

TOPOGRAPHY OF HUMAN SUFFERING IN NIGERIA – FROM THE PLATEAU OF CORRUPTION TO THE LOW LANDS OF POVERTY: THE RIGHT TO DEVELOPMENT TO THE RESCUE

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Abstract:

This article takes a critical look at the content of the right to development as provided in the African Charter on Human and peoples' Rights and the United Nations Declaration on the Right to Development, and interrogates the availability of that right in Nigeria. The article argues that an institutionalized culture of corruption is to blame for the failure of successive Nigerian governments to promote and foster the right to development because the resources for realizing that right are usually commandeered by the corrupt leaders. It is contended that the failure of the right to development in Nigeria truncates the realization of other human rights because the right to development is indeed the fountain head of all other human rights, what with the interdependence, interconnection and indivisibility of all human rights. A deficit of the right to development is therefore the reason for so much poverty and human suffering in Nigeria. Finally, the article submits that lawyers and judges have what it takes to actualize the quest of suffering Nigerians to enjoy the right to development. If lawyers through cause lawyering can engage the courts with a flood of strategic litigations, backed by robust policy and social change advocacy, the right to development will become tangible to checkmate corruption, poverty and human suffering in Nigeria.

KEY WORDS: CORRUPTION, DEVELOPMENT, HUMAN RIGHTS, CAUSE LAWYERING, JUDICIAL ACTIVISM

1.0 Introduction:

The right to development has been recognized under various international human rights regimes as a fundamental human right without which other human rights cannot effectively be secured and enjoyed. Interestingly, the right to development was first recognized, espoused and codified as a full-fledged individual and collective human right by the African Charter on Human and Peoples' Rights, which was adopted in 1981.¹ The right to development was subsequently proclaimed by the [United Nations](#) in 1986 in the "Declaration on the Right to Development," which was adopted by the [United Nations General Assembly](#).² The vote took place on the 4th of December 1986. A total of 146 States voted for the resolution with 8 abstentions (Denmark, Finland, the Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the United Kingdom of Great Britain and Northern Ireland). Ironically, the only country to vote against the declaration was the United States of America.

The Preamble of the Declaration on the Right to Development among other things recognizes that:

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

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¹ Nigeria signed up to the Charter in 1982 and ratified same in 1983, finally domesticating the Charter in 1989 as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act

² Resolution 41/128

The essence of the right to development entails that without securing the economic, social, cultural and political development of the people, the full realization of their human rights and fundamental freedoms is seriously compromised and jeopardized. Economic development is at the heart of the right to development because the ramifications of that right are geared towards extricating people from poverty. Social, cultural, and political development therefore are all conducive to economic development of the people.³ There is no gainsaying that Nigeria, with the present crisis of poverty, is at the lowest ebb on the index of the right to development. Millions of Nigerians of working age are either without any meaningful source of income or outrightly jobless. Thus, effectively, millions of Nigerians are economically marginalized and disempowered because of lack of commitment on the part of political leaders to secure and guarantee the right to development. That right continues to languish in the doldrums of our statutory literature without any deliberate and sincere effort at its realization.

The bane of the right to development everywhere around the world, especially in the developing and under-developed countries, is corruption. Corruption ensures that resources of a nation that ought ordinarily to be channeled towards the development of the nation and prosperity of its people, are misused, misapplied, diverted, looted or misappropriated by those at the helms of governance. Corruption is therefore a travesty of good governance, to the extent that it constricts accountability, discounts transparency, jettisons probity, dissipates resources, commandeers the commonwealth and consequently atrophies development. Nigeria is in a turgid quagmire of corruption, which has eaten deep into the fabrics of government and society. Elected political leaders and public servants in Nigeria are in a free jamboree of wanton impunity in the squandering of the nation's commonwealth that has left the economy in a comatose, infrastructure in pitiable conditions, and millions of Nigerians in abject poverty. Hence, the right to development in Nigeria is a byword of fantasy, which sounds too utopian to be tangible and realistic.

