SHOULD UTILITARIANISM UNIVERSALIZE ENVIRONMENTAL RIGHTS, RIGHT TO GOOD GOVERNANCE AND PEACE OVER FUNDAMENTAL HUMAN RIGHTS? ANALYZING THE NIGERIAN CONUNDRUM

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ABSTRACT

The paper x-rays the role of the natural law school of thought in the emergence of the utilitarian school of thought and how it has led to the decline of the natural law school. Key to this is the goal of the utilitarian school proponents arguing for the rights of citizens of a state to a healthy environment. While this right have captured by majority of nations, Nigerian Constitution has continued to shy away from giving effect it. This paper seeks amongst others to examine whether the tenets of utilitarianism which guarantees environmental rights, good governance and peace over fundamental rights. In achieving the aim of this paper, the doctrinal research method is adopted. It contextualizes relevant source materials and scholarly literature to reveal that the right to healthy environment, a key tenet of utilitarianism is nonexistent under Nigerian Law. In addition, the provisions of fundamental human rights under Nigerian law do not have any impact on the right to a healthy environment. The paper therefore recommend that Chapter II of the Nigerian Constitution be amended to make the items listed under it, such as the right to protect the environment and the right to a healthy environment be justiciable against the Nigerian Government with a view to bridging the gap between the rights to a healthy environment, good governance, peace and fundamental human rights.

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Keywords: Utilitarianism, Natural Law, Fundamental Rights, Environmental Rights, Good Governance, Nigeria.

INTRODUCTION

The decline of the Natural school of thought which dwelt mostly on analytical positivism that hinged on law as deriving from God to man through morals and ethics,[i] paved the way for the emergence of the principle of Utilitarianism which is an aspect of the sociological school of thought. The natural law discovered that law is given to man through the use of reasons in order for man to choose between good and evil.[ii] It is believed that what is good should be universal and what is evil should be rejected by all. This school of thought was largely propounded in the medieval days by Socrates, Plato and Aristotle as philosophers, and in the middle ages/contemporary days the likes of St. Augustine, St. Thomas Aquinas, Williams Blackstone, John Locke, Jean Jacque Rousseau, and Roscoe Pound, etcetera emerged. These criticisms and more led to a drastic shift and departure from the natural school of thought to utilitarianism which is an aspect of the sociological school of thought. In the 19th century, the Sociological School of Thought was seen as a response to the Natural law and legal positivism's jurisprudential conflict. The Utilitarian school of thought was expounded by Jeremy Bentham.[iii]According to Adaramola,[iv] the utilitarian school of jurisprudence revolves round and was made popular by the works of Jeremy Bentham, who is seen as the father of English utilitarianism jurisprudence. Bentham based his premise on the principle of utilitarianism on the fact that men are self interested or selfish and always act to gain pleasure and avoid pain or mischief. He argued further that the purpose of law is to create happiness for the greatest number of persons and to reduce pains, and posits that the sole aim of legislators in enacting laws is the greatest happiness of the greatest number of persons. Bentham posited further in his expository and censorial jurisprudence that law should be seen as it ought to be rather than law as it.[v]Arising from the above, utilitarianism as a school of thought is an offshoot from the sociological school of thought that believes that law should not be looked only from the perspective of how it is stated in the statute book but on how it affects the society and how it impacts on the greatest number of persons through good governance, right to safe environment, and how the fundamental human rights of man are protected. Although the concept of fundamental human right predates the concept of environmental rights, an attempt to separate both concepts may be likened to the separation of a mother from a child. In contrast, this is not the case under Nigerian Constitution. While general principles of fundamental rights enforced

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and acceptable globally, under Nigerian law, there is a clear distinction under Chapter II and Chapter IV. It is in this regard that this paper will argue that although environmental rights protection will promote good governance and peace, as is the case under Nigerian law, which is the core principle of the utilitarian school of thought, without fundamental human rights, it will be ill-conceived to guarantee environmental rights provided for in Chapter II.[vi] As Cranston observes, 'Human Right, is a universal moral rights, something which all men, everywhere, at all times ought to have, something which no one may be deprived without a grave affront to justice...' This paper therefore will critically look at how the theory of utilitarianism as a school of Jurisprudence is been universalized in environmental right, good governance and fundamental human right and whether nations should not universalize environmental right and rights to good governance and peace over fundamental human rights. This paper aims at analysing the utilitarian school of thought. This paper also aims at discussing how utilitarianism as a School of Thought has impacted fundamental right, environmental right, good governance and Peace Building through legislations. It will further critically analyse whether environmental right, good governance and peace building rank above fundamental right universally and to proffer solutions in ensuring that environmental rights, good governance and peace building are to be made a fundamental constitutional rights as is the case globally.

