a period of two years, we see the adoption of provisions on the Rights and Duties of the people in the Provisional Constitution of China of 12 May, 1931, on the Rights and Duties of the Siamese in the Constitution of the Kingdom of Siam of 10 December, 1932, and on the Rights of Afghan subjects in the Fundamental Principles of the Government of Afghanistan of 31 October, 1932. The Turkish Constitution of 1928 did not refrain from similar terminology vividly reminiscent of the Declaration of 1789. 'Every Turk is born and lives free .... The limits, for everyone, of freedom, which is a natural right, are the limits of the freedom of others.'[20]

France herself, in the preamble to the Constitution of 1946, solemnly reaffirmed 'the rights and freedom of man and of the citizen consecrated by the Declaration of Rights of 1789 and the fundamental principles recognized by the law of the Republic', and proclaimed once more that 'every human being without distinction of race, religion or belief, possesses inalienable and sacred rights'. The Constitution of Japan of 3 November, 1946, laid down, in its Article, that the people shall not be prevented from enjoying any of the fundamental rights' and that 'these fundamental rights guaranteed to the people by the constitution shall be conferred upon the people of this and future generations as eternal and inviolable rights'. In the fundamental principles of the Italian Constitution of 23 December, 1947, 'the Republic recognises and guarantees the inviolable rights of man' (Article 2). It states, significantly, that while 'sovereignty belongs to the people', the latter must exercise it 'within the limits of the Constitution' (Article II).

As noted above, the constitutional making process is premised on the concept of people. It is the people that give constitution its life and breath characteristic of how God, after the forming of man from the dust of the ground breathed into his nostrils the breath of life, and man became a living being.[21] This assertion is evidently clear from the preamble to the constitution of most countries including Nigeria, recognizing the centrality of man's humanity. For instance, the Nigerian 1999 Constitution, in Chapter IV proclaims some fundamental rights guaranteed to the citizens of Nigeria as follows: the rights to life,[22] right to dignity of human person,[23] right to personal liberty,[24] right to fair hearing,[25] right to private and family life,[26] right to freedom of thought, conscience and religion,[27] right to freedom of expression and the press,[28] right to peaceful assembly and association,[29] right to freedom of movement,[30] right to freedom from discrimination,[31] right to acquire and own immovable property anywhere in Nigeria,[32] and right to be paid compensation in the event of compulsory acquisition of property.[33] The above rights are safeguarded and guaranteed by the 1999 Constitution. However, these rights are not granted in absolute terms as they are subject to reasonable justifiable restriction which the state may by law impose in the interest of defence, public safety, public order, public morality or public health and for the purpose of protecting the rights and freedom of other persons.[34]

Different Between Fundamental Rights and Human Rights

The main reason why human rights are codified into the Constitution of a country is to make them identifiable before breach. The relevant question to ask at this juncture is whether fundamental human rights are the same as human rights? To answer this question, it is necessary to examine the attributes of fundamental rights as oppose to human rights. As noted above in this study, the concept of fundamental human rights has root in the concept of natural law discovered and formulated by the Greek and Roman philosophers of the stoic school and theologians. For this reason, fundamental human rights had at one time or the others called natural rights, natural justice, moral rights, human rights and constitutional rights and so forth. These various names had led into

confusion in the understanding of the two concepts. However, fundamental rights and human rights are not one and the same.

Nasir PCA, while explaining the difference between human rights and fundamental rights in the case of *Uzoukwu v. Ezeonu II*[35] said as follows:

> Due to the development of constitutional law in this field, distinct difference has emerged between 'Fundamental Rights' and 'Human Rights'. It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. These were termed human rights. When the United Nations made its declaration, it was in respect of 'Human Rights' as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of international law.
>
> Fundamental rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country; that is, by the constitution. Not all fundamental rights are available to all persons in a country. Some of the provisions are limited to the citizens while other provisions are applicable to all persons, citizens and aliens alike. This is the position in this country, in the United States, in India, and many other countries....

Furthermore, in the case of *Ransome Kuti v. A. G. Federation,*[36] Kayode Eso (JSC) (as he then was) described the nature of fundamental rights in the following terms:

> But what is the nature of a fundamental right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence.

