

DIFFERENCE BETWEEN 'FUNDAMENTAL RIGHTS' AND 'FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY' IN THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA*

Abstract

Fundamental Human Rights as enshrined in Chapter 4 of the 1999 Constitution and Fundamental Objectives and Directive Principles of State Policy in Chapter 2, appear to refer to the same thing on the surface. In the wake of the August 2024 End Bad Governance rallies in Nigeria, the discourse on both the mass and social media space, revealed that many commentators (including well informed human rights activists), often fail to draw a distinction between the two chapters of the constitution. In the zeal to stir up public protests across Nigeria, the general impression created appears to be that citizens have a right to good governance and the right to peaceful protest, and these two are often presented as legally enforceable human rights. This research hypothesis is that Nigerians generally do not understand the fine line between Fundamental Human Rights and Fundamental Objectives and Directive Principles of State Policy as contained in the constitution. To test this hypothesis, the researcher randomly sampled the opinions of more than 500 citizens on the streets of Abuja from different backgrounds. The sampled population proved the research hypothesis right, as none of the persons interviewed understood that the right to good governance and the right to peaceful protest are not human rights under the constitution. The work recommended that there is the need for informed public awareness on the distinction between the two concepts.

Keywords: Fundamental Rights, Fundamental Objectives and Directive Principles of State Policy, Difference Between Constitution of the Federal Republic of Nigeria 1999

1. Introduction

The End Bad Governance protests of August 2024 brought to the fore the need to draw a fine line between fundamental human rights which are justiciable on the one hand, and social political and economic non justiciable rights. The protests were mostly borne out of political concerns by activists who in several instances interpreted the constitution according to their own whims. One noticed within the media space, that the concept of fundamental human rights as enshrined in the constitution was often interpreted and expanded beyond the scope of the constitution. What are the fundamental human rights of Nigerian citizens? From a strictly legal point of view, one would state that these are the actionable individual rights specifically enshrined in chapter 4 of the constitution which the courts will enforce. On the flipside are fundamental objectives and directive principles of state policy. These are ideals to be pursued by governments at all levels, and whether government decisions conform to these objectives or not, cannot be made a subject of judicial interpretation.¹

2. Fundamental Human Rights and Fundamental objectives and Directive Principles of State Policy Defined

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.² 'Fundamental rights is a group of ideas that are recognized by the Supreme Court as being necessary for every person...The Supreme Court protects the citizens and their given privilege from the government and any regulations they may impose that encroaches on these rights. Individuals, corporations, and other entities are also not allowed to infringe on a person's fundamental rights.'³ Fundamental rights are used in constitutional law, where human rights are used in the broader context.⁴

Fundamental Rights are a set of '...essential liberties and entitlements guaranteed to every citizen *by the constitution of a country* [emphasis mine]. These rights serve as the bedrock of individual freedom, protecting citizens from arbitrary state actions and ensuring basic human rights and freedoms....The Fundamental Rights are named so because they are *guaranteed and protected by the Constitution*, [emphasis mine] which is the fundamental law of the land.'⁵ Within the Nigerian context, Fundamental Rights can be defined as the basic rights which are guaranteed to every citizen of a country under part 4 of the 1999 constitution. Human rights are said to be rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status.⁶ However for a human right to be enforced in court, it must fall within the rights listed in the constitution.

Fundamental Objectives and Directive Principles of State Policy are the identification of the ultimate objectives of the nation, and they indicate the path which led to the objectives or the policies to be pursued to achieve those objectives.⁷ They are the directions or ideals or instructions which are provided to the Central and State Governments, which these governments have to

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¹ See section 6 (6) (c) of the 1999 Constitution of the Federal Republic of Nigeria.