EXAMINING UTILITARIANISM AS SCHOOL OF THOUGHT IN JURISPRUDENCE

According to Taiwo and Koni,[vii] utilitarianism is an offshoot of the Sociological School of Thought. The sociological school of thought is among the five schools of thought in jurisprudence; that is: philosophical or the natural law school, analytical school, positive school, historical school, sociological school and the realist school of thought. The sociological school of jurisprudence emerged as the synthesis of various juristic and philosophic thoughts. One of the major exponents of this utilitarian school of thought is a philosopher is Jeremy Bentham. Here law is viewed as a social phenomenon. According to him, law is a social function, an expression of human society concerning the external relations of its individual members. The proponents of this school of thought are of the view that the State does not create law, but only formulate law and that social unity and social needs are preserved and satisfied;

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so laws do not come from State but from the Society. He went further to state that the sanction behind law is not the force of the State but the awareness on the part of the individuals. However, the it is posited that even if the law emanates from the society, the law must still be formulated by the instrument of the State called the legislature in a democratic setting and such laws made are maintained and preserved by the Executive arm of Government who is also another instrument of the State that has a force of coercion such as the police, the court, the correctional centres and so on. It therefore posited further that if the simulation of the making of laws is put in the hands of an individual, chaos, anarchy and strife will become the order of the day and therefore the Researcher supported this postulations of this utilitarianism Sociological School of thought to the extent of creating happiness to the greatest number of persons but disagreed with the utilitarianism school of thought that the function and the formulation of law should be left in the hands of individual rather than state in order to avoid chaos and anarchy. Notable jurists who postulated the idea of Utilitarianism of the Sociological School of Thought are Jeremy Bentham, Rudolf Von Jhering, Eugene Erlich, Roscoe Pounds etc. These Philosophers or Jurists above mentioned believes that the making of law, formulation of law and function of law must yield towards good governance and peace for the greatest number of persons this is what will guarantee the happiness to the greatest number of persons. A question is in dire need of an answer; how does this utilitarian school of thought universalise environmental law, good governance and peace as well as environmental right above or over Fundamental Human Rights? While the paper will argue for a universalization of environmental right, good governance and peace, it will also conclude by recommending for the amendment of the Nigerian Constitution by fusing the rights under Chapter II with Chapter IV under Nigerian Constitution as part of a universalized fundamental rights protection.

UTILITARIANISM AND THE UNIVERSAL CONCEPT OF ENVIRONMENTAL RIGHT

There is no universal acceptable definition of the term "environment." Legal scholars and scientists view the term environment from different perspectives. However, the Chambers Concise Dictionary[viii] defines environment as "surroundings, external conditions, influencing development or growth of people, animals or plants; living or working conditions." Under Nigerian law,[ix] the environment is defined to include water, air, land and all plants and human

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beings or animals living therein and the interrelationships which exist among these or any of them. Rau and Wooten[x] give a comprehensive definition of the environment when they defined it thus" the whole complex of physical, social, cultural, economic and aesthetics factors which affects individuals and communities and ultimately determines their form, character, relationship and survival. Environmental law, according to Ezeibe,[xi] is defined as a corpus of laws whether customary, local, national or international that deals with the maintenance, promotion, preservation and protection of the environment; it includes legislative enactments, customs and traditions, international conventions, treaties, protocols, regulations and decided authorities or case law.

