

The Primary Purpose of Government in Nigeria: A Legal Survey*

Abstract

Section 14(2) (b) of the Constitution of the Federal Republic of Nigeria 1999 declares that the security and welfare of the people shall be the primary purpose of government. In this declaration, the security and welfare of the people are conjunctively presented as a sole purpose. Accordingly, the primary purpose of government is seen as one but it has two interwoven limbs, namely: the security of the people and the welfare of the people. Notably, the deployment of the adjective “primary” in the said constitutional declaration suggests that the security and welfare of the people shall be the main or principal purpose of government in Nigeria. Failure of the government in this primary purpose will give birth to, if not tantamount to failure of the government in every other purpose because without the accomplishment of the primary purpose, the accomplishment of every other purpose of government shall be baseless, meaningless, hindered or frustrated. This paper evaluates the security and welfare of the people in Nigeria. The researcher found inter alia that the government has not prospered but has rather regrettably staggered or faltered in this principal purpose and this has given birth to several serious stumbling blocks in Nigeria including violence, insurgency, banditry, kidnapping, religious intolerance, and increase in crime rate. It is the researcher’s conclusion that security and welfare of the people as the primary purpose of government requires more than having many laws, many law enforcement agencies security agencies and or providing the basic amenities; the accomplishment of that purpose extends to taking prompt and strict measures against factors or things that undermine the welfare of people and trigger insecurity or criminalities. It is herein recommended inter alia that Nigeria should control her national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

Keywords: Welfare, Security, Government, Rights, Purpose, Enforcement, Primary.

1. Introduction: Legal Cue from the Social Contract Theory

The most basic essence of government is to provide security and essential public services to the citizenry.¹ Generally speaking, under the social contract, people voluntarily surrender their rights of self-protection to government, thereby, authorizing the government to somewhat enjoy monopoly of force. The social contract envisages that government will evolve veritable and viable mechanisms to prevent, abate, and resolve violent external or internal conflicts.² This social contract including all the compromises and understandings therein whether express or implied goes a long way to impeach and discourage the employment and/or deployment self-help; little wonder in the case of *Elesie Agbai & Ors v Samuel I. Okogbue*,³ the Supreme Court of Nigeria per Akpata JSC held, *inter alia*, that:

“...In the area where the rule of law operates, the rule of self-help by force is abandoned. Nigeria being one of the countries in the world even in the third world which proclaim loudly to follow the rule of law, there is no room for the rule of self-help to operate...For anyone to resort to self-help, that is, taking the law into his hands...is the very antithesis of orderliness. It is a retrogressive

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¹ A Omozuwa, ‘Re-examining the Primary Purpose of Government’, *Ships & Ports of December 18, 2017* <<https://shipsandports.com.ng/re-examining-primary-purpose-government/>> accessed on July 16, 2022.

² *ibid.*

³ (1991) LPELR-225(SC) p. 97, paragraph A – F.

step which, if encouraged, will lead to chaos, anarchy, and the law of the fittest.”⁴

Likewise, in *Union Bank of Nigeria Plc v. Alhaji Adams Ajabule & Anor.*,⁵ the Supreme Court of Nigeria per Mohammed, JSC reiterated the aforesaid position of law vis-a-vis the impeachment and/or discouragement of resort to self-help when the Court held *inter alia*, that:

“Having regard to the decision of this Court in *Chief Ojukwu v. Governor of Lagos State* (1986) 1 N.W.L.R. (Pt. 18) 62 in which this Court condemned in strong terms that self-help has no place in our civilized world as it is against the observance of the Rule of Law in a democratic set up like ours...”⁶

Generally, social contract theorists advance the view that the state or, more precisely, civil society is the product of a contract, a covenant, an agreement, or a compact. The said contract, a covenant, an agreement, or a compact and the basic terms and conditions thereof may be codified in a people-oriented document usually known as the Constitution or any other binding legal document. This, therefore, implies that the Constitution of the Federal Republic of Nigeria 1999 may be argued to subsist as the legally binding contract agreement between the Nigerian peoples [that is, the various indigenous peoples that make up Nigeria’s population] and the Nigerian government. It is by a deliberate resort to this sort of binding contract, covenant, agreement, or compact that various [indigenous] peoples may voluntarily come together to dwell together and share in the benefits and laws of the community.⁷

In legal parlance, a contract is generally a formal agreement between two or more parties creating obligations or commitments that are enforceable or otherwise recognizable in law.⁸ Adapting the rudiments of the legal concept of contract, the likes of Thomas Hobbes, John Locke and Jean Jacques Rousseau opined and formulated the social contract theory. The theory is to the effect that, due to the absence of a government and a body of laws in man’s state of nature, men decided to enter into two parts: *pactum unionis* and *pactum subjectionis*. The first being an agreement by men to live together peacefully and to respect each other, in order to ensure the protection of lives and property. The second agreement was premised on the need for the people to band together and surrender all or part of their freedom and rights to a supreme body, in return for protection of lives, property and some degree of civil liberties.⁹ Although the trio of Hobbes, Locke and Rousseau theorized differently on the social contract theory, they were in consensus *ad idem* vis-à-vis the fact that, the main gamut of the theory entails people surrendering their respective liberties and rights in exchange for protection of lives, property and liberties by a sovereign, to whom all these collective freedoms and rights were surrendered.¹⁰

⁴ *ibid.*

⁵ 2011) LPELR-8239(SC) p. 28, paragraphs D – E.