² Human Rights; <https://www.un.org/en/global-issues/human-rights>, Accessed 10/10/2025

³ Fundamental Rights <https://study.com/academy/lesson/what-are-fundamental-rights-definition-types-features.html> Accessed 10/10/2025

⁴ Ibid

⁵ Fundamental Rights: Meaning, Features, Significance and Criticism <https://www.nextias.com/blog/fundamental-rights/> Accessed 10/10/2025

⁶ What are Human Rights; <https://www.ohchr.org/en/what-are-human-rights> Accessed 10/10/2025

⁷ Fundamental Objectives and Directive Principles of State Policy <https://www.learnnigerianlaw.com/learn/constitutional-law/fundamental-objectives>, Accessed 10/10/2025

take into consideration, while enacting various laws and policies.⁸ These objectives are contained in Chapter 2 of the 1999 constitution, and they cut across political (S.15), economic (S.16), social (S.17), educational (S.18), foreign policy (S.19), environmental (S.20), cultural (S.21), mass media (S.22), ethical (S.23) objectives and duties of citizens. These objectives are made non-justiciable by the provisions of S. 6(6)(c) of the 1999 Constitution, and therefore do not stand on the same pedestal as fundamental human rights. It has been argued in favour of the non-justiciability of fundamental objectives and directive principles that;

...a constitution operating as law and imposing judicially enforceable restraints upon government should not abandon its other function as a source of legitimacy for those political concepts and governmental powers and relations that are by their very nature non-justiciable. Nor should it renounce its role in the affirmation of fundamental objectives and ideas or directive principles of government which serve to inform and inspire governmental actions along desirable lines.⁹

It has also been asserted that:

...if the objectives and directive principles were made enforceable it would lead to constant confrontation between the executive and the legislature on the one hand and the judiciary on the other hand...it will be tantamount to asking judges to make political value judgments if they have to decide whether governmental actions and omissions are in line with the objectives and the directives.¹⁰

Indeed, if fundamental objectives and directive principles of state policy were to be made justiciable, then the judiciary would be reduced to the status of a philosophical arbiter between the government of the day and the opposition.

3. Difference Between Fundamental Human Rights and Fundamental Objectives and Directive Principles of State Policy

The Fundamental Rights mentioned in the Constitution help to ensure Political Democracy while the Directive Principles of State Policy mentioned in the help to ensure Social and Economic Democracy. The violation of the Fundamental Rights is punishable, while the violation of the Directive Principles of State Policy is not punishable.¹¹ If a particular law of any government, or any amendment of the Constitution initiated by the Parliament, infringes the Fundamental Rights of the citizens, the Courts can declare such law or amendment as unconstitutional. If a particular law of any government, or any amendment of the Constitution initiated by the Parliament, infringes the Directive Principles of State Policy, Courts cannot declare such law or amendment as unconstitutional. In case of National Emergency, some Fundamental Rights (like the freedom of movement) can be temporarily suspended, while the Directive Principles of State Policy cannot be suspended under any circumstances.¹²

Fundamental rights are individual and ascertained rights, while fundamental directives are basically ideals to be pursued. When the constitutional rights of an individual are breached, it is easy to approach the courts setting out the facts that constitute the breach, praying the court for specific reliefs. Fundamental objectives and directive principles however revolve around ideals that are debatable, and may not be factual. What constitutes good governance, and whether there is good governance in the land today can hardly constitute the subject matter of litigation because the issues involved do not center around a set of discernable facts, and the courts cannot be called upon to embark on a voyage of discovery, measure public opinion and make a pronouncement. In essence, the breach of fundamental rights is a question of fact, while the breach of fundamental objectives is largely a matter of opinion.

4. The Right to Peaceful Protest and the Right to Good Governance

The fundamental rights under the Constitution include; right to life; dignity of human person; liberty, fair hearing; private and family life; freedom of thought, conscience and religion; freedom of expression and press; peaceful assembly and association; movement; freedom from discrimination; right to acquire and own immovable property among others. Any infringement of these rights is legally enforceable at the Federal High Court and High Courts of the states and the federal capital using the procedure laid down in The Fundamental Rights (Enforcement Procedure) Rules, 2009. A cursory look at the fundamental rights guaranteed under the constitution reveals that the right to good governance and the right to peaceful protest are not contained in the constitution.