Talking in the same vein, Mudiaga Odje SAN,[37] said *inter alia* that: '... while all rights enjoyed and asserted by human persons may be described generally as human rights not all human rights can be termed fundamental or fundamental human rights under our classification unless they are entrenched in the constitution.'[38] The conclusion to be drawn from the above is that fundamental rights are natural rights given to man by God at

creation. These rights have always been there from time immemorial. They are basic rights which a person has from birth. They are birthrights. A fundamental right is a right which is inalienable rights and stand above the ordinary laws of the land. They are rights which are antecedent to organised or political society. Human rights, on the other hands, are precondition to a civilized existence. The fundamental rights provisions are meant to prevent and impose limitation on the actions of government with respect to citizen, and other persons and between persons *inter se*.[39] The codification of fundamental human rights as forming part of the organic law of the land[40] with all authorities and strengths of the constitution are the features which provide its linkage to Chapter II of the 1999 Constitution albeit with clear differences in term of enforcement.

Rights Protected Under Chapter II of the 1999 Constitution

While illustrating the importance of constitution to a state, Nwabueze compared it with the constitution of a club, trade association or union. According to the learned author,[41]

> Every association is governed by a constitution which sets out the aims and objectives of the association and how its affairs are to be conducted and managed. It is the same idea that is applied to the constitution of the association of all the people living within a given geographical area. In this wider context, a constitution is the means by which people organise themselves into a political community and it defines the aims and objectives of its association, the condition of membership, the rights and obligation of membership, the organs and powers necessary for the conduct of the affairs of the association and the duties and responsibilities of those organs to the individual members.

A statement of objectives in any constitution is necessary because it focuses attention on the reasons for the existence of the association. Basically, most nations are made up of diverse ethnicities and cultural backgrounds;[42] hence, the need for a statement of ideals and objectives, and of integrating principle to counter the heterogeneity of the society and the cleavage between the various social

groups. If the ideals and objectives are enshrined in the constitution, then this would make them appear less of a political slogan and invest them with the quality of constitution, thereby making it easier for the political leaders and all public functionaries to establish and show the desired identification with them.

It was in the realization of the above objectives that the fundamental objectives and directives principles of state policy was adopted and codified in Chapter II of the 1999 Constitution for Nigeria. According to Akande,[43] fundamental objectives are the 'directive principles' laid down in the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. Other reasons for the inclusion of fundamental objectives in the constitution is to provide the government with a policies and direction in governance and to bridge the gap between the rich and the poor granted the fact that government functionaries in developing countries have tended to be pre-occupied with power and its material prerequisite with scant regard for "political ideals as to how society can be organized and ruled to the best advantages of all".[44] In order to guarantee compliance and observance of the principles in the interest of good governance and to ensure that Nigeria citizens enjoy the dividend of democracy, section 13 of the 1999 Constitution declares as follows:

> It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive and judicial powers to conform to, observe and apply the provision of Chapter 11 of the Constitution

To consolidate the above principles and objectives, the Constitution proclaims a state based on the principles of participatory democracy and social justice as the ideals upon which the nation is founded, and declares, by way of amplification, that the security and welfare of the people shall be the primary purpose of government;[45] that government shall be responsible and accountable to the people from which it derives its sovereignty;[46] that the composition of the government of the Federation or any of its agencies shall reflect the federal character of Nigeria, while appointment both

at state and local government levels shall recognize the diversity of the people within its area of authority[47]. The political objectives of the country is based on unity and faith, peace and progress, the purpose of this is to encourage loyalty to the country which transcend sectional interest.[48]

The economic objective is based on the principle of free enterprise, in this connection, free enterprise is to be regulated by the government to ensure the promotion of a planned and balanced economic development; that the material resources of the community are harnessed and distributed to the greatest degree possible to serve the common good; and that the economic system is not operated in such manner as to permit the concentration of wealth or the means of production and exchange in the hands of a few individuals or a group. Central to the economic policy is that the government is expected to direct its policy towards ensuring that all citizens have equal opportunity for securing adequate means of livelihood and suitable employment.[49]