⁶ *ibid.*

⁷ GH Sabine & TL Thorson, *A History of Political Theory* (4th edn, New Delhi, Calcuta: Oxford & IBH Publishing Co. PVT Ltd., 1973) p. 398.

⁸ *BPS Construction & Engineering Company Limited v Federal Capital Development Authority* (2017) LPELR-42516(SC) pp. 14 – 17, paras. F – A.

⁹ JA Ambi, ‘Collapse of the Social Contract Theory in Nigeria’, *Daily Trust* (2021) <<https://dailytrust.com/collapse-of-the-social-contract-theory-in-nigeria>> accessed on 14 June 2022.

¹⁰ *ibid.*

Citizens depend on States and central governments to secure their persons and free them from fear.¹¹ Nation-States stagger, falter and/or fail when they are overwhelmed by insecurity and internal violence and can no longer deliver positive political goods to their inhabitants or see to the welfare of the people¹². There is a hierarchy of political goods but in any event, no political good is as critical as the supply of security, especially human security. Individuals alone, almost exclusively in special or particular circumstances, can attempt to secure themselves but traditionally and usually, individuals and groups cannot easily or effectively substitute private security for the full spectrum of public security. The State's prime function is to provide that political good of security – to prevent cross-border invasions and infiltrations, and any loss of territory; to eliminate domestic threats to or attacks upon the national order and social structure; to prevent crime and any related dangers to domestic human security; and to enable citizens to resolve their disputes with the State and with their fellow inhabitants without recourse to self-help which includes the employment or deployment of arms or other forms of physical coercion.¹³ The delivery of a range of other desirable political goods becomes possible when a reasonable measure of security has been sustained.¹⁴

For many years, Nigerians have been battling with multifarious threats to peace. Incessant violent crimes have dimmed the prospects of attaining national cohesion, socio-economic prosperity, and democratic consolidation. Terrorism, banditry, insurgency and the sprouting up of ethnic militias across the six geopolitical zones have also quashed all hopes that every Nigerian can experience freedom from fear of violent attacks. The state of insecurity in Nigeria queries the essence of social contract between the citizenry and government, which is predicated on the centrality of security to human flourishing and felicity.¹⁵

Many families are sundered by criminal violence perpetuated by herdsmen, Boko Haram, kidnappers, bandits, terrorists and ethnic militias. Many children are separated from their parents. Many cannot access basic health care. Also, many have become premature orphans. Without viable family structures how can human values be effectively transmitted from one generation to the other? How can children fulfill their potential without parental nurturing, guidance, and support? What kind of future awaits children deprived of quality education because of violent disruptions? The point is insecurity has multilayered and multi-generational implications that do not lend themselves to easy computation.¹⁶

In tandem with the foregoing cue, it is interesting to observe and note that *section 14(2) (b) of the Constitution of the Federal Republic of Nigeria 1999* without any equivocation declares that the security and welfare of the people shall be the primary purpose of government. In this declaration, the security and welfare of the people are conjunctively presented as one purpose and accordingly it will be safe to posit that the said primary purpose of government is a twofold purpose encompassing the security of the people on one hand, and the welfare of the people on the other hand. In other words, in the context of the above constitutional declaration, the primary purpose of government is seen as one but it has two limbs, namely: the security of the people as the first limb and the welfare of the people as the second limb. Notably, the

¹¹ RI Rotberg, *When States Fail: Causes and Consequences* (Princeton, Princeton University Press: 2004) p. 6 <https://www.brookings.edu/wp-content/uploads/2016/07/statefailureandstateweaknessinatimeofterror_chapter.pdf> accessed on July 15, 2022.

¹² *ibid.* p. 1.

¹³ *ibid.* p. 3.

¹⁴ *ibid.*

¹⁵ (n 2).

¹⁶ A Omozuwa, 'Re-examining the Primary Purpose of Government', *Ships & Ports of December 18, 2017* <<https://shipsandports.com.ng/re-examining-primary-purpose-government/>> accessed on July 16, 2022.

employment and deployment of the adjective “primary” in the said constitutional declaration suggest that the security and welfare of the people shall be the main or principal or chief purpose of government in Nigeria. However, it is unfortunate and very saddening that Nigeria is today well bedeviled by frightening heights and saddening sights of insecurity and increasing level of poverty among the people. It is more saddening to hear how much money the government votes and puts or perhaps pretends to vote and put into security yet insecurity has obviously kept on growing in height. Lives are lost in numbers either in the hands of kidnappers, bandits, terrorists, Fulani herdsmen,¹⁷ religious fighters, armed robbers among others. Whooping sums of money are paid as ransom to kidnappers. Diverse non-state actors now freely bear arms and ammunitions in Nigeria and the government seem to have become overwhelmed if not overcome.