It has been argued that the essence of having democracy is to ensure accountability and transparency which will eventually lead to good governance, and the leadership can only deliver the basic needs of the society in a democratic or constitutional

⁸ C.J Okoye; Fundamental Objectives and Directive Principles of State Policy <https://cjokoyelawview.com/law-244-constitutional-law-ii/topic-2-fundamental-objectives-and-directive-principles-of-state-policy>. Accessed 10/10/2025

⁹ Fundamental Objectives and Directive Principles of State Policy <https://www.learnnigerianlaw.com/learn/constitutional-law/fundamental-objectives>. Accessed 10/10/2025

¹⁰ *ibid*

¹¹ Difference Between Fundamental Rights and Directive Principles of State Policy <https://byjus.com/free-ias-prep/difference-between-fundamental-rights-and-directive-principles-of-state-policy/> Accessed 10/10/2025

¹² Difference Between Fundamental Rights and Directive Principles of State Policy <https://testbook.com/key-differences/difference-between-fundamental-rights-and-directive-principles>. Accessed 10/10/2025

government through governance through accountability and transparency.¹³ While this writer acknowledges the need for good governance and the ideals it portends towards development, this nonetheless does not elevate it to the plane of human rights.

The key attributes of good governance are said to include: transparency, responsibility, accountability, participation, responsiveness to the needs of the people, efficiency in public administration and development-oriented budgeting.¹⁴ Good governance also ensures the rule of law, promotes due process, improves efficiency, facilitates accountability, tackles corruption, salutes excellence, insists on productivity, and delivers high quality service to the people.¹⁵

It has also been asserted that the Nigerian Constitution contains several provisions geared towards good governance.¹⁶ These provisions of course, include fundamental human rights as contained Chapter 4 of the constitution. Good governance is therefore, essentially a fundamental ideal of democracy, which governments at all levels must strive to achieve. Whether the government has succeeded in delivering these ideals to the citizen remains a subject matter of political debates, and can hardly be said to amount to an issue for determination before the courts. Good governance may be said to be the cornerstone of chapter 2 of the 1999 constitution.

The Nigerian media space has also been inundated with claims on the right to peaceful protest. A few examples are apt here:

Twelve international and Nigerian civil society organizations call upon the government of Nigeria to respect people's rights to protest as guaranteed by the nation's constitution and its international human rights obligations... The government is accountable for guaranteeing people's right to protest, safeguarding citizen rights, and any breach of these rights...¹⁷ 'Protesting is a fundamental right in any democratic society, serving as a crucial means for citizens to express their opinions, grievances, and demands. In Nigeria, the right to protest is enshrined in the Constitution and various international conventions to which Nigeria is a signatory.'¹⁸ 'The right to peaceful protest is protected under the international and African regional human rights frameworks, including the Nigerian Constitution. In Nigeria, the Public Order Act is designed to support the appropriate and peaceful conduct of peaceful assemblies (protests), meetings and processions.'¹⁹

Another article on the right of Nigerians to peaceful protest succinctly captures the essence thus: 'The protection of the right to freedom of assembly is very fundamental in a democratic society... It is the primary responsibility of the state to put in place adequate mechanisms to ensure that the right to freedom of assembly is practically enjoyed and not hampered by undue restriction... This responsibility of the government comes with a counter obligation on the part of the citizen to ensure that his or her right is exercised appropriately and in accordance with the law.'²⁰

The above cited articles are a few examples of how the right to peaceful assembly has been twisted as as the right to peaceful protest, and has been presented to Nigerians as a constitutional right. When it comes to citing the particular section of the constitution wherein the right is enshrined, it is often claimed that; 'The right to peaceful protest is enshrined in Chapter IV, Section 40 of the 1999 Nigerian Constitution as amended.'²¹ The point must be stressed that the right to freedom of thought, conscience and religion (section 38), the right to freedom of expression and the press (section 39), and the right to peaceful assembly and association (section 40) are enshrined in the Nigerian constitution. It is often assumed that the combined effect of these constitutional freedoms is that they confer on the citizen the automatic right to embark on civil disobedience as a form of peaceful protest.