The social order is founded on ideals of freedom, equality and justice. The purpose of social objective is to ensure that every citizen have equality of right, obligation and opportunities before the law, that the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced and most importantly that government actions shall be humane.[50] That government shall direct its education policy towards ensuring that there are equal and adequate educational opportunities at all level.[51] In line with the preamble to the 1999 Constitution, the government foreign policy objectives shall aim to promote African unity as well as total political economic, social and cultural liberation of African and all other forms of international co-operation conducive to the consolidation of universal peace and mutual respect and friendship among all people and states.[52]

The state is directed to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.[53] The state is also expected to

protect, preserve and promote the Nigerian cultures, which enhances human dignity and are consistent with the fundamental objectives,[54] while the mass media shall strive to uphold the responsibility and accountability of the government to the people,[55] it is further declared that the national ethic shall be discipline, integrity, dignity of labour, social justice, religious tolerance, self-reliance and patriotism.[56] For the first time in the annals of constitutional making process in Nigeria, the 1999 Constitution provides for the duties of Nigerian citizens. These duties among others include: respect for the constitution, its ideals and institutions including the national flag and national anthem as well as national pledge, citizens are expected to enhance the power, prestige and good name of Nigeria; have respect for the dignity of other citizens and the rights and legitimate interest of others. Nigerians are further enjoined to live in unity and harmony in the spirit of brotherhood and make useful and positive contribution to the advancement, progress and well-being of the community where he resides.[57]

It is submitted that the objectives in chapter II of the 1999 Constitution are quite laudable and desirable. The objectives are tailored toward democratic governance with maximum rights and privileges to the Nigerian citizen, albeit with corresponding responsibilities and duties from the citizens. For instance, the citizens are enjoined to live in unity and harmony in the spirit of brotherhood. Citizens are further enjoined to provide good atmosphere for good governance to strive. However, enforcement and observance of them are left at the discretion of government. The major clog in the wheel of achieving the objectives in Chapter II of 1999 Constitution is contained in section 6 (6) (c) of the 1999 Constitution which provides as follows:

> The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provide by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and

> Directives Principles of State Policy set out in Chapter II of this Constitution.

The implication of section 6 (6) (c) is that no one can seek judicial redress when government or any of her agencies fail to implement the provision of Chapter II of the 1999 Constitution. In the case of *Archbishop Olubunmi Okogie v. Attorney General, Lagos State,*[58] it was held *inter alia* that the directive principles of State policy in Chapter II of the Constitution have to conform to and run subsidiary to the fundamental rights and that Chapter II is subject to legislative powers conferred on the State. Furthermore, a cursory look at the provision of section 46 (1) of the 1999 Constitution, which confers on every Nigerian to apply to the High Court for redress on the violation of their fundamental right is completely silent on the violation or non-compliance with the fundamental objectives and directives principles of state policy.

Premised on the foregoing, it is submitted that section 13 of the 1999 Constitution found formidable oppositions in sections 6 (6) (c) and 46 (1). Worse still, the pronouncement of the Supreme Court in *Olubunmi Okogie's* case, which make the fundamental objectives and directive principles of state policy subsidiary to the fundamental rights further dealt a big blow on the authority of Chapter II of the 1999 Constitution. For instance, the Supreme Court, in that case, failed to put the Fundamental Objectives and Directives Principles of State Policy in the same pedestal with the fundamental human rights provisions, thus, leaving the observance and compliance with its provisions at the whim and caprice of the government and her agencies.