2. Interrogating the Concept of Human Security (Security of the People)

The Concept of human security (that is, the idea of the security of the people) has been debated and disputed at length in the past twenty years or more. Many lists of definitions exist and various comparative analyses of definitions equally exist.¹⁸ Although the definition of human security remains an open question, there is consensus among its advocates that there should be a shift of attention from a state-centered approach to a people-centered approach. The simplest definition of security is “absence of insecurity and threats”. To be secure is to be free from both fear (of physical, sexual or psychological abuse, violence, persecution, or death) and from want (of gainful employment, food, and health). This broadened use of the word “security” encompasses two ideas: one is the notion of “safety” that goes beyond the concept of mere physical security in the traditional sense, and the other the idea that people’s livelihoods should be guaranteed through “social security” against sudden disruptions.¹⁹

The concept of human security was elaborated on the basis of empirical research conducted after the end of the post-Cold War period. Respect for sovereignty was shaken by too many examples where States themselves became perpetrators of insecurities, not only failing to fulfill their obligations toward their subjects but threatening their very existence and/or peace. At the same time, this era saw a variety of new and often unsuccessful international interventions in Bosnia, Kosovo, East Timor and Afghanistan. While conflicts seemed to be settled, the very reasons that had led to conflict in the first place were not dealt with through rehabilitation and long-term peace-building efforts.²⁰ This calls to memory from history, the Nigeria-Biafra Civil War in which many lives and property were destroyed in Nigeria. This war ceremonially ceased (came to an end) without proper attention to the cause(s) of the war. For example, part of the basic causes of the said war were the heterogeneity of Nigeria’s population and the denial and/or neglect of the rights of the diverse indigenous peoples in Nigeria. Another related or intertwined cause of that war is the denial and/or neglect of distinctive desire of the various indigenous people of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation. This distinctive desire was later encapsulated in the extant Constitution of the Federal Republic of

¹⁷ D Edieya, ‘The Menace of Fulani Herdsmen Attack and Its Effects on the Socio-Economic Development of Nigeria’ (2019) available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3476374> accessed on July 16, 2022.

¹⁸ Des Gasper, ‘The Idea of Human Security’ <<https://core.ac.uk/download/pdf/18516744.pdf>> accessed on July 17, 2022.

¹⁹ S Tadjbakhsh, ‘Human Security: Concepts and Implications with an Application to Post-Intervention Challenges in Afghanistan’, *Les Etudes du CERI - n° 117-118* (2005) p. 5, <https://www.sciencespo.fr/cei/sites/sciencespo.fr/cei/files/etude117_118.pdf> accessed on July 17, 2022.

²⁰ *ibid.*

Nigeria as the Federal Character principle yet the denial and/or neglect has continued leading to recurrent ill-feelings, agitations, crisis, violence and intolerance.

The concept of ‘human security’ redirects attention in discussions of security: from the national/state level to human beings as the potential victims; beyond physical violence as the only relevant threat/vector; and beyond physical harm as the only relevant damage. Scores of specific proposed definitions exist. Human security is discussed at different scales and with reference to threats of varying scope. Moving through from broader to narrower definitions: first, it can be treated as the security of the human species, or second, as the security of human individuals. Third, it may focus on severe, priority threats to individuals, as judged perhaps by mortality impacts or by the degree of felt disquiet. Fourth, the severe priority threats are sometimes limited to ‘freedom from want’ and ‘freedom from fear’, or fifthly, to only the latter. More narrowly still, sixthly, some authors wish to consider only threats to individuals brought through violence, or organized intentional violence, or, the narrowest conception yet, only the threats to physical survival brought about through organized intentional violence.²¹

Human security, in its broadest sense, embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfill his or her potential. Every step in this direction is also a steep towards reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear, and the freedom of future generations to inherit a healthy natural environment – these are the interrelated building blocks of human security.²²

Several key elements make up human security. A first essential element is the possibility for all citizens to live in peace and security within their own borders. This implies the capacity of states and citizens to prevent and resolve conflicts through peaceful and nonviolent means and, after the conflict is over, the ability to effectively carry out reconciliation efforts. A second element is that people should enjoy without discrimination all rights and obligations - including human, political, social, economic and cultural rights - that belonging to a State implies. A third element is social inclusion or having equal access to the political, social and economic policy making processes, as well as to draw equal benefits from them. A fourth element is that of the establishment of rule of law and the independence of the justice system. Each individual in a society should have the same rights and obligations and be subject to the same set of rules. These basic elements which are predicated on the equality of all before the law, effectively remove any risk of arbitrariness which so often manifests itself in discrimination, abuse or oppression.²³ Underlying these elements is the role and responsibility of the State toward its citizens. When States abdicate or fail in providing national protection - if the security of people is not safeguarded - massive forced population movements will continue to plague our world.²⁴

²¹ Des Gasper, ‘The Idea of Human Security’ <<https://core.ac.uk/download/pdf/18516744.pdf>> accessed on July 17, 2022.

²² K Annan, ‘Secretary-General Salutes International Workshop on Human Security in Mongolia’, *Two-Day Session in Ulaanbaatar, May 8 – 10, 2000. Press Release SG/SM/7382*, <<https://press.un.org/en/2000/20000508.sgsn7382.doc.html>> accessed on July 17, 2022.