It is misleading to assert that the right to peaceful protest is enshrined in the 1999 constitution. There is no specific provision under the bill of rights wherein such a right is specifically provided. The right to peaceful assembly and association (section 40) is not synonymous with the automatic right to peaceful protest. Section 40 of the constitution provides as follows:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. Provided

¹³L. Ogboye; Constitutionalism and Good Governance in Nigeria: file:/C:/Users/admin/Downloads/ajol-file-journals_479_articles_136312_submission_proof_136312-5653-364979-1-10-20160530.pdf. Accessed 10/10/2025

¹⁴ Jerry Gana: Concepts in Democracy and Good Governance: (2005) *Democracy Day Lecture Series* (Vol 1)

¹⁵ Ibid

¹⁶Evans O. Ayeni; Democracy and Good Governance in Nigeria (1999-2015) https://www.researchgate.net/publication/338096164_DEMOCRACY_AND_GOOD_GOVERNANCE_IN_NIGERIA_1999-2015, Accessed 10/10/2025

¹⁷Nigeria: Respect Peoples Rights to Protest, Guarantee Constitutional Human Rights: <https://www.civicus.org/index.php/media-resources/news/7219-nigeria-respect-peoples-right-to-protest-guarantee-constitutional-human-rights>. Accessed 10/10/2025

¹⁸Rights of Citizens to Protest: Extent and Limits: https://nesgroup.org/download_resource_documents/Right%20to%20Protest_1722950957.pdf. Accessed 10/10/2025

¹⁹ Alex Cyril Okeke: Right to Peaceful Protest in Nigeria and the Recurrent Syndrome of Brutalization: The #EndSARS Protest Debacle <https://www.cambridge.org/core/journals/journal-of-african-law/article/right-to-peaceful-protest-in-nigeria-and-the-recurrent-syndrome-of-brutalization-the-endsars-protest-debacle/CA7594872B853DAB25713BE26C45E4E0>. Accessed 10/10/2025

²⁰ Right to Protest: Organizing and Participating in Rallies and Protests: https://nigeria.action4justice.org/legal_areas/freedom-of-assembly/protection-of-the-right-to-freedom-of-assembly/ Accessed 10/10/2025

²¹ Safeguarding the Right to Peaceful Protest in Nigeria <https://www.thecable.ng/safeguarding-the-right-to-peaceful-protests-in-nigeria/> Accessed 10/10/2025

that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

It amounts to pushing the rules of statutory interpretation beyond the normal boundary to locate the right to peaceful protest within section 40, unless it is conceded that the words ‘protest’ and ‘assembly’ can be used interchangeably. Secondly the constitution does not define what constitutes a peaceful assembly, and all peaceful assemblies, meetings and processions are regulated by the Public Order Act.²² Section 3 of the Public Order Act provides that:

Any assembly, meeting or procession which- (a) takes place without a licence issued under section 1 of this Act; or (b) violates any condition of any licence granted under section 1 as aforementioned; or (c) neglects to obey any order given under section 2 of this Act, shall be deemed to be an unlawful assembly, and all persons taking part in such assembly, meeting or procession, and in the case of an assembly, meeting or procession for which no licence has been issued, all persons taking part in the convening, collecting or directing of the assembly, meeting or procession, shall be guilty of an offence and liable on conviction to a fine of N1,000 or imprisonment for 6 months or to both such fine and imprisonment.