Furthermore, the Black's Law Dictionary, defines environmental law as the field of law dealing with the maintenance and the protection of the environment including preventive measures such as the requirement of the Environment Impact Assessment statements as well as measures to assign liability and provide clean up for incident that harm the environment.[xii] Environmental rights have been defined as the rights of individuals and peoples to an ecologically sound environment and sustainable management of natural resources conducive to sustainable development[xiii]. It must be noted that there is no universally acceptable definition of environmental rights. However, environmental rights can broadly be grouped into three areas; the right to a clean and safe environment, the right to act so as to protect the environment and the right to information, access to justice and to participate in environmental decision making. The first written suggestion that there should be a Human Right to a healthy environment came from Carson in *Silent Spring*, published in 1962.[xiv] If the Bill of Rights contains no guarantee that a citizen shall be secure against lethal poisons distributed either by private individuals or by public officials, it is surely only because the country's forefathers, despite their considerable wisdom and foresight, could conceive of no such problem.

Similarly, in her final public speech before dying of cancer, Carson testified before President Kennedy's Scientific Advisory Committee, urging it to consider much neglected problem, that of the right of the citizen to be secured in his own home against the intrusion of poisons applied by other persons. "I speak not as a lawyer but as a biologist and as a human being, but I strongly feel that this is or ought to be one of the basic human rights." The first formal recognition of the right to a healthy environment came in the *Stockholm Declaration*, which emerged from the pioneering global eco-summit in 1972[xv] thus:

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> Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

In the five decades since the *Stockholm Declaration*, the right to a Healthy Environment rapidly migrated around the globe. This formal recognition of the right to a healthy environment came in the Stockholm Declaration, which emerged from the pioneering global eco-summit in 1972 thus:

> Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.[xvi]

As at April 2022, 150 of the world's 193 UN member-nations recognise this right, either through their constitutions, national environmental legislations, court decisions, or ratification of an international agreement.[xvii] In 1976 and 1978, Portugal and Spain, respectively included the right to a healthy environment in their constitutions. According to the Portugal's Constitution, everyone one has the right to a healthy and ecologically balanced environment and the duty to defend it.[xviii] Since the mid-seventies, ninety-five countries have granted constitutional status to this right.[xix] Furthermore, constitutional law experts observe that recognition of environmental rights has grown more rapidly over the past fifty years than any other human right. Despite this progress, there is an ongoing debate about the scope and potential utility of the right to a healthy environment. Proponents have argued that the potential benefits of constitutional environmental rights include: stronger environmental laws and policies, improved implementation and enforcement, greater citizen participation in environmental decision-making, increased accountability, reduction in environmental injustices, a level playing field with social and economic rights; and better environmental performance.[xx]

Critics on the other hand, have argued that constitutional environmental rights are too vague to be useful, redundant because of existing human rights and environmental laws, a threat to democracy because they shift power from elected legislators to judges, not enforceable, likely to cause a flood of litigation; and likely to be ineffective. Is the constitutional right to live in a

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healthy environment merely a paper tiger with few practical consequences? Or is this right a powerful catalyst for accelerating progress towards a sustainable future? The best way to answer these questions is by examining the experiences of the 95nations where this right enjoys constitutional status. Proving a clear cause and effect relationship is always challenging in the social sciences. However, new research demonstrates that the incorporation of the right to a healthy environment in a country's Constitution leads directly to two important legal outcomes that are stronger environmental laws and court decisions defending the right from violations. Evidence indicates that the other anticipated benefits of constitutional environmental rights also are being realised, while the potential drawbacks are not materializing.

The paper therefore aligned itself with the latter critics that surprisingly despite the fact that Nigeria as a nation is a signatory to most international environmental treaties and conventions, such instruments are not expressly given enforceable legal backing as seen in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended [xxi] but rather they are merely seen in Chapter II,[xxii] which are the sections referred to as Fundamental Objective and Directive Principles of State Policy. It provides thus:

> The judicial powers vested in the foregoing provisions of this section shall not, excerpt 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 Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.[xxiii]

This chapter has been declared as non justiciable. Sadly, this is against the spirit and letters of the Utilitarianism School of Thought.[xxiv] There are several environmental legislations that deal with pollution, oil spillage and discharges however none expressly proclaim environmental rights as human right. Most troubling is the fact that despite the enactment of the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act and other laws, environmental rights was also not made a fundamental right. It is submitted however, that despite the silence of the Nigerian Constitution on environmental rights, it appears that the Nigerian courts have come in aid to persons who has suffered damages as a result of an environmental hazard. For example, The Federal High Court in *Gbemre v Shell Petroleum Development Company,*[xxv] held that:

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> gas flaring is a gross violation of the constitutionally guaranteed rights to life and dignity which include the right to a clean poison free, pollution free, healthy environment, access to a safe and portable water and adequate sanitation and adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions.