²³ S Ogata, ‘Inclusion or Exclusion: Social Development Challenges for Asia and Europe’, *Statement of Mrs. Sadako Ogata United Nations High Commissioner for Refugees at the Asian Development Bank Seminar, 27 April 1998* <<https://www.unhcr.org/admin/hcspeeches/3ae68fcd54/statement-mrs-sadako-ogata-united-nations-high-commissioner-refugees-asian.html>> accessed on July 17, 2022.

²⁴ *ibid.*

Human security refers to the quality of life of the people of a society or polity. Anything which degrades their quality of life – demographic pressures, diminished access to or stock or resources, and so on – is a security threat. Conversely, anything which can upgrade their quality of life – economic growth, improved access to resources, social and political empowerment, and so on – is an enhancement of human security.²⁵

Human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs or in communities. Such threats can exist at all levels of national income and development.²⁶ The list of threats to human security is long, but most can be considered under several main categories:²⁷

- Economic security
- Food security
- Health security
- Environmental security
- Personal security
- Community security
- Political security

According to the above-highlighted United Nations Development Programme (UNDP), Human Development Report, human security is not only concerned with threats to the physical security of individuals, it encompasses economic, feeding, community, political, health, and environmental concerns as well.

It will suffice for the pursuit of this paper to have the foregoing categories listed without more since our inquiry at this point is to discover what human security (security of the people) entails and perhaps the scope thereof. So, what is human security in its most simple expression? According to United Nations Deputy Secretary-General, Louise Frechette, security of the people (human security) means:

“All those things that men and women anywhere in the world cherish most: enough food for the family; adequate shelter; good health; schooling for the children; protection from violence whether inflicted by man or by nature; and a State which does not oppress its citizens but rules with their consent... Human security is about people: their needs, their welfare, their aspirations...”²⁸

The term human security focuses the concept of security on human survival, wellbeing and freedom. We conceptualize human security as the objective – the ultimate ends – of all security concerns. In this schema, other forms of security, such as military security, are not ultimate

²⁵ RC Thakur, ‘From National to Human Security’, in Stuart Harris and Andrew Mack (Eds), *Asia-Pacific Security: The Economics–Politics Nexus* (Sydney: Allen & Unwin, 1997) pp. 53 – 54.

²⁶ United Nations Development Programme (UNDP), *Human Development Report* (New York: Oxford University Press, 1994) p. 23 < http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf> accessed on July 17, 2022. Although the definition of human security is subject to much debate, its first, most commonly cited usage came in this United Nations Development Programme’s (UNDP) 1994 Human Development Report.

Also available at <https://digitallibrary.un.org/record/240220/files/hdr_1994_en_complete_nostats.pdf?ln=en> and <<https://hdr.undp.org/system/files/documents/hdr1994encompletenostatspdf.pdf>> accessed on July 17, 2022.

²⁷ *ibid.* pp. 24 – 25.

²⁸ Statement by the United Nations Deputy Secretary-General, Louise Frechette to a high-level panel discussion on the occasion of the twentieth anniversary of the Vienna International Centre (VIC), October 9, 1999 <<https://press.un.org/en/1999/19991012.dsgsm70.doc.html>> accessed on July 17, 2022.

goals. Rather, these other forms of security are simply means for achieving the ultimate objectives of human security.²⁹

3. The Welfare of the People and Socio-Economic (Welfare) Rights

Another name for socio-economic rights is welfare rights.³⁰ The Universal Declaration of Human Rights included socio-economic (or “welfare”) rights that address matters such as education, food, health services, and employment.³¹ Socio-economic rights are human rights that relate to people’s ability to live in dignity and participate fully in our society. They include rights related to the workplace, social security, and access to housing, food, water, health care and education. They include the right to fair wages and equal pay; the right to adequate protection of income in the event of unemployment, sickness or old age; and the right to an adequate standard of living.³² Human welfare encompasses many aspects of an individual’s wellbeing, including their labor rights, working conditions, equitable treatment and access to resources and opportunities, regardless of their sex or gender.³³ By parity of reasoning, it is clear that in view of the broad scope of human security (security of the people), the concepts of human security and welfare of the people are intertwined / interwoven such that the both must go together. Little wonder, the extant Constitution of the Federal Republic of Nigeria declare the duo conjunctively to be the primary purpose of government.

Socio-economic rights aim to ensure that everyone has access to resources, opportunities and services essential for an adequate standard of living. Typical examples of social, economic and cultural rights include the rights to education, work, social security, food, and an adequate standard of living. A perusal of the provisions of Chapter II of the 1999 Constitution of Nigeria will reveal that it largely draws inspiration from, but is not limited to, the spirit of socio-economic rights. The provisions of Chapter II of the Constitution of Federal Republic of Nigeria, 1999 will not set out *seriatim* in this paper the researcher sees it as imperative to sift, and cite from the said provisions, those particular or key provisions that are largely perceived to represent, or have the coloration of, socio-economic rights therein. The said particular or key provisions that are perceived to represent, or have the coloration of, socio-economic rights are sifted and cited as follows:

1. Right to General welfare and security: the security and welfare of the people shall be the primary purpose of government.³⁴
2. Right to participatory governance system: participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.³⁵
3. Provision of Transportation: adequate facilities for movement of people, goods and services throughout the Federation.³⁶

²⁹ L Chen, ‘Human Security: Concepts and Approaches’ in T Matsumae and LC Chen (Eds), *Common Security in Asia New Concepts of Human Security* (Tokyo: Tokai University Press, 1995) p.139

³⁰ I Tucak, ‘The Nature of Welfare Rights’, *Economics and Working* (2017) <<http://eworkcapital.com/the-nature-of-welfare-rights/>> accessed on July 18, 2022.