Legal Frameworks for the Enforcement of Fundamental Human Rights

One salient feature of fundamental human rights is that they are rights which are antecedent, and existed before the organized society, government and constitutions. They are rights which are fundamental to the existence of man as social being. Given impetus to fundamental human rights, the Constitutions of civilized countries the world over, including Nigeria, contain a declaration making its provision binding on government

and all authorities and on all persons within its purview of jurisdiction.[59] As highlighted earlier in this paper, sections 33 to 46 of the 1999 Constitution (as amended) provide for the fundamental rights. To ensure compliance with the provisions and for their enforcement, Nigeria is a member of the international community and party to several International Treaties that impose an obligation to respect, protect and fulfill the human rights.[60]

Similarly, at the regional level, the African Charter on Human and People Rights[61] states that every individual shall have the right to liberty and to the security of his person and as such no one may be deprived of his freedom except for reasons and conditions previously laid down by law in particular, no one may be arbitrarily arrested or detained.[62] To provide a ready avenue for the enforcement of these rights at the domestic level, section 6 (1) and (2) of the 1999 Constitution vests judicial powers in the country on the superior courts established within the federation of Nigeria.[63] Section 6 (6) of the Constitution further confers on all superior courts powers to adjudicate all matters between persons or between government or authority and any person in Nigeria involving civil rights and obligation of those persons. In similar fashion, section 36 (1) of the 1999 Constitution states *inter alia* that in the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to fair hearing by the court or other tribunal established by law. Section 46 (1) of the 1999 Constitution in specific term provides *inter alia* that any person who alleges that any of the provision of the Chapter IV of the Constitution bordering on that person's fundamental human rights has been violated may apply to the High Court in that State for redress.

The sum total of the above provisions is that enforcement of fundamental human rights does not exclude any authority or person in Nigeria. Fundamental rights are therefore binding on government and private persons, however, the procedure for enforcement against the government on one hand and private persons on the other hands are different.[64] For instance, the breach of fundamental rights is

enforceable against private persons in other areas of law such as: criminal law, torts, land law, contract, customary law, common law, family law and succession law. Thus, where a private person kills another person, there is breach of the right to life enforceable in criminal law; similarly, the cases of assaults, kidnapping, beating or enslaving of another person are breach of the right to dignity of human person, which are enforceable either under the criminal or torts law. Furthermore, every citizen of Nigeria has the right to acquire and own immovable property anywhere in Nigeria, hence, where a citizen is unlawfully dispossess of his immovable property such as land, he may enforce the right by taking action either under the tort of trespass or land law.

It should be noted that the enforcement of fundamental rights in other area of law does not make such enforcement unconstitutional since all areas of law derive their validity from the constitution and rest on the constitution as their foundation.[65] Due to the importance of fundamental rights to the liberty, dignity and well-being of every Nigerian, the special provisions for the enforcement of the fundamental rights, most especially, against the government is provided for under the Fundamental Rights (Enforcement Procedure) Rules, 2009,[66] According to Adeigbe,[67] this Rules is specifically designed to avoid technicalities afford accelerate speedy disposition of the fundamental rights action. In the light of this, paragraph 3 (g) of the preamble to the Rules expressly states thus:

> Human rights suits shall be given priorities in deserving cases. Where there is any question as to the liberty of the applicant or any person, the case shall be treated as an emergency.

To guide against discrimination in the application of the Rules to all manner of people, Order 1, Rule 3 (e) of the Rules states that:

> The Court must proactively pursue enhanced access to justice for all classes of litigant, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented[68]

The import of the above provisions is that all Nigerian Citizens as well as their relations, friends and

associates are given free access to court and in that instance, no procedural formulae or arid legalism shall be allowed to hamper, inhibit, hinder, or obstruct human right enforcement litigations in courts in Nigerian.[69] The courts are enjoined to take proactive steps and enhance access to justice for all classes of litigants especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented.[70]

Although, a prime of place is given to the enforcement of fundamental human rights in Nigeria, these rights are not without limitation. They are to be exercised to the limits of the ambit of section 45 of the 1999 Constitution which provides thus:

> Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society – in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protection the rights and freedom of other persons.