One would have expected that the National Assembly of the Federal Republic Nigeria would have taken clue of the above court judgement to amend the Nigerian Constitution by ensuring that environmental rights are fundamental rights and justiciable. It must be further noted that the right to life[xxvi] as seen in section 33[xxvii]cannot be guaranteed in an unhealthy environment as the right to life encompasses the right to a clean and safe environment. Most global, regional and National bodies that recognise this right; these include; the American Convention on Human Rights 1969, International Covenant on Civil and Political Rights 1966, the European Convention on Human Rights 1950, Universal Declaration of Human Rights 1948 and the African Charter on Human and Peoples' Rights 1981.

UTILITARIANISM, GOOD GOVERNANCE AND PEACE BUILDING

According to Bentham,[xxviii] utilitarianism is the system of Government that will benefit or create happiness to the greatest of number of persons; and for the greatest number of persons to benefit in any system of government, there must be good legislations enacted by legislators for the benefit of the greatest number of persons and executed by the executive arm of Government that has the interest of the people at heart. What is Good Governance? The United Nations Development Programme[xxix] (UNDP) defines good governance as governing systems that are capable, responsive, inclusive and transparent. UNDP works closely with Governments to strengthen public institutions, help fight corruption and support inclusive participation. Despite all the criticism, the utilitarianism formula of creating the greatest happiness for the greatest number of persons still remain a most veritable tool towards social justice. Utilitarianism views a just society or a society with good governance as that which creates the greatest happiness to the greatest number of persons. Utilitarianism is sensitive to the human nature. The fundamental goal of human being is to be happy. This feature is so fundamental to the existence that we explore all available means towards attaining happiness hence what utilitarianism is doing is to aid us to realise our individual and collective ideals. Jeremy

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Bentham maintains that the State should always act to remove disabilities thereby advancing the welfare of the citizenry. Utilitarianism supplies a frame work with which state actions can be judged.

Universally speaking, Good governance is all about having the basic fundamental norms, accountability, transparency, respect to basic laws, checks and balances, safe environment for its citizenry and corrupt free society where every ,manner of persons will be treated equally and all laws of the land must be respected by all irrespective of the race, sex and status. The word good governance is universally accepted as its opposite is bad governance and bad governance can be resulted from lack of transparency, disrespect for rights of others usually bring anarchy and distrust among people can as well lead to war. One cannot talk about good governance in Nigeria, without making reference to the Fundamental Human Rights of people and case laws in Nigeria because one of the hallmark of good governance is equality before the law, respect to the Constitution, the Rule of Law and respect to the Fundamental Rights of the citizens as seen in *Gani Fawehinmi v Sanni Abacha,*[xxx] where the Supreme Court of Nigeria, held that the African Charter on Human and People Rights,[xxxi] was not affected by the military Decree purporting to have suspended the Constitution since moreover, there was no such express mentioning of the Charter. Also, it held that the African Charter on Human and Peoples Rights therefore remains preserved. Consequently, it was held that there was a breach of the applicant's right.

It is important to note at this point that there is a natural nexus between good governance and peace building. This is so, because once a society is governed in accordance with the Rule of Law, the rule of might automatically declines. For example in countries like America, Norway, United Kingdom etc where there is accountability, transparency, respect for Human Rights, rule of law etc there is automatic civility among her citizens unlike in Nigeria where there is banditry, theft, unknown gun men, terrorism, kidnapping etc which are directly traceable to bad governance. It is hoped that Nigerian Government will drastically move away from bad governance and start ruling in accordance to the rule of law which will guaranty societal peace. Nations are further encouraged to take a clue from the United Kingdom whose Prime Minister; Boris Johnson forcefully resigning because majority of his cabinet members were all resigning as a result of his inordinate attendance to a party during the COVID 19 period.[xxxii] Whereas in Nigeria, despite the noticeable bad governance those in the helm of affairs stick to office

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without anyone resigning, or giving account in the face of brazen acts of corruption. The most recent attack on the advance team and convoy of the Nigerian President; Muhammadu Buhari and the attack on the maximum correctional centre, Kuje on the 5th and 6th of July, 2022 and the singular fact that nobody has taken responsibility or fired nor anyone resigning as seen in international best practices where heads would roll shows the level of bad governance in Nigeria.[xxxiii] No wonder Thomas Hobbes in the 17th and 18th century stated that "man in a state of nature everyman carries arm against each other and the instrument of power (state) is not guaranteed."[xxxiv] In this situation, it is argued whether the situation mentioned above is not indicative of Nigeria becoming failing state.