³¹ J Nickel, ‘Human Rights’, *Stanford Encyclopedia of Philosophy* (2003) <<https://plato.stanford.edu/entries/rights-human/#WhicRighHumaRigh>> accessed on July 18, 2022.

³² Poverty and human rights, ‘Backgrounder: Economic and Social Rights’ <<https://maytree.com/what-we-focus-on/poverty-human-rights/backgrounder-economic-social-rights/>> accessed on July 18, 2022.

³³ The Oceans and Fisheries Partnership: A collaboration between the U.S. Agency for International Development and SEAFDEC, ‘Human Welfare and Gender Equity’ <<https://www.seafdec-oceanspartnership.org/human-welfare/>> accessed on July 18, 2022.

³⁴ The Constitution of the Federal Republic of Nigeria 1999, S. 14(2) (b).

³⁵ *ibid*, s. 14(2) (c).

³⁶ *ibid*, s. 15(3) (a).

4. Provision of Physiological needs: suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.³⁷
5. Right to employment: all citizens, without discrimination on any group whatsoever, [shall] have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.³⁸
6. Conditions of work: it shall be ensured that conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life.³⁹ Also, the State is to put in place policies to ensure that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused.⁴⁰
7. Right to health: adequate medical and health facilities for all persons.⁴¹
8. Gender sensitive rights: Right to equal pay: for equal work without discrimination on account of sex, or on any other ground whatsoever.⁴²
9. Right of the child: children, young persons and the aged are [entitled to be] protected against any exploitation whatsoever, and against moral and material neglect.⁴³
10. Right to public assistance in conditions of need.⁴⁴
11. Right to education, from cradle to grave: free, compulsory and universal primary education; free secondary, university education and adult literacy programme.⁴⁵
12. Right to a safe environment: The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.⁴⁶
13. Cultural rights: the state shall protect, preserve and promote the Nigerian cultures which enhance human dignity.⁴⁷

Perhaps, in order to ensure that the State has the capacity to fund the socio-economic (welfare) rights that require budgetary provision to execute, *Section 16 of the Constitution of the Federal Republic of Nigeria 1999* provides essentially for State ownership and control of the major sectors of the economy. That the State shall:

1. manage and operate the major sectors of the economy, without prejudice to equally operating or participating in other sectors of the economy.
2. protect the right of every citizen to engage in any economic activities outside the major sectors of the economy, even though any person may still participate in the major sectors of the economy;
3. not operate the economic system in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group;
4. ensure that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
5. control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

³⁷ *ibid*, s. 16(2) (d).

³⁸ *ibid*, s. 17(3) (a).

³⁹ *Ibid*, s. 17(3) (b).

⁴⁰ *ibid*, s. 17(3) (c).

⁴¹ *ibid*, s. 17(3) (d).

⁴² *ibid*, s. 17(3) (e).

⁴³ *ibid*, s. 17(3) (f).

⁴⁴ *ibid*, s. 17(3) (g).

⁴⁵ *ibid*, s. 18(3) (a) to (d).

⁴⁶ *ibid*, s. 20.

⁴⁷ *ibid*, s. 21.

In the same spirit of ensuring availability of resources to meet socio-economic (welfare) needs, Chapter II of the Constitution of the Federal Republic of Nigeria 1999, in *Section 15(5)* donates power to the State to combat corruption, thus it is therein declared that ‘the State shall abolish all corrupt practices and abuse of power’.

Notwithstanding the manner in which they are framed or couched, and the debate surrounding its usefulness, the provisions of Chapter II of the 1999 Constitution of Federal Republic of Nigeria represent the constitutional framework for, and guarantee of, economic, social and cultural (welfare) rights of the people in Nigeria or at least have the color of making that representation.⁴⁸

4. Factors militating against the Security and Welfare of the People in Nigeria

Ever since Nigeria attained independence in 1960, she has been challenged with and by diverse degrees of insecurity, violence, insurgence, religious intolerance, and with so many irregularities and anomalies and even till date she remains a third world country,⁴⁹ yet it is largely believed and posited that Nigeria is very much endowed with natural resources. Sadly, while those in public offices continue to mismanage, loot, embezzle, and/or misappropriate the public treasury to satisfy their selfish desires, the masses are there on the streets and/or at the grassroots suffering and sorrowing with tears. There are only a few good roads, no stable or regular power supply, no adequate or quality health and housing facilities. Poverty and corruption are at all times high, and for the common man in sight there seems to be no hope for a better tomorrow. The grand outcome of these is that there is little national development, bountiful feeling of insecurity, intolerance, crises and even insurgency in Nigeria.