Similarly, the right to life and right to personal liberty are made subject to emergency rule, thus during the period of emergency or whenever there is war in any part of the country or in the execution of sentence of death imposes by Court in murder cases, the life of a citizen may be taken without access to court for enforcement or redress.[71] Premised on the foregoing, the procedure for the enforcement of fundamental rights against government or any of her agencies are as stipulated in the Fundamental Rights (Enforcement Procedure) Rules, 2009, these procedures cannot be invoked in cases against private individuals. However, breaches of fundamental rights by private individuals are enforceable according to the ordinary laws of the land and procedure rules of court. In the case of *Madu v. Onuaguluchi*[72], Osobu J (as he then was) said as follows:

> It is my view that the Fundamental Rights (Enforcement Procedure) Rules, 1979 operates only against public persons and institutions, it cannot operate against private individuals.[73]

Conclusion

Having examined the provisions of fundamental objectives and directive principles of state policy and the fundamental human rights

side by side, it is safe to conclude that the inclusion of the two Chapters in the 1999 Constitution is to enhance human dignity, equality and liberty of every citizen of Nigeria in the atmosphere of peace and harmony. The fundamental ideals enunciate in the provisions of Chapters II and IV of the 1999 Constitution provides the synergy between the fundamental objectives and fundamental rights. It is submitted that the provisions of the two Chapters, to all intent and purpose provide the yardsticks by which the conduct of government can be measured by the citizenry.

Having said that, it is noted that the rights confer in Chapter II of the 1999 Constitution are not fundamental rights and therefore not justiciable, that is, they cannot be enforced in the court of law like the breach of fundamental rights. The divergence in the enforcement of the two Chapters marked the major difference between their provisions. For instance, under the Constitution of Nigeria unlike in India from where Nigeria borrowed her Fundamental Objectives of State policy, the provisions on Fundamental Objectives and Directives Principles of State Policy are not justiciable.[74] It follows that violation of the principles cannot be challenged in court. However, the provisions are normative in that they help government in the formulation of policies that will improve on the general welfare and wellbeing of the citizenry.

On the other hand, the rights provided under the fundamental human rights are justiciable and can be enforced against all authorities and individual. However, these rights are equally not absolute, as they admit some limitations as discussed in this paper. The constitutional impediments for the full realization of the principles in Chapter IV of the 1999 Constitution provide yet another strong linkage between the two Chapters. It is in this light that I hereby propose amendment to the Constitution to place the provisions of the fundamental objectives and directive principles of state policy in the same pedestal with fundamental rights, thus, making its provisions enforceable in the Courts of law where government and any of her agencies fail to comply with its provisions.

Notes and References

1. The first Constitution made in Nigeria during the Colonial era was the Clifford Constitution of 1922. The Constitution for the first time established for the whole country, 'Legislative Council of Nigeria'. Other Constitutions made before Nigeria attained independent in 1960 are: Richard Constitution, 1946; Macpherson Constitution, 1951 and Lyttleton Constitution of 1954.

2. Hereinafter referred to as '1999 Constitution' (as amended).

3. The two Chapters provide for the Fundamental Objectives and Directive Principles of the State Policy and Fundamental Human Rights respectively.

4. Nwabueze Ben, *The Presidential Constitution of Nigeria,* C. Hurst & Company, London,1982, p.1.

5. *Ibid.* See also Anyaegbunam, E. O., *The Legislators Companion: A Handbook for Houses of Assembly,* Book Builders, Ibadan, 2007, p. 23. In the same vein, the historical effort of the founding fathers of the United States in the inauguration of the Constitutional Congresses in Philadelphia is noteworthy. The outcome was the Declaration of Independence and the Conference Government of 1774 and 1775, respectively. The United States Constitutional Convention of 1789 in the same vein produced the workable federal constitution with the guiding principle of separation of powers and bicameral legislative arm. It is noted that the Nigerian Constitution since the 1950 Ibadan Conference, has witnessed several Constituent Assemblies that deliberated over all her constitution making processes up to 1994/ 1995. However, military regimes, as shown by the

examples of the 1979, 1995 and 1999 constitutional making processes, tinkered with the final drafts. Such official and blatant military interference undermined the salient representatives input in the Nigeria extant Constitution.

6. Nwabueze, B. O., "The Presidential Constitution of Nigeria", p. 7. In the case of *PDP v. INEC (1999) 1 NWLR (Pt. 626) 200 at 205*. The Nigeria Supreme Court defined the Constitution as 'the organic law or *'grundnorm'* of the people. While it seeks to provide the machinery of government it also gives rights and imposes obligation on the people it is meant for'.