According to the UN Human Rights Committee, the right of peaceful assembly protects non-violent gatherings, wherever they take place – outdoors, indoors and online, in public or in private. Such assemblies may take many forms, including demonstrations, protests, meetings, rallies, online assemblies, civil disobedience or direct-action campaigns, provided that they are non-violent.²³ The essential ingredient of a peaceful assembly is therefore the element of non-violence, an element that may be difficult to determine at the onset. This perhaps explains why municipal laws usually provide guidelines for all peaceful assemblies or processions to ensure non-violence. So, while the right to peaceful assembly is constitutionally enshrined, the constitution does not provide a right to peaceful protest. The point must however be stressed that a peaceful protest may be an integral part of a peaceful assembly, but for all intents and purposes, a peaceful protest will be interpreted by the courts according to the provisions of the Public Order Act. Also, the right to peaceful assembly does not exist in a vacuum, as it is subject of the duty of government to maintain public order. Therefore, assuming but not conceding that the right to peaceful protest exists under the constitution, it is not an absolute right to carry placards and block the roads shouting obscenities, in total disregard for the rights of other citizens.

5. Research Results

This research monitored newspaper and online articles on social media on good governance and peaceful protests, and noticed some levels of obfuscation and half-truths in the attitude of most of the analysis. From the monitored conversations, the researcher hypothesized that Nigerians have been given the impression that the right to good governance and the right to peaceful protest are specifically enshrined in the 1999 constitution. A random sampling of citizens was carried out by the researcher concentrating mainly on educated Nigerians in higher institutions of learning within the Federal Capital Territory. The subjects were asked whether they thought the 1999 constitution contains specific provisions on the right to good governance and the right to peaceful protest. The researcher conducted personal interviews with the 500 participants over a period of three weeks. Given the limited scope of the work, no questionnaires were administered to take the personal details and academic qualifications of the participants. The result of the interviews revealed that all 500 participants were of the opinion that the right to good governance and the right to peaceful protest are enshrined in the constitution, and almost all the participants relied on information from the media to form their opinions.

6. Conclusion

The Constitution guarantees fundamental rights but makes provisions for restrictions on fundamental rights and grounds on which the government can take away, derogate, or limit the exercise of fundamental rights in the interests of the state by laws which are reasonably justifiable. The government may impose certain restrictions on the grounds of defence, public safety, public order, public morality, public health; or for the purpose of protecting the rights and freedom of other persons.²⁴ The foregoing is to the effect that these rights are not in any way absolute as there are limitations so as to safeguard the rights of others and prevent any form of lawlessness and anarchy. The freedom of movement (section 41) for instance may be restricted by the government by imposing a curfew in the interest of public order and safety. There is a dearth of knowledge within the Nigerian context on the actual scope of the bill of rights contained in chapter 4 of the constitution, and especially the restrictions which may be imposed on the citizens in the interest of public order. The increased freedoms brought about by democracy has enlarged the media space, especially the electronic media. The space is further enhanced by the emergence of the new media (social media). The resultant impact of this increased media space is that issues which were hitherto the exclusive preserve of informed discussions and contributions have now become all-comers’ affairs. The discussion on fundamental human rights seldom turns pedestrian as activism is driven to extremes, and the ordinary citizen gets miseducated on the scope of his/her constitutional rights. Unfortunately, there are instances where members of the bar are dragged into this media frenzy. The enforcement of fundamental human rights within the ambit of the law is not a matter of opinion; it requires an in-depth knowledge of the constitution and the legal system. There is no gainsaying the fact that not every infraction amounts to a breach of fundamental human rights. A person may join a public procession or protest, get arrested, and find himself facing a prison term, in spite of assurances by activists to the contrary. The common view would then be that he was unfairly convicted for exercising his right to peaceful protest. To the unbiased legal mind however, it is easy to understand how this ignorant protester fell afoul of the law. In essence, the electronic and social media space is awash with a plethora of opinions on human rights which are either not entirely accurate, or outrightly inadequate. Legal advice is usually personal in nature, and Nigerians must be properly enlightened on the need to seek for legal advice from appropriate quarters.

²² Cap 382 LFN

²³ The Right of Peaceful Assembly <https://bangkok.ohchr.org/the-right-of-peaceful-assembly/> Accessed 10/10/2025

²⁴ See section 45 (1) of the 1999 Constitution wherein the right to private and family life (section 37); right to freedom of thought, conscience and religion (section 38); right to freedom of expression and the press (section 39); right to peaceful assembly and association (section 40); right to freedom of movement (41) can all be restricted.