Meanwhile, Chapter II of the extant Constitution of Nigeria⁵⁰ contains what is titled the “Fundamental Objectives and Directive Principles of State Policy”, which, *prima facie*, are guidelines to the government of Nigeria to promote democracy, social justice and order. The said objectives appear to encompass social inclusiveness with a view at reducing socio-economic and political inequality in status and opportunities in Nigeria. In other words, economic, social, and cultural benefits/rights are found in Chapter II of the Constitution. However, despite the “Fundamental Objectives and Directive Principles of State Policy” which ought to induce a legal duty from the State to provide economic, social, and cultural benefits/rights, these provisions appear unfortunately to be unenforceable by the courts in Nigeria in the light of the ouster clause in *Section 6 (6) (c) of the Constitution of the Federal Republic of Nigeria 1999*. However, in another twist, the same Constitution appears to have placed the viability of the enforcement of the “Fundamental Objectives and Directive Principles of State Policy” under the legislative competence of the National Assembly vide Item 60(a) of the Exclusive Legislative List. Evidently, the point, which is significant here, is that there is a contradiction or at least controversy vis-à-vis the judicial enforcement (justiciability) of the fundamental principles and directives of state policy provided for under Chapter II of the 1999 Constitution of Nigeria.

For the avoidance of doubt, *Chapter II of the Constitution of Federal Republic of Nigeria 1999* titled “The Fundamental Objectives and Directive Principles of State Policy” sets out certain socio-economic (welfare) benefits/rights, but by the provision of *section 6(6)(c) of the*

⁴⁸ S Ibe, ‘Beyond justiciability: Realizing the promise of socio-economic rights in Nigeria’ (2007) 1 *African Human Rights Law Journal*, 225.

⁴⁹Third world countries are the underdeveloped nations of the world, especially those with widespread poverty. <<http://www.dictionary.com/browse/third-world>> accessed on 19 July, 2022.

⁵⁰ The Constitution of the Federal Republic of Nigeria 1999 (as amended)

Constitution of the Federal Republic of Nigeria 1999 read together with the Preamble to the said Constitution of Nigeria, these welfare benefits / rights are non-justiciable⁵¹ purportedly on account of the will or aspiration of "...THE PEOPLE OF THE FEDERAL REPUBLIC OF NIGERIA". The irony of this constitutional impression evidently reveals what the researcher has considered a contradiction: that the people of Nigeria would enact, make, and/or give themselves a Constitution that excludes the justiciability of *inter alia* their primary welfare such as adequate health care⁵² and education,⁵³ principles of democracy and social justice, the State social order is founded on ideals of Freedom, Equality and Justice.⁵⁴ This contradiction is a big factor which militate against the security and welfare of the people in Nigeria because the people that constitute the government seem to incur no [serious] liability when they neglect and/or fail to fulfil the primary purpose of government which is security and welfare of the people. The people seem to have no remedy in law. In fact, painfully, the National Assembly has never considered such neglect and/or failure as grave enough to ground the impeachment/removal of any President and/or Vice-President; likewise, no House of Assembly of any of the Federating State in Nigeria has considered such neglect and/or failure as grave enough to ground the impeachment/removal of the Governor and/or Deputy Governor of the State.

Another related factor militating against security and welfare of the people in Nigeria is the constitutional dichotomy between the provisions of Chapter II of the Constitution of Federal Republic of Nigeria 1999 and the provisions of Chapter IV of the Constitution of Federal Republic of Nigeria 1999. Chapter II of the Constitution of Federal Republic of Nigeria 1999 provides for socio-economic (welfare) rights under the constitutional cover of "Fundamental Objectives and Directive Principles of State Policy" while Chapter IV of the Constitution of Federal Republic of Nigeria 1999 provides for civil and political rights under the constitutional cover of fundamental rights. The said dichotomy dwells principally in the aspect of justiciability / enforceability of the said provisions. While the provisions of Chapter IV of the Constitution of Federal Republic of Nigeria 1999 are generally justiciable / enforceable by virtue of *Section 46 of the Constitution of Federal Republic of Nigeria 1999*, the wheel of justiciability / enforceability of the provisions of Chapter II of the Constitution of Federal Republic of Nigeria 1999 is generally clogged down and/or hindered by the ouster clause contained in *Section 6 (6) (c) of the Constitution of the Federal Republic of Nigeria 1999*. In furtherance and in pursuance of the aforesaid dichotomy, many people now freely exercise and enjoy the fundamental rights recognized and guaranteed in Chapter IV of the Constitution of Federal Republic of Nigeria 1999 and in ratified agreements or charters. However, the same cannot be said of socio-economic (welfare) rights even as the declaration of security and welfare of the people as the primary purpose of government and socio-economic (welfare) rights are contained in Chapter II of the Constitution of Federal Republic of Nigeria 1999 which is affected by the ouster clause.

Interestingly, Nigeria has many security and law enforcement agencies including the Nigerian Armed Forces [comprising the Nigerian Army, The Nigerian Navy and the Nigerian Air force] of which the President of Nigeria is the Commander-in-Chief, the Nigeria Police Force, the State Security Service (SSS), the Nigeria Immigration Service, the National Intelligence Agency, the Nigeria Security and Civil Defense Corps (NSCDC), the Nigeria Customs Service,

⁵¹ O Okere 'Fundamental objectives and directive principles of state policy under the Nigerian Constitution' (1983) 32 (1) *The International and Comparative Law Quarterly*, 214-228.