So much work, time, energy and resources have been devoted to the study of corruption in Nigeria towards getting a handle around it to ameliorate its devastating impact on governance. Unfortunately, Nigerian politicians and public officials remain constantly ingenuous in devising uncanny ways and means of truncating every effort at mitigating corruption; thus, rather than abate, the crime of corruption continues to flourish in Nigeria for the flamboyant aggrandizement of those in the corridors of power but to the utter discomfiture of a crestfallen citizenry. Are we therefore without hope? Is the future altogether bleak and dire? Many have thrown in the towel and taken a French leave from a country that has disappointed them and offers little or no hope for economic survival, to settle in other climes as vagrant sojourners in search of greener pastures. This article offers a new strategy to re-engender hope for Nigerians through robust cause lawyering and judicial activism for upholding and enforcing the right to development in Nigeria.

2.0 The Purport and Purview of the Right to Development:

The development of the right to development,⁴ as a germinal African contribution to international human right law⁵ is partly traceable to the history of exploitative experience and underdevelopment that has for many years remained native to the African continent, and consequent contention

³ It has been contended by some scholars that development should no longer be conceived solely in terms of economic growth; that development at its core involves the fostering of equity, mainstreaming of gender issues in development design and practice. That participatory development is to be favoured over the top-down model; and that a right-based approach is useful.

⁴ Upendra Baxi, *The Development of the Right to Development*, in *Human Rights in Post Human World: Critical Essays* (Oxford University Press, 2007) p. 124

⁵ C. O. Obiorah, 'A Regional Perspective: Article 22 of the African Charter on Human and Peoples' Rights' (sourced from <https://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIVChapter27.pdf> accessed 4/2/24)

amongst African legal scholars and few progressive leaders that international law must take a significant part in the quest to ameliorate those experiences.⁶

The African Charter on Human and Peoples' Rights provides that:

*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. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.*⁷

The United Nations Declaration on the Right to Development on the other hand offers an exhaustive definition and codification of the right to development as follows:

*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.*⁸

Development in the context of the right to development therefore entails harnessing the resources of a State or country towards improving the lives and wellbeing of the people by providing the enablement for their attainment of economic, social, cultural and political emancipation. The resources of the state are not to be disposed at the pleasure of those in government, but strictly and solely for the facilitation of a progressive development of the country that offers conducive environment for people and individual citizens to develop their full potentials and lead a productive, creative, decent, happy, prosperous and protected lives. The African Commission on Human and Peoples' Rights was saddled with a consideration of possible violation of Article 22 of the African Charter in the case of *Kevin Mgwanga Gumne, et al v. Cameroon*⁹ wherein the complainant alleged denial of economic infrastructure and economic marginalisation against them by the Cameroonian government. The Commission held the view that the government of Cameroon was obligated to invest its resources in the best way possible to attain the progressive realization of the right to development. Hence the Commission opined that State parties are imbued with discretion on how to allocate scarce resources towards progressive realisation of the right to development. However, it is submitted that such discretion is not to be exercised arbitrarily but fairly and transparently, adopting a right-based approach to development that guarantees equity and eschews discrimination of any kind. What is more, it has rightly been contended that 'progressive realisation' contemplates incremental development. That is what Odinkalu trenchantly described as the "*incremental language of progressive realisation*."¹⁰ Thus, instances of commandeering the commonwealth for the satisfaction of the selfish yearnings of the political leaders as is prevalent in Nigeria, amounts to abdication of obligation under the right to development, for which government can be held accountable by an action of adversely affected persons for the enforcement of their fundamental right to development.