GOOD GOVERNANCE, PEACE BUILDING AND THE NIGERIAN CONSTITUTION

By the provisions of section 4(2) of the Nigerian Constitution[xxxv], the National Assembly (the Legislative Arm of Nigerian Government) shall have powers to make law for the peace, order and good government of the Federation or any part thereof with respect to matters in the exclusive legislative list set out in Part 1 of the Second Schedule to this constitution. Furthermore, Section 4(3) of the Nigerian Constitution[xxxvi] provides that the power of the National Assembly to make laws for peace, order and good government of the Federation with respect to any matter included in the Exclusive legislative list save as otherwise be to the exclusion of the State Houses of Assembly. Despite the beautiful thinking of the drafters of the Constitution, it only grants the National Assembly rights to make laws for the good, peace and order of any part therein but such cannot be said of the Executive Arm of Government as seen in section 5 of the Nigerian Constitution whose duties primarily is implementation of laws. Painfully, that the execution and the implementation of good governance is not fundamental and enforceable in Nigerian, the provisions of good governance as seen in section 14(1) 14(2)(b)[xxxvii] could not be said to be justiciable but mere rhetoric used for political jingles as actions cannot be taken against the Government. It therefore calls to question the rational or basis for putting this section in Chapter II of the Nigerian Constitution as action cannot be maintained or enforced by any competent court this further shows why Nigerian politicians are not been punished administering bad governance, poor execution of project, lack of welfarism and these have led to communal crisis, poor infrastructure, poor administration of criminal

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justice system, rising level of corruption and abuse of fundamental rights. Despite all the international conferences and treaties signed by the Nigerian Government, the Government still pays deaf ears to good governance, welfare and peace building.

UTILITARIANISM AND FUNDAMENTAL HUMAN RIGHT UNDER NIGERIAN CONSTITUTION

As discussed above, utilitarianism is the system of Government that will benefit or create happiness to the greatest of number of persons; and for the greatest number of persons to benefit in any system of government, there must be good legislations enacted by legislators for the benefit of greatest number of persons and executed by the Executive arm of Government that has the interest of the people at heart. On the other hand, Fundamental human rights started as far back as the time of creation when God[xxxviii] respected the right to life and right to fair hearing of Adam despite his omnipresence status. Fundamental right is the first right and most fundamental right of man. Universally speaking, most countries of the world have adopted this right as the first right that must be respected by all. In Nigeria, Chapter IV[xxxix]of the Nigerian Constitution guarantees this right and those rights are justiciable and can be enforced in the courts of the land. A practical instance where the right has been upheld was in the case of *Bello v AG Oyo State*[xl]where the Supreme Court of Nigeria held that the right to life of any man is sacrosanct and fundamental and that the killing of the appellant was unlawful and unconstitutional. Furthermore, section 35 and 36 of the Nigerian constitution[xli]Section 36 of the constitution guarantees the right to fair hearing of any man and based solely on two principles Audi Alterem patem and Nemo Judex in causa sua meaning hear the other side and that no man can be a judge in his case respectively. In *Garba v University of Maidugiri,*[xlii]where there was a riot by the student union and properties were destroyed including the personal properties of the Deputy Vice-Chancellor. The university in their wisdom set up a panel to investigate the activities headed by the Deputy Vice-Chancellor which ended up rusticating the appellant and the other students. The Court during hearing of this matter held that the Deputy Vice Chancellor being the chairman of the panel violated the fundamental human rights of the Appellant as he cannot be a judge in his own case. The Court, therefore, upheld the fundamental right of fair hearing of the Appellant. In the United States of America, the Bill of Rights 1791 and the 14th Amendment recognised fully the fundamental rights of Americans, this came to

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fore in the case of *Lochner v New Work,*[xliii] was a landmark decision of the U.S Supreme Court in which the Court Ruled that a New York state Law setting maximum working hours for bakers violated the bakers right to freedom of contract under the Fourteenth amendment of the U.S Constitution.