7. Melami, Ese, *Administrative Law,* 4th edn, Princeton Publishing Co, Ikeja, 2013, p. 137.

8. Malemi, Ibid, p. 125.

9. Finch, John, D., *Introduction to Legal Theory,* Sweet and Maxwell, London, 1970, p. 18.

10. *De Republic, 111, XX11, 33.*

11. Iloh, E. O., "Fundamental Rights Enforcements in Nigeria: Wearing a New Garb", *University of Ibadan Law Journal,* Vol. 2 No. 1, May 2012, 119-152, p. 120.

12. A concept, which has in modern times, given birth to fundamental rights and freedom of individual.

13. Salmond, *Jurisprudence,* 12th edn, p. 15 cited by Egwummuo, J. N., *Modern Trends in Administrative Law,* Academic Publishing Company, Enugu, 2000, p. 112.

14. Saint Thomas Aquinas defined natural law as 'the participation in the eternal law of the mind of a natural creature'. He postulated that the state is subject to that higher law which determines the relation of the individual to the state. The justification of the state is in its service to the individuals; and a King who is unfaithful to his duty forfeits his claim to obedience and liable to be deposed.

15. Marsilius of Padua adopted Aquinas idea of natural law and posited that the ruler is under the supremacy of the law.

16. To Bracton, the King has two superiors, 'God and Law'. He argued that the King ought not be subjected to man, but subject to God and to the law, for the law makes the King.

17. The American Declaration of Independence, adopted in Congress on July 4, 1776, retrieved from http://www.kidport.com/reflib/usahistory/americanrevolution/DecInd.htm, accessed on 12/6/2015 at 3.00pm.

18. Power belongs to the people and they reserve the rights to resume the power through their vote at a general election by voting out those who had betrayed the power entrusted in them and electing other people that will meet their aspirations and yearning. The practical applicability of this point was captured by Lord Coleridge in the case of *Huth v. Clarke 25, QBD 391* where he said as follows: "But delegation do not imply a denudation of power and authority. The word 'delegation' implies that powers are committed to another person or body, which are as a rule, always subject to resumption by the power delegating [it] and many examples of this might be given. Unless, therefore, it is controlled by statute, the delegating power can at any time resume its authority."

19. Iloh, F. O., "Fundamental Rights Enforcement in Nigeria..." p. 124.

20. *Ibid.*

21. Genesis Chapter 1 verse 28, *Holy Bible,* (New International Version, Bible Society of Nigeria, 18, Wharf Road, Apapa, Lagos) p. 3.

22. Section 33 of the Constitution of the Federal Republic of Nigeria 1999.

23. Section 34, *Ibid.*

24. Section 35, *Ibid.*

25. Section 36, *Ibid.*

26. Section 37, *Ibid.*

27. Section 38, *Ibid.*

28. Section 39, *Ibid.*

29. Section 40, *Ibid.*

30. Section 41, *Ibid.*

31. Section 42, *Ibid.*

32. Section 43, *Ibid.*

33. Section 44, *Ibid.*

34. Section 45, *Ibid.*

35. (1991) 6 NWLR (Pt. 200) 708 at 760/761.

36. (1985) 2 NWLR (Pt. 6) 211 at 229-230.

37. Odje Mudiaga, "Human Rights, Civil, Political, Social, Economic and Cultural" *The Nigeria Bar Journal,* Vol. 21, No. 3, August 1986, p. 87.

38. See also Idigbe JSC, "Fundamental Rights Provisions of the Constitution" *Nigeria Judges Conference Papers,* 1982, pp. 41-42.

39. Enemchukwu Rose, "Inalienability of Human Rights: A Mistake in the Choice of Words" *Journal of Law. Policy and Globalisation.* Vol. 28, 2014, p. 141.

