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Abstract

This article examines the notion of a right to development accruing to Nigerians from the provisions of Article 22 of the African Charter on Human and Peoples' Right. It notes that the right to development in Nigeria is a very FRQWURYHUVLDO RQH JLYHQ LWV XQVHWWOHG QDWXUH VFRSH GRPDLQ DQG FRO

legal nature, as well as its enforcement and justice ability, depend on the relationship between well-being and human rights. Although the right to development presumes the enjoyment of a full array of rights, in terms of its legal nature, it is not merely a compilation or synthesis of these; rather, it is an independent composite right that is enjoyed both collectively and individually. It is distinguished from the discrete rights that comprise it by requiring the duty-bearers to create an environment that is conducive to the realization of individual and collective well being.

Discussion

Arguments for its existence nevertheless are essentially hinged on international legal instruments and principally on the provisions of Article 22 of the African Charter on Human and Peoples' Rights (Rati cation and Enforcement) Act being a domestication of the African Charter on Human and Peoples' Rights in the Nigerian legal system; albeit not without di culty.

It is against the above background that this article examines the nature, content, scope, and domain of the sui generis right to Conceptualization of the Right to Development in Nigeria development and also just to what extent it can be enforced within the

Prefatorily, it is expedient to de ne the scope, content, and domain of the subject matter of development. The establishment of any legal right or claim to development. is exercise will serve to de ne the extent and degree of the legal bene t, duty, and responsibility arising from the

notion of a right to development. Also, for the right to development to eventually be enforced in Nigeria, the same must be understood by the

citizens for it to have e ective legal appreciation and existence. Hence,

the understanding of the instant right is a material prerequisite for the existence per se of the right. It therefore behoves us at this point to elicit such an understanding so that Nigerians may adequately press for what

is duly guaranteed to them by relevant laws [4].

Unsettlingly, the concept of development is not one that is not

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Copyright: © Ttt uaadDght: populace while remaining irredeemably controversial in the community of Nigerian jurists and academia given its unsettled content, which consequently has the extended e ect of expropriating Nigerians of the instant legal preserve [2].

right to development. Arguing on this point, we posit that the domain, content and scope of every concept subject of human rights must transcend human beings and their economic, social, political, and cultural engagements as well as their internal faculties and processes to include their interactions with society and their environment. Until this is put into consideration, only a mirage of a human right will exist or at best, an ineffective human right [6].

Vindictively, international instruments providing for the right to development have often been conceptualized under circumstances much more relatable to our position, while scholars positing the content of the right to development have often identified elements much more related to our arguments as being subsumed in the right to development. Starting from the second half of the twentieth century, the United Nations' push for a global recognition of the right to development, at least within the categorization of so rights, was essentially premised on the realization of the pervasiveness of the concept in daily human living and existence as well as states' corporate existence and essence.

Through the years, however, the right to development, as following from the concept of development, has come to be established as a human-centric notion which must be made to reflect across all human endeavor's, starting from their environment to the least of their abstract engagements. It is therefore within these confines that the right to development is construed within the purview of a right of Nigerians [7].

As has been noted, the concept of a right to development is of international origin in relation to Nigeria. To this extent, amongst the host of international legal instruments providing for the right to development, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) stand out as the most comprehensive legal frameworks providing for the instant right. However, regional instruments as the African Charter on Human and Peoples' Rights domesticated in Nigeria by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act also avail the arguments of a fundamental right; the same being provided for under its Article 22. Yet it must be noted that for the purpose of the enforcement of the right to development in Nigeria, recourse and reliance must be placed on the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act as a matter of compliance with the provisions of Section 12 (1) of the Nigerian Constitution (in force) and the explanatory note to the Fundamental Rights (Enforcement Procedure) Rules, 2009, which elevates the instant right to a near status of the fundamental right under the Nigerian jurisprudence and hierarchical system of rights [8].

In this regard, we note the provisions of Article 22 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, which is to the effect that:

1. All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively to ensure the exercise of the right to development [9].

As much as the notion of development has been relatively settled, interpreting the content of the instant Article is a largely problematic exercise. To this extent, in the deconstruction proceedings, the courts have often noted a priori that the legal preserve of a right to development creates a correlative duty on the part of the government, which in the

first instance must formulate national development policies consistent with the development objectives of the citizenry through a democratic approach. However, this is not to tie the consummation of the right to development solely to governmental actions. In effect, the right to development is expounded as an overarching concept that incorporates all human actions within the domain of societal interaction in its realization. In this regard, it is submitted that individual persons have duties, as singular participants and collectively as members of a community, to promote and protect an appropriate political, social, and economic order for development. However, as it affects states, the latter have the primary responsibility, at both national and international levels, to create "national and international conditions favourable to the realization of the instant right." Furthermore, it is submitted that States through coordinated efforts, have the duty to put together a machinery to ensure that their citizens are not disadvantaged or deprived of such necessary basic needs of life. It is the capacity expansion, that permits the effective participation by the members of the community [10].

Flowing from the above, the right to development, relevant to Nigeria as arising from the provisions of Article 22 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, can therefore be construed to mean the legal claim to development itself or, in a more critical perspective, it means the legal claim to the process of attaining development within the definition of development being a process enabling the creation of growth, progress, positive change, or the addition of physical, economic, environmental, social, and demographic components. Enjoying the right to development, therefore, entails the presence of the condition of development or the existence of conditions aimed at achieving development.

As an aid to interpretation, the courts may turn to the elaborate provisions of Article 1 of the United Nations Declaration on the Right to development, which expounds on the concept by providing thus:

3. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.

By the instant provision, an informed praxis of the right to development is created, while subsequent provisions have the effect of delimiting the contours and determining the content of the instant right [11]. It refers to the provisions of Article 1 (2) of the United Nations Declaration on the Right to development, which reads:

4. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

While the foregoing provisions may not have a binding effect on Nigerian courts when exercising their judicial scrutiny on the provisions of Article 22 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, it goes a long way in preempting the courts over what essentially is the content of the right to development and how they could approach the subject matter at any time they are confronted with giving effect to it.

Further theorization put forward by scholars on the scope of the right to development are to the effect that its full realization will entail full respect for all human rights, citizen participation in all activities of the State affecting them, full attainment and preservation of social justice, enhanced and optimal level of international cooperation and

effective enjoyment of the right to self-determination [12]. In light of the above argument, it is noted that the existence of these conditions or the full realization of the right to development are sine qua non

position, however, the African Union Court of Justice, substantially relatable to Nigeria and presenting a mutually applicable law as the basis of the right to development, has been confronted over time with the task of determining the right to development.

Although law suits have abounded in this regard, substantive arguments have nonetheless been advanced against the justice ability of the legal preserve. Arguing in this regard, contentions have hovered around the metrics for determining the benchmark for a violation of the right to development. Furthermore, the positivists theorists have been noted to advance such arguments generally that rights which cannot be legally enforced are not justiciable. While the former argument may have been dislodged by the realisation of the fact that the subject matter of a right to development transcends econometric analyses to impinge on a little less than every human interaction and activity within the State, the latter remains a clog in the wheel of the enforcement of the right to development. is is largely because for the right to

References

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