⁶ Chidi Odinkalu, 'Analysis of paralysis or paralysis of Analysis? Implementing Economic, Social, and Cultural Rights under the African Charter on Human and Peoples' Rights', *Human Rights Quarterly*, Vol. 23, No. 2, (2001) p. 347

⁷ Article 22 thereof

⁸ Article 1 (1) thereof

⁹ Communication No. 266/2003 available at <http://caselaw.ihrda.org/doc/266.03/view/>

¹⁰ Chidi Odinkalu, *ibid* (See footnote 7 above), p. 349

Securing the right to development includes an obligation to run the affairs of the state in a manner that effectively yields economic stability, social justice, cultural and political freedoms. It includes provision, equipment and maintenance of infrastructure such as good roads, residential houses, hospitals, schools, markets, prisons, courts, etc. It also incorporates provision of basic utilities and services such as electricity, portable water, cooking gas, education, healthcare, etc at minimal or affordable costs. Fostering the right to development and providing enabling environment for human development entails involving or consulting the people before major decisions are taken in the process of development. Thus, in the case of *Centre for Minority Rights Group International on behalf of the Endorois Welfare Council v. The Republic of Kenya*¹¹ the complainant alleged that the government converted into a game reserve a large parcel of land around Lake Bogoria on which the pastoral Endorois community grazed livestock and performed their religious ceremonies. It was claimed that the community was neither consulted nor compensated throughout the process of compulsory acquisition of their historic land. The African Commission held that government had the burden to create conditions favourable to a people's development. The Commission therefore found that failure to provide suitable alternative land or compensate the Endorois community was a gross violation of Article 22 of the African Charter.

The right to development belongs to the third generation rights,¹² comprising what is known as the solidarity rights, which is usually asserted collectively by a group of persons, people or community. Also coming under the umbrella of third generation rights are the rights to self-determination, peace, humanitarian assistance, racial non-discrimination, and environmental protection.¹³ It is important to reiterate the decisive role of Africa's political lobbying for the recognition and codification of these third generation rights at the United Nations. It has been posited that:

*Through writings and speeches critical of colonialism, racism, and global inequality; cultivating alliances with non-African Third World nations; and making the United Nations a more inclusive and representative international body, African leaders, it is shown, helped redefine human rights at the UN in ways that continue to reverberate in our own era.*¹⁴

Unfortunately, and ironically too the same African leaders have championed the frenetic gymnastics of corruption and bad governance that erode the realisation of the right to development for their people. In the telling submission of James Paul:

*The constitutional character of some authoritarian regimes, often combined with the structured poverty which exists within the State, means that popular exercise of human rights, especially the right to development, are threat to entrenched, powerful groups and public services, which control administration, law and its enforcement.*¹⁵

¹¹ Communication No. 276/2003 available at <http://caselaw.ihlda.org/doc/266.03/view/>

¹² The first generation rights are the civil and political rights, the second generation rights and the socio-economic and cultural rights.

¹³ Adrian Vasile Cornescu, 'The Generations of Human Rights' in Days of Law: The Conference Proceedings, 1st edition, (Masaryk University, 2009)

¹⁴ Derrick M. Nault, 'Africa and the Shaping of International Human Rights' (Oxford University Press, 2020)

¹⁵ C. N. James Paul, 'The Human Right to Development: Its Meaning and Importance' (Third World Legal Studies, Vol. 11, 1992) Pg. 17

Nigeria is a good example of the worst form of government abdication of its duty to secure the right to development. Nigerian leaders siphon or loot state resources that should be employed for development of the country and launder those resources to already developed countries, thus further boosting the economy and development indexes of such developed countries. For the virtual absence of the third generation rights in Nigeria, and Africa at large, Nigeria and most countries in the African region remain third world countries, often ignominiously designated as the ‘*silent other*’ in the comity of nations.

3.0 The Right to Development as the Fountain Head of Other Human Rights:

The nature of economic, social, cultural and political development envisaged under the right to development is such as ensures the realization of all other human rights and fundamental freedoms. The right to development therefore obligates government to fulfill its duty of promoting and fostering development in a manner that encourages the realization of human rights in all ramifications, including taking resolute steps to eliminate the incidence of massive, rampant and flagrant violations of human rights.¹⁶