40. See the case of *PDP v. INEC (supra).*

41. Nwabueze, B. O., "The Presidential Constitution of Nigeria", p18.

42. Nigeria is believed to have about two hundred and fifty ethnicities and cultural backgrounds.

43. Akande, J. O., *The Constitution of the Federal Republic of Nigeria 1979,* Sweet & Maxwell, London, 1982, p. 13.

44. *Ibid.*

45. Section 14 (2) (b) of the 1999 Constitution.

46. Section 14 (1) *Ibid.*

47. Section 14 (3) and (4) *Ibid.*

48. Section 15 *Ibid.*

49. Section 16 *Ibid.*

50. Section 17 *Ibid.*

51. Section 18 *Ibid.*

52. Section 19 *Ibid.*

53. Section 20 *Ibid.*

54. Section 21 *Ibid.*

55. Section 22 *Ibid.*

56. Section 23 *Ibid.*

57. Section 24 *Ibid.*

58. *(1981) 1 NCLR, 218.*

59. In this connection, section 1 (1) of the 1999 Constitution provides that:
'this constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria'.

60. These Treaties include the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) ratified July 13, 1985; the Convention on the Rights of the Child (CRC) ratified April 19, 1991; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ratified on January 4, 1969; the Convention Against Torture and other Cruel; Inhuman or Degrading Treatment or Punishment (CAT) ratified July 28, 2001; the International Covenant on Civil and Political Right (ICCPR) ratified October 29, 1993 and the International Convention on Economic. Social and Cultural Rights (ICESCR) ratified October 29, 1993.

61. African Charter was ratified by Nigeria on January 19, 1981 and was incorporated into the Nigerian Municipal Law on March 17, 1983 as the African Charter on Human and People Rights (Ratification and Enforcement) Act 1983 (Now Cap A9 Laws of the Federation of Nigeria, 2004).

62. Okene, O. V. C, "National Human Rights Commission

and the Promotion and Protection of Human Rights in Nigeria: A Reflection, Emerging Challenges and Suggestions for Effectiveness" *International Journal of Law and Contemporary Studies,* Vol. 3, No. 1 & 2, 2009, p. 110, 112-113.

63. Akinbosade Ade., *The Legislature: Law-Making Organ of Government,* O & A Books Publishers, Akure, 2007, pp. 8-9.

64. Malemi, "Administrative Law", p. 109.

65. *Ibid.*

66. (Hereinafter referred to as 'the Rules').

67. Honourable Justice Adeigbe Moshood A., "Highlights of the Fundamental Rights Enforcement Procedure Rules in Nigeria" *The Lord Justice Journal,* Vol. 5, 2014, p.41.

68. See *Tofa v. UBA (1987) 3 NWLR (Pt. 62) 707.*

69. See Order 1, Rule 3 (h) of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

70. Lawal, Ilias, B and Fagbemi, S. A.: An Appraisal of the Doctrines of Exhaustion, Ripeness and *Locus Standi* as Means to Preventing Frivolous Action Against Administrative Decisions in Nigeria. *Ebonyi State University Law Journal,* Vol. 6 No.1, 2015, p. 215.

71. See section 45 (2) and (3) of the 1999 Constitution {as amended). In the case of *National Union of Electricity Employees v. Bureau of Public Enterprises (2010) 3 SCM 135 at 166.* It was held inter alia that the fundamental rights entrenched in the constitution are subject to the provisions of section 45 of the 1999 constitution i.e. non of these rights shall conflict with or invalidate any law which is reasonably justifiable in a democratic society in the interest of public safety, order, morality or health.

72. (1985) 6 NCLR 365.

73. In the case of *Ibrahim Abdulhamid v. Talal Akar (2006) 8-9 SCM 1 at 17.* It was held inter alia that the position of law is that when fundamental rights are invaded not by government agencies but by ordinary individuals, as in the instant case, such victims have rights against the individual perpetrators of the acts as they would have done against state actions ….. Thus, where the alleged breach of a fundamental right is ancillary or incidental to the substantive claim of the ordinary civil or common law nature, it will be incompetent to constitute the claim as one for the enforcement of a fundamental right. See further the cases of *Federal Republic of Nigeria & Another v. Ifegwu (2003) 15 NWLR (Pt. 842) 113 at 180 and Tukur, v. Government of Taraba State (1997) 6 NWLR (Pt. 510) 549.*

74. Akande, J. O., "The Constitution of the Federal Republic of Nigeria 1979".