The decision has been overturned where the American Supreme Court upheld the fundamental rights of the Applicants. Furthermore, in the United Kingdom, the Magna carter 1215 also recognised the fundamental right of her citizens.[xliv] Furthermore, the Brazil Constitution recognises and protects the fundamental rights of her citizens.[xlv] Universally speaking, it is important to point out that in most countries of the world, Fundamental Human Rights rank far above any other right including environmental right, the right to good governance and peace building. In the Nigerian law, the National Assembly can only amend Chapter IV of the Nigerian Constitution,[xlvi] when she has two-third majority support of each of the house (Senate & House of Representatives) for any section of the chapter to be amended[xlvii]. However, no matter how highly placed Fundamental Rights are, in some cases, it goes with some certain level of breach from the angle of those managing the State authorities. As seen in *Okogie v Millitary Governor of Lagos state*[xlviii] where Government closed down missions schools and the Government was sued for breach of their Right to Information and Press. The Court upheld their arguments and held that their rights have been breached. In recent times the lives of innocent citizens were wilfully terminated by members of the Nigerian Army that shoot sporadically against harmless citizens in exercise of their fundamental right to association and assembly. Despite these shortcomings of how Nigerian Government breached the right of citizens, in Nigeria laws, the environmental rights, good governance and peace are not justiciable because they cannot be enforced in Nigeria Superior Courts just as in India.

RECOMMENDATIONS

It has become apparent that the items that come within the provisions of Chapter II of the Nigerian Constitution are not justiciable, and as such cannot be enforced as it relates to right to healthy environment. It is further revealed that Nigeria has a weak institutional framework on good governance. This has led to violations of environmental rights, which has seen for instance, international oil companies in Nigeria are seldom found guilty for polluting the ecosystem, especially degradation of the environment, gas flaring and so on. It is revealed that

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there is no active citizen engagement between the governed and the governance. It is further observed that the free (better) value system of citizen from cradle is nonexistent. Finally, it is revealed that there is no better legal framework in accordance to International best practice on Fundamental Human Rights. In the light of the above, the following recommendations will be key to the actualization of the aim of this paper. It recommends that rights such as environmental rights and good governance enshrined in Chapter two of the 1999 Constitution of the Federal Republic of Nigeria be amended by the National Assembly by making such rights fundamental rights, justiciable and enforceable. It is further recommended that there should be a strong and better institutional framework on good governance in line with international best practices. Similarly, there should be a strong and better institutional framework on environmental laws and rights in line with International best practices. In addition, mobile courts should be established amongst all the tiers of Government to try offenders who violate and breach environmental laws in Nigeria. Considering government and oil company partnership in environmental violations, it is recommended also that oil companies must also be made to sign an undertaking or a memorandum of understanding to curb/reduce environmental pollution to its barest minimum within areas of operations on a field by field basis. Finally, a Constitutional Court be established to try Offenders who are in gross disregard and breach of the Provisions of Chapter IV of the Constitution outside the regular courts which till date have not been able dispense justice, mostly those relating to rights violations in Nigeria due to longevity of cases.

CONCLUSION

Utilitarianism should not universalize the supremacy of environmental rights and rights to good governance above fundamental human rights. It is agreed that environmental rights, rights to good governance and peace be universalized. However, the paper disagree that environmental rights and rights to good governance should be superior to fundamental human rights but rather argues that the rights enshrined in Chapter II of the Nigerian Constitution of should be made justiciable and enforceable by and against the Government of Nigeria in line with global trend. It is further submitted that certain special courts manned with lawyers with specialty be created such as Mobile and Constitutional Courts for trials of offenders of environmental laws. Issues of fundamental human rights should be separated from the regular courts to guarantee speedy

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adjudication of trials within the aforementioned areas. The recent decision of the Nigerian Supreme Court, in the case of *Centre for Oil Pollution Watch v. The Nigerian National Petroleum Corporation (NNPC)*,[xlix] is also commendable and a light at the end of the tunnel in the battle to make the right to a healthy environment in Nigeria justiciable.