The linkage of development and human rights locates the human person at the center of development and propagation of the principle that elimination of every form of human rights violation is integral to every cogent development agenda. The connection of human rights and development in policy and academic discourses has developed in a double traffic approach. First, is through adoption of a right-based approach to development, which entails integration of human rights in sustainable development praxis. Development in this context is thus viewed in terms of process and participation, a conception that has gained global purchase in the discourse on development and human rights. A major aspect of this approach to development is what has been recognized as a human rights approach to development assistance, which proposes an international law framework for regulating international development cooperation and development assistance.¹⁷ The second and more germane approach to the right to development is the one that estimates development as a tangible human right in itself. This draws from the appreciation of human rights as interrelated and indivisible. It is predicated on the idea that development comes in the diverse hues of social, economic, cultural and political contents, and that an aspect of human right cannot effectively be fostered except every other aspect of human rights is simultaneously protected.¹⁸ It has been argued in amplification of this approach that:

The right to development means that development is, itself, a human right and thus it prescribes the manner by which development can be viewed from the human rights perspective, together with the rules by which development can be realized like other human concepts. A rights approach to development enhances social justice, creates stronger and more equitable institutions, strengthens democracy and promotes good governance.¹⁹

The foregoing explains why in Nigeria the gross deficit of human development in its social, economic, cultural and political ramifications implicate in unmitigated rampancy of violent crimes,

¹⁶ Isabella D. Bunn, ‘The Right to Development: Implications for International Economic law’ *American University International Law Review*, (2000) Vol. 15, Issue 6, pg. 1425

¹⁷ Bonny Ibhawoh, ‘The Right to Development’, *Human Rights Quarterly*, (2011) Vol. 33 pg. 76

¹⁸ *Ibid*

¹⁹ O. Olusegun & O. Ajibaye, ‘Realising the Right to Development in Nigeria: An Examination of Legal Barriers and Challenges’ *Afe Babalola University Journal of Sustainable Development, Law & Policy*, Vol. 6:1, (2015) pg. 145

low life expectancy, pervasive poverty, and general lawlessness. Nigeria is enmeshed in an unbridled spiral of violent crimes such as kidnapping, insurgency, armed robbery, ritual killings, etc., all of which wantonly undercut security of lives and property and grossly violate the fundamental rights to life, freedom of movement, right to own property, and right to private and family life. This ripple effect flows from the failure to promote the right to development because, it is the absence of facilities and resources for the enhancement of human development that mostly instigate recourse to crime as desperate, albeit illegal, means for survival. Also, the very low life expectancy in Nigeria is largely traceable to poor health-care services, poverty and decrepit medical infrastructure and equipment, all of which impact negatively on the right to life, thus strongly indicting the failure to guarantee the right to development as a factor undermining the right to life. Meanwhile, our leaders unabashedly have recourse to foreign countries for their health care needs at the expense of public funds. They have their families permanently reside in foreign countries to enjoy the benefits of good infrastructure and medi-care for healthier lives and longevity.

The rampancy of abject poverty in Nigeria is traceable to poor standard of education in the country and paucity of capacity building programs for skill acquisition and talent development. Failure on the part of government to commit to improving the quality of education and human capital development is indicative of an evanescent, nay, moribund right to development, which conduces to poverty.²⁰ In turn, poverty significantly undermines the right to the dignity of the human person and the capacity to enjoy all other human rights because the poor are disproportionately predisposed to abuse of their human rights and often lack the wherewithal to enforce same given the cost of access to justice. This, again, underscores the connection between the right to development and other human rights. Indeed, the foregoing exegesis demonstrates the centrality of the right to development to the sustainability and promotion of all other human rights.

Poverty mentality is the reason why corruption is pervasive in public service in Nigeria, which is the reason for failure of government to foster the right to development. Those who control the affairs of government see their positions as opportunity to acquire massive wealth by stealing from the commonwealth to pile up for their families, believing that by so doing, they would have eradicated poverty permanently from their families for generations to come. This unreasonable attitude draws from the fear of poverty, which inspires corruption; and by undermining the right to development, corruption further replicates poverty in society and foists upon the common people the hopelessness and helplessness of right dispossession.

