

# CONSTITUTIONAL LAW I

## Fundamental Objectives and Directive Principles of State Policy

### Provision & Nature

- Chapter II of the 1999 Nigerian Constitution contains the Fundamental Objectives and Directive Principles of State Policy (FODPSP).
- A cursory look at the provisions relating to FODPSP in the 1999 Nigerian Constitution, from Sections 13 – 24 (under Chapter II), reveals that it covers political, economic, social, educational, foreign policy, environmental, cultural, mass media, and ethical objectives, including of duties of citizens.
- They are usually of a social, economic, and even civil and political, rights nature, and are considered helpful or a pre-requisite for the actualisation of other justiciable human rights provided for in the national constitution (such as Chapter IV of the 1999 Nigerian Constitution on Fundamental Rights).

### Purpose & Relevance

- FODPSP was first introduced into the 1979 Nigerian Constitution according to the constitution drafting committee, to ensure that the government is more conscious of, and responsive to, its wide obligations and responsibilities to society; and this was necessitated by the fact that previous constitutions only provided for powers and right, not duties.
- As defined by that committee, fundamental objectives ‘are the identification of the ultimate objectives of the nation’, and directive principles of state policy ‘indicate the path which led to the objectives’ or the policy to be pursued to achieve the objectives. The committee further noted that the purpose of specifying FODPSP was to clearly define the goals and fundamental attitudes and values that should inform the behaviour of the government and the governed, and to enable them take concerted efforts towards achieving them – for indeed, a constitution should not simply be a code of legally enforceable rules.
- The High Court in *Okogie & Others v. Attorney General of Lagos State* (1981) 1 Nigerian Constitutional Law Report 218 noted that ‘fundamental objectives are ideals towards which the Nation is expected to strive whilst directive principles lay down the policies which are expected to be pursued in the efforts of the Nation to realise the

national ideals’. Also, in *Attorney General of Ondo State v Attorney General of the Federation & 35 Ors* (2002) 7 Monthly Judgement of the Supreme Court of Nigeria 1, the Supreme Court noted that, generally, although the provisions of Chapter II ‘cannot be enforced by legal process but would be seen as a failure of duty and responsibility of State Organs if they acted in clear disregard of them.’ Here, the court further stated that ‘[i]t is not the intention to introduce these principles... as mere pious declarations. It is the intention... that in future both the legislature and the executive should not merely pay lip service to these principles but that they should be made the basis of all legislative and executive action[s].’

## Legal Status

- **Section 13(1) of the 1999 Nigerian Constitution:** ‘It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.’ This duty and responsibility also applies to private individuals and organisations according to the Supreme Court in *Attorney General of Ondo State v Attorney General of the Federation* (*supra*)
- However, as a general rule, Section 6(6)(c) of the 1999 (and 1979) Nigerian Constitution renders the provisions on FODPSP non-justiciable, in providing that: ‘The judicial powers vested in accordance with the foregoing provisions of this section – ... (c) shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the [FODPSP] set out in Chapter II of this Constitution.’

- Why do you think FODPSP are made non-justiciable? And why should they be made justiciable? Or, should they be made justiciable?

- Nevertheless, Section 6(6)(c) does not totally exclude the possibility of the provisions of Chapter II being made justiciable through legislation. In other words, the provisions on FODPSP are not absolutely non-justiciable.

✚ **Proviso to Section 6(6)(c):** The judicial powers vested in accordance with the foregoing provisions of this section – ... (c) shall not, except as otherwise provided by this Constitution, extend...’

✚ **Section 4(2) of the 1999 Nigerian Constitution:** ‘The National Assembly shall have power to make laws for the peace, order and good government of the

Federation or any part thereof with respect to any matter included in the Exclusive Legislative List...’

✚ **Under the Exclusive Legislative List:** The National Assembly can make laws for: **Item 60:** ‘[t]he establishment and regulation of authorities for the Federation or any part thereof - (a) To promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution’;

**Item 67:** ‘[a]ny other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution’;

**Item 68:** [a]ny matter incidental or supplementary to any matter mentioned elsewhere in this list.’

### ✚ **Supreme Court Decisions:**

*Federal Republic of Nigeria v Anache & Ors* (2004) 3 Monthly Judgement of the Supreme Court of Nigeria 1, pp. 46 – 50, *per* Belgore, JSC. Based on a community reading of the proviso to Section 6(6)(c), Section 4(2), as well as Items 60(a), 67 and 68, the court held that Chapter II can no longer be considered ‘a toothless dog which could only bark but cannot bite...Chapter 2 becomes clearly and obviously justiciable’. In this light, it held that the ICPC Act, 2000, was not unconstitutional but was lawfully made by the National Assembly, and the ICPC thereunder lawfully created as an authority to enforce, give effect to, and make Section 15(5) of the 1999 Nigerian Constitution justiciable, especially as the latter provision directs that ‘[t]he State shall abolish all corrupt practices and abuse of power.’ For the same position, see the earlier case:

*Attorney General of Ondo State v Attorney General of the Federation* (*supra*) pp. 42-44, *per* Uwais, CJN (as he then was).

More broadly, in a paper written by Uwais (titled: ‘Fundamental Objectives and Directive Principles of State Policy: Possibilities and Prospect’), he noted that: ‘[Item 60] is definitely one avenue that could be meaningfully exploited by our legislature to assure the betterment of the lives of the masses of Nigeria... The utilization of this power would ensure the creation of requisite bodies to oversee the needs of the weak and often overlooked and neglected in our society... to prioritize the and implement the provisions of Chapter II, and by extension, the welfare of all Nigerians.’