⁵² S. 17(3) (d) of the Constitution of Federal Republic of Nigeria, 1999 (As Amended).

⁵³ *ibid*, S. 18 (1).

⁵⁴ *ibid*, S. 14 (1).

National Drug Laws Enforcement Agency (NDLEA), Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC) *et al* yet the security of people in Nigeria is nothing to write home about. Ungodly and/or unhealthy compromises on grounds of religion, tribe *et al*, corruption and abuse of power are cancers which have eaten deep into the fabrics of the efficiency and effectiveness of the security and law enforcement agencies including those aforementioned. The popular recent protest in Nigeria which is known as and called “End SARS Protest” was as a result of perceived abuse of power and corruption in/by a Unit of the Nigerian Police Force. The said protest was reported by BBC News as follows:

“Tens of thousands of young Nigerians took to the streets to protest against police brutality after a video went viral of a man allegedly being killed by the notorious Special Anti-Robbery Squad (SARS), sparking what became known as the #End SARS demonstrations.”⁵⁵

According to Premium Times,

Protests against police brutality were held for weeks in various parts of Nigeria in October with the theme #End SARS. The protest began with a demand for an end to criminality by security operatives and the dissolution of the now-defunct Special Anti-Robbery Squad (SARS) of the Nigerian police. It later led to the demand for better governance and institutional reforms. Officers of the police unit were accused of extortion, abuse of fundamental human rights of suspects, and extrajudicial killings.⁵⁶

In relation to immigration, the Federal Government some time ago unveiled a new visa policy, which would allow visitors to gain visa upon entrance into Nigeria. And among other reaction of the people to the security implications of the policy, the National President of Miyetti Allah Kautal Hore, Abdullahi Bello Bodejo reportedly contended that Fulani herdsmen in other countries do not need visa to enter Nigeria.⁵⁷ The report of the said reaction stated as follows:

What concerns Fulani with visa? The Fulani that needs visa are very few, and they are the very educated ones and are in government in other countries. Free visa or no free visa, Fulani don't have any border. Oh yes. They go anywhere they want from anywhere without visa all over the whole world, not only in Africa. They can migrate from Sahel, from Sudan, from Chad, from Niger, from Cameroon to here (Nigeria), nothing concerns them with visa. Even before now, that bandits are trying to spoil Fulani name and image, there is nothing that concerns them with visa; the country where they just want to enter, they will enter and you can just see them. So, those who are troubling themselves that the free visa policy that President Buhari wants to introduce was aimed at bringing in the Fulani from other countries should hold their peace as there is nothing that concerns the Fulani with visa, as they are well organized and already know how they do their movements with their cows; anywhere they see grass they start grazing in that area. They don't need visa, you can see them they just appear there and start their grazing business.

⁵⁵ M Jones, ‘Nigeria’s #End SARS protests: What happened next’, *BBC News of October 7, 2021* <<https://www.bbc.com/news/world-africa-58817690>> accessed on July 19, 2022.

⁵⁶ A Kabir, ‘10 reasons #End SARS protest gained global attention’, *Premium Times of November 7, 2020* <<https://www.premiumtimesng.com/news/top-news/425026-10-reasons-endsars-protest-gained-global-attention.html>> accessed on July 19, 2022.

⁵⁷ S Opejobi, ‘Why Fulani herdsmen don't need visa to enter Nigeria – Miyetti Allah’, *Daily Post News of January 6, 2020* <<https://dailypost.ng/2020/01/06/why-fulani-herdsmen-dont-need-visa-to-enter-nigeria-miyetti-allah/>> accessed on July 19, 2022.

The foregoing shows the exaltation of nepotism and tribalism above the security and welfare of the people in view of the killing / massacre of several people in diverse places / communities in Nigeria by suspected Fulani herdsmen.

Recently, a Nigerian Correctional Center also known as “Kuje Prisons” or “Kuje Medium Security Custodial Centre” situate at the Federal Capital Territory, Abuja was attacked by armed terrorists and several terrorists and criminals were set free from the correctional center. The Commander-in-Chief of the Nigerian Armed Forces, President Muhammadu Buhari visited the facility and was reportedly asking questions that he rather ought to be answering.⁵⁸ The Press Release by the Federal Ministry of Information and Culture in this regard states as follows:

President Buhari, who, like most Nigerians was shocked by both the scale and audacity of the attack queried: “How did the defenses at the prison fail to prevent the attack? How many inmates were in the facility? How many of them can you account for? How many personnel did you have on duty? How many of them were armed? Were there guards on the watchtower? What did they do? Does the CCTV work?”... After inspecting some of the points impacted by the attack, President Buhari spoke to newsmen, expressing disappointment with the intelligence system (and utilization). “I am disappointed with the intelligence system. How can terrorists organize, have weapons, attack a security installation and get away with it?”⁵⁹

The questions that the people should be asking and expecting reasonable answers from the government are the very questions that the Commander-in-Chief of the Nigerian Armed Forces has asked in relation to such a serious security breach and threat as the Kuje prisons attack by terrorists.