3.0 Corruption as the Bane of the Right to Development in Nigeria:

Corruption is the route to poverty and underdevelopment. This explains why developing countries such as Nigeria, with their history of “*organized systematic plundering of national treasuries and spoliation of assets*” have continued to experience exacerbation of poverty and relentless economic quagmire.²¹ Corruption as an indicator of governance failure invariably generates poverty in a society, which in turn regenerates corruption – leaving a society in a vicious circle of poverty and corruption.²²

In most developing countries, pervasive lack of accountability in governance and ineffective mechanisms for combating corruption have implicated in widespread poverty,²³ erosion of

²⁰ D. P. Saredau, ‘Law and Nigeria’s Development: How to Strengthen the Efficacy of Law for development in Nigeria’ *African Journal of International and Comparative Law* Vol. 29, Issue 4, (2021)

²¹ D. A., Chaikin, ‘Controlling Corruption by Heads of Govt. & Political Elites’ in Larmour, P. & Wolanin, N. (eds.) *Corruption & Anti-Corruption* (Asia Pacific Press, Australia, 2001) 97

²² N. Manandhar, ‘*Corruption and Anti-Corruption*’ (Transparency International, Nepal, 2005)

²³ Y. Akinseye-George, ‘*Judicial Protection of Human Rights in Nigeria*’ (Centre for Socio-Legal Studies, Abuja, 2011) pg.

democratic institutions, collapse of rule of law and violations of basic human rights, which cumulatively create conducive atmosphere for perennial conflicts and violence.²⁴ Deep seated corruption in Nigeria for instance has systematically ensured that the huge resources of the State continue to serve the interests of a few politicians and bureaucrats whilst millions of the common people are consigned to the margins of society to languish in penurious human suffering. This entails that majority of citizens are left at their own devices to source for food, shelter, water, health care, energy, employment, security, and education, because the resources of the State are not deployed toward making these basic human needs available or easily accessible. Hence, in Nigeria as in many developing nations of the world especially in Africa, human suffering relentlessly undercut the quality of life and the dignity of the human person, making everyday a frustrating struggle of survival for many. It is evident that the goal of contemporary human rights project is to throw light on human sufferings everywhere and find ways of ameliorating them.²⁵ In this connection, it has been observed that realizing human rights in Africa is an economic and political project of eliminating poverty and recreating freedoms necessary for all people to realize their fullest potentials.²⁶

In Nigeria for instance, the Constitution,²⁷ which is a product of military junta famed for institutionalizing corruption in the country, makes very salutary declarations about social, economic and cultural rights in Chapter II designated as 'Fundamental Objectives and Directive Principles of State Policy'. Ironically, these so-called 'fundamental objectives' were pronounced non-justiciable by the same Constitution.²⁸ This implies that nobody can go to court to seek the enforcement of any of the rights contained in Chapter II of the said Constitution. It would therefore seem that acts of corruption, wanton arbitrariness, impunity and *ultra vires* acts by government officials and agencies that run contrary to these '*fundamental objectives and directive principles*' cannot effectively be challenged in court. This, in the main, has been responsible for the entrenchment of a culture and orientation of political corruption in today's democratic Nigeria. This sort of veiled constitutional contempt of socio-economic rights and the right to development captured under chapter two of the constitution clearly ignores the interdependence and interconnection of all human rights, plus the extensive ramifications of socio-economic and cultural rights and the right to development on the lives and wellbeing of millions of poor and suffering Nigerians.²⁹

However, by virtue of the African Charter on Human and People's Rights, which has been ratified and domesticated by Nigeria as African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, the right to development enshrined under Article 22 of the Charter encapsulates the economic, social, cultural and political dynamics of human and state development, which tend to obviate the disingenuous constitutional dispossession of the 2nd and 3rd generations of human rights³⁰ under the 1999 Constitution. Unfortunately, the salutary codification of the right to development in Nigeria under the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act remains largely an idle donation of right the benefits of which are tangibly separated from the ordinary Nigerians. There is an obvious nexus between corruption and violation