ENDNOTES

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[iii] F Adaramola, *Jurisprudence* (Lexis Nixes: 2008) 253.
[iv]Ibid.
[v]Ibid.
[vi] See for instance s. 20 which provides that 'the State shall protect and improve the environment, and safeguard the water, air and land, wildlife of Nigeria.'
[vii]Taiwo and Koni, (n 1) 269.
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[ix]See s. 37 of the National Environmental Standard and Regulations Enforcement Agency (establishment Act) LFN 2004, hereinafter NESREA Act.
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[xx]Ibid.
[xxi] The Constitution of the Federal Republic of Nigeria 1999 (as amended) 2011 (hereinafter the Nigerian Constitution).
[xxii]Ibid. See s. 13-20.
[xxiii] See s. 6 (6) (c) of the Nigerian Constitution.
[xxiv] See R Ako, N Stewart & E O Ekhator, 'Overcoming the (Non) Justiciable Conundrum: The Doctrine of Harmonious Construction and the Interpretation of the Right to a Healthy Environment in Nigeria' (2016). See also U Etemire, 'The Future of Climate Change Litigation in Nigeria: Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation' (2021) 2 *CCLR*, 166-167, and A Babalola, 'The Right to a Clean Environment in Nigeria: A Fundamental Right?' (2020) 26 (1) *Hastings Environmental Law Journal*, 4.
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[xxvii]ibid
[xxviii]Taiwo & Koni, ibid (n 3) 148.
[xxix]United Nation Development Programme Report, 1965.
[xxx] See the Nigerian Constitution, ibid (n 21).
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ISSN 2581 3382
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[xxxiii] See N Okodili, 'Revealed: How Bandits Plotted Kuje Prison Attack' in The Nation Newspaper Nigeria (17 July, 2022.
[xxxiv] See A Munro, *The State of Nature Encyclopaedia Britannica* (Online) https://www.britannica.com/topic/state-of-nature-political-theory. Accessed 4 August 2022.
[xxxv]See s. 4 of the Nigerian Constitution, ibid (n 21).
[xxxvi]Ibid
[xxxvii]Ibid
[xxxviii]Genesis 3:9, 10, New King James Version of the Holy Bible.
[xxxix] See Chapter IV of the 1999 Constitution, ibid (n 21)..
[xl] (1986) Legal Practitioners Electronic Law Report- 764 Supreme Court.
[xli]See s. 35 and 36 of the Nigerian Constitution, ibid (n 21).
[xlii](1986) 1NWLR (pt. 18) 553.
[xliii] 198 U.S 45 (1905)
[xliv] See the s. 12(2) of the Constitution of the Federal Republic of Ghana, which recognizes the fundamental rights of her citizen. In addition, Part III Article 12-35 of the India Constitution also recognises fundamental rights of Indians.
[xlv] See Art. 5 of the Brazilian Constitution.
[xlvi] See Chapter IV of the Constitution of Nigeria, ibid (n 19).
[xlvii] See s. 6, ibid.
[xlviii] (1980) NWLR pt (18) 243
[xlix] (2019) 5 NWLR (Pt. 1666) 515, where an NGO commenced an action at the Federal High Court against the defendant, NNPC over alleged oil spillage. NNPC raised a preliminary objection on points of law challenging the locus standi of the plaintiff, an NGO to commence the action, and prayed the court to strike out the suit. Both the trial court and the Court of Appeal struck out the suit. The Supreme Court in allowing the appeal, cited the Preamble 3 (e) of the Fundamental Rights Enforcement (Procedure) Rules, 2009 by holding that the…concept of locus standi has grown beyond narrow approach and now encompasses public spirited individuals and NGOs, thus expanding the scope of locus standi on environmental matters. See also J N Mbadugha, 'Locus Standi and Public Interest Litigation in Environmental Matters in Nigeria: Lesson from Centre for Oil Pollution Watch V. Nigerian National Petroleum Corporation ' (2020) 11 (3) *The Gravitas Review of Business and Property Law*, 1-20, M C Anozie & E O Wingate, NGO Standing in Petroleum Pollution Litigation in Nigeria: Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation' (2020) 00 *Journal of World Energy Law and Business*, 1-8, and 'Etemire, ibid (n 24).

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