The scope of this paper does not extend to outlining several killings and/or massacre of people in Nigeria which have links with religious intolerance, nepotism and tribalism; these are in the public domain and the internet has reports of those killings and/or massacre of people yet the government continues without liability. Other factors militating against the security and welfare of the people are lack of independence of the Judiciary, corruption in the judiciary, lack of intervention by international community, centralization of the security commands such that the State Governors and/or governments have no control over the security agencies. Also, the current structure and operation of the Federal Republic of Nigeria seem to undermine the heterogeneity of the Nigerian population which indeed comprises diverse indigenous peoples and different religions.

5. Conclusion and Recommendations

Significantly, fundamental rights have been described somewhere as rights which are possessed by human beings prior to their recognition by a legal system or despite their denial by a legal system – fundamental rights are synonymous with human rights or natural rights.⁶⁰ Elsewhere, it was notably submitted that “to have human rights, one does not have to be anything other than a human being. Neither must one do anything other than be born a human being”⁶¹. For the avoidance of doubt, let us quickly observe and remark that the term “human rights” is not restricted to any

⁵⁸ I Abdullahi, ‘UPDATED: Buhari visits Kuje prison, faults intelligence system’, Punch News of July, 6, 2022 <<https://punchng.com/breaking-buhari-visits-kuje-prison-after-attack/>> accessed on July 19, 2022.

⁵⁹ S Anyanwu, ‘President Buhari Visits Kuje, Asks Questions About Intelligence And Why Prison Defences Failed To Work’, *Federal Ministry of Information and Culture Press Release of July 6, 2022* <<https://fmic.gov.ng/president-buhari-visits-kuje-asks-questions-about-intelligence-and-why-prison-defences-failed-to-work/>> accessed on July 19, 2022.

⁶⁰ P Jackson & P Leopold, *O. Hood Phillips & Jackson: Constitutional and Administrative Law* (London: Sweet & Maxwell, 2001) p. 13.

⁶¹ J Donnelly cited in B Nwabueze, *Constitutional Democracy in Africa Vol. 2* (Ibadan: Spectrum Books Limited, 2003) p. 3.

particular brand of rights but represent a common household or an amalgamation of both civil and political rights on the one hand and social, economic and cultural rights on the other hand.⁶² In fact, socio-economic rights have been defined as those ‘human rights that aim to secure for all members of a particular society a basic quality of life in terms of food, water, shelter, education, health care and housing’.⁶³ Put *simpliciter*, socio-economic rights form part of human rights. It has been reasonably submitted elsewhere and the researcher herein concurs with the said submission that:

No knowledgeable person has ever suggested that constitutional safeguards provide in themselves complete and indefeasible security. But they do make the way of the transgressor, of the tyrant, more difficult. They are so to speak, the outer bulwarks of defence.⁶⁴

In the premises of the foregoing submission, the people of Nigeria to whom the making of the Constitution should not be left without judicial remedy should any organ of government, person or political party chooses to take the implementation of the provisions of Chapter II of the Constitution for granted! If there is no remedy for such violation, then we may have been deceived by a mere constitutional window dressing which could make the conscience of those exercising governmental powers seared with hot iron as they embezzle and misappropriate the funds/monies which ought to be directed toward implementing the magnificent provisions of Chapter II of the Constitution.

Corruption and abuse of power should be taken seriously and they should be abolished as commanded by *Section 15(5) of the Constitution of the Federal Republic of Nigeria 1999*; it is recommended that the National Assembly should prescribe death penalty for corruption and abuse of power for it is not reasonable that death penalty or serious punishment be prescribed and retained for offences such as culpable homicide, armed robbery, kidnapping, treason whereas the offences of corruption and abuse of power which somewhat trigger or contribute to those other aforementioned offences are treated with levity. Little wonder, the politicians have kept on looting the wealth of Nigeria and abusing the power entrusted to them by the people because they know that there is little or no serious criminal liability awaiting them. It is thus recommended *inter alia* that Nigeria should control her national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity and failure to the economy in that manner should be an automatic ground for impeachment/removal of the President, Vice-President or the Governor and/or Deputy Governor. Restructuring of the country in such that will effectively countenance the heterogeneity of the Nigeria’s population is equally recommended so as to reduce agitations and ill-feelings along the lines of tribes and religion, there is nothing wrong with returning to the regional structure or restricting Nigeria into a confederation of sovereign states or regions with a loose center. State/regional policing system and decentralization of the commands of the security agencies and law enforcement agencies are equally recommended so that every state or region should tackle the security challenges of the state or region accordingly and invite the central government where the need arises. It is also recommend that there should be a robust legal framework for the intervention of regional and/or international community where any government has grossly neglected / failed or is progressively failing or neglecting the security and welfare of the people.

⁶² SI Nwatu, ‘Legal Framework for the Protection of Socio-Economic Rights in Nigeria’ (2011 – 2012) 10 *The Nigerian Juridical Review*, 24.

⁶³ G Erasmus, ‘Socio-Economic Rights and Their Implementation: The Impact of Domestic and International Instruments’ (2004) 32 *International Journal of Legal Information*, 243, 252.

⁶⁴ DV Cowen, *The Foundations of Freedom* (New York: Oxford University Press, 1961) p. 119 cited in B Nwabueze, *Constitutional Democracy in Africa Vol. 2* (Ibadan: Spectrum Books Limited, 2003) p. 11.