²⁴ M. Robinson, 'Making Human Rights Matter: Eleanor Roosevelt's Time has Come' *Harvard Human Rights Journal* vol.1, (2003)

²⁵ U. Baxi, 'Voices of Suffering and the Future of Human Rights' (1998, 8 *Transnat'l L. & Contemp. Probs.* 127)

²⁶ Chidi Odinkalu, 'Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa' (2003), 47, 1 *Journal of African Law*

²⁷ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²⁸ Section 6 (6) (c) thereof

²⁹ S. Ibe, 'Implementing Economic, Social & Cultural Rights in Nigeria: Challenges and Opportunities' 10 *African Human Rights Law Journal*, (2010) 197

³⁰ Socio-economic and cultural rights enshrined under Chapter II of the Constitution and Fundamental objectives and directive principles of state policy.

of socio-economic rights and the right to development in many developing countries of the world – especially in Africa –, which implicate in pervasive poverty and human suffering in those countries.³¹

The discovery of oil and the years of oil windfall in Nigeria paradoxically became a ‘resource curse’³² that has ultimately turned the country into an unrepentant prodigal nation, as it were, incapable of securing even the most basic human needs for a vast majority of its crestfallen citizenry. The sheer abundance of oil rents robbed successive Nigerian governments of the motivation for leadership ingenuity and turned them into indolent rent seekers with zero imaginativeness and zeal for good governance. What with Nigeria’s antecedent of military autocracy and absolutism, the leadership psyche became finagled with a culture of impunity, which dealt a fatal blow to the principles of accountability and the rule of law.³³ So much money in the hands of very powerful and unaccountable leaders engendered a penchant for avarice; thus, government positions became synonymous with stupendous personal wealth, dizzying ostentation and wanton profligacy. Abundant resources that ought to be deployed for infrastructural and human development are thus frittered away or misappropriated. This situation of plundering of public wealth has left majority of Nigerians in penury and terrible human suffering, which contributed to the incidence and proliferation of violent crime, kidnapping, conflicts, militancy, and terrorism in the country, all of which have taken monumental tolls on human rights and security of lives and property.

At this ugly juncture in Nigeria’s historical narrative, the country seems to have completely lost direction, and derailed aimlessly from the visions of the ‘heroes past’ – the champions of Independence. There is a large void of patriotism among the political class in Nigeria, and an evanescent actuation for the paramount good of the nation – with governments largely populated by egocentric officials callously diverting the commonwealth of the nation into their personal pockets with no apprehension of repercussions or consequences. The more they steal from the national treasury the more they impoverish and subjugate the people, thereby inventing a regime of neo-colonialism against their own people. Thus, a new orientation, absolutely and completely averse to the concept of leadership as service to the people, has long been enthroned and institutionalized. The values of altruism, patriotism, service, accountability, resourcefulness, prudence and modesty consequently have become eroded in the ideas of leadership and public service. Therefore, political and public service positions have become extremely attractive because they have lost the responsibilities and cumbersomeness of real service and become the fastest track to easy and extraordinary affluence and wealth. Little wonder why even the least qualified persons now jostle for important political or public service positions.

Politics and politicians that prioritize corrupt commandeering of public funds over societal and human development are responsible for the pervasive orientation in Nigeria, especially among the youths, for fastlane hook or crook financial success. The alarming quest among youths to make quick money and achieve financial success through criminal and treacherous means, be it through armed robbery, kidnapping, ‘yahoo plus’ (financial fraud laced with diabolism), etc., draws from an institutionalized orientation of unabashed looting by corrupt and duty abnegating political leaders and public officials. The lack of commitment among public functionaries to human development and their ostentatious lifestyles instigate a similar proclivity among the impressionable youths to loathe the route of patient self-development and honest hard work towards financial success. What

³¹ K. Olaniyan, *‘Corruption and Human Rights Law in Africa’* (Hart Publishing, UK, 2004)

³² M. Bhayani *‘Challenges of Corruption & Good Governance: A Human Rights Perspective’* (IPEDR vol.71.6, 2014) pg. 24

³³ A. Peters, *‘Corruption & Human Rights’* (Basel Institute on Governance Working Paper Series No. 20, 2015). See also E.O. Abah & M.O. Nwoba *‘Effects of Leadership & Political Corruption on Achieving Sustainable Development: Evidence from Nigeria’* (Public Policy & Administration Research vol.6 No.6, 2016) pg. 32

is more, a culture of money idolation or worship regardless of source, plus a very weak rule of law tradition guarantees virtual lack of accountability for political corruption and inexplicable sudden wealth, which incentivize and embolden those who enlisted or co-opted into the frenzy of fastlane wealth in Nigeria.

4.0 Fostering the Right to Development in Nigeria – The Bar Instigating the Bench in A Robust Engagement:

Lack of accountability among government officials is the major cause of human rights violations in Nigeria. Political leaders, public servants and law enforcement officers often carry on with impunity without any question or challenge for arbitrary, *ultra vires* and downright illegal activities under the cover of official authority. The deployment and disposition of public resources at the whims of political leaders and public servants as if those resources were their exclusive preserve, is the genus of corruption that has become entrenched in the Nigerian public administration. The cloak of immunity³⁴ emboldens public kleptomania, which often rises to level of the audacious and outrageous, completely emasculating the capacity of government to live up to its obligations under the right to development.³⁵ However, immunity of individuals who occupy public offices does not undermine the competence of actions against such persons in their official capacity in government³⁶ for abdication of their duties under the right to development nor does it forestall the post tenure prosecution for corrupt activities during the tenure in public service.³⁷

The judiciary is tasked with the onerous task of protecting human rights, it therefore requires courage and activism on the part of sitting judicial officers to rise to the occasion by upholding human rights at all times even when government is the culprit. The timorousness of hiding under technicalities or the outlandish doctrine of non-justiciability to evade opportunities of upholding human rights is the reason why impunity among political office holders, public servants and law enforcement agents continues to rise and fester in the Nigeria today. The judex needs particularly to come to the realization that the right to development, being at the center of human rights ought to be fostered, promoted and upheld whenever violation of same is alleged and made out in an application. Actions or charges for corruption against such public officials should similarly be treated with utmost seriousness, as not to allow such official escape the long hands of the law flimsily or upon mere technicality.³⁸ According to Yemi Akinseye-George, SAN:

The judiciary is the main institution charged by the constitution with the responsibility for the protection and enforcement of human rights. If the judiciary fails in discharging this responsibility, the society will degenerate into a jungle where only the fittest can survive. No meaningful social or

³⁴ Section 308 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

³⁵ F. N. Ukoh & R. A. Nwoke, 'Immunity Clause under the 1999 Constitution of Nigeria: A Dire Need for Reform' *Journal of Politics and Law* Vol. 14 No. 2, (2021)

³⁶ Section 308 (2) CFRN, 1999

³⁷ Section 308 (1) of the CFRN, 1999 presupposes that immunity only subsists whilst a person is actively in office.

Criminal, civil or fundamental right enforcement action can be initiated against a former President, Vice President, Governor or Deputy Governor for illegal actions during his tenure, including acts of corruption, which undermined a people's right to development.

³⁸ The former Governor of Kogi State, Yahaya Adoza Bello is currently facing criminal charges bordering on money laundering of a sum in excess of eighty billion Naira while in office. The case of Yahaya Bello has shocked many Nigerians given the enormous amount of money allegedly misappropriated by one man under the cloak of public power and authority. Meanwhile millions of the State indigenes languish in abject poverty. That huge amount of money if properly directed towards infrastructural and human development in Kogi State, would have lifted many out of poverty and fostered every ramification of their human rights.

economic activity can be carried out under such an atmosphere. Therefore, judges must come to terms with the fact that human rights are entitlements as of right and not, simply because of charity, social solidarity or other moral considerations, although those purposes may also be served in the process. The obligation of the state to protect human rights extends beyond the negative obligation to refrain from actions that violate these rights. It encompasses a positive obligation on the part of the state to act in the implementation of these rights.³⁹

The true test of judicial activism which must guide the judex in the mandate of protecting human rights was eloquently enunciated by Geogewill, J.C.A. in the celebrated case of *Faith Okafor v. Lagos State Government*⁴⁰ wherein the learned law Lord made the following notable pronouncement:

It is my view that democracy thrives more on obeying and promoting the rule of law rather than the whims and caprices of the leaders against the led....I think it is worth reiterating here that the culture of impunity, this time as displayed by the respondents in not only restricting the movement of the appellant, a free citizen of this country, on 25/5/2013 but also arresting, prosecuting, convicting and punishing her not for any breach of any offence as prescribed in any written law but purportedly for breaching the directive of the Governor of Lagos State, which like many other acts of impunity in the land have been tolerated for far too long in this country and has indeed run its full circle must be stopped now!

Similarly, in the unreported case of *Francis Moneke v. The Governor of Anambra State*⁴¹ the Honourable Justice Ike Ogu of Anambra State High Court, while upholding the application for enforcement of the applicant's right to freedom of movement against the respondents' unjustifiable blockage of public roads, demonstrated the mettle of judicial activism in the protection of human rights. His Lordship, *inter-alia*, pronounced as follows:

The fact that in this country unconstitutional acts are often carried out by the executive arm and the Nigeria Police as well as security agencies without any complaint from the citizens as highlighted by the learned counsel for the 1st and 2nd respondents does not mean that those acts are legal. But when the occasion demands as in the instant case, the perpetrated acts will not receive the imprimatur of the courts for they are unconstitutional acts.We have journeyed from the medieval era into military rule when few men in the name of traditional rulers or supreme military council could at the shout of Jack Robinson banish or restrict the freedom of movement of others; and are at the moment practicing democracy which is founded on the rule of law and respect for the civil rights and obligations of persons residing in this country.....In the premise, I must say that the powers conferred on the 3rd respondent by section 4 of the Police Act, 2020 must be exercised in

³⁹ Y. Akinseye-George, *ibid.* see note 24 above pg. 70 - 71

⁴⁰ (2017) 4 NWLR (1556) pg. 404 @ 442-444

⁴¹ Suit No. A/ Misc. 194/2021 pgs. 22 - 24

accordance with law else the courts will not shy from holding as invalid any act that is not reasonably justifiable in a democratic society.

The foregoing judicial pronouncements evidence the wholesome attitude of the courts that must pervade the Bench if Nigeria must begin to recreate accountability among political office holders, public servants and law enforcement agents. An intrepid judiciary, is sine-qua-non for realizing the right to development and by extension every aspect of human rights in Nigeria. It is however, not the end of the matter, as the solution does not rest entirely on the shoulders of the Bench. The courts must perforce be moved to action by a bold and activist Bar through robust development advocacy and a flood of public interest cum human rights enforcement litigations challenging actions of political office holders, public servants or law enforcement agents, which undermine or violate the right to development. Lawyers who share the concerns for lack of accountability and corruption in government appreciate the need to convert the principles of development into tangible human right that can be enforced.⁴² Deep legal knowledge and deft legal reasoning are certainly part of the skill set needed to eradicate poverty and promote development. It is hardly possible to secure social justice and development without seasoned advocates for justice.⁴³ Unfortunately, the field of development law is virtually unknown in Nigeria; most lawyers being more enamored with personal ambition and self-interest. Perhaps the focus of our legal education on private law is partly to blame for such 'single-minded' approach to lawyering. Also, there is paucity of research relating to the connection between law and social, economic and political development; thus the huge capacity of the legal profession to use the law as a tool for social change is largely left untapped. If developing countries such as Nigeria must attain sustainable development, they must do with the services of development lawyers, who are equipped with the legal strategies for surmounting the obstacles to development.⁴⁴

Development law entails the training of lawyers to appreciate the problems of the masses, which essentially border on lack of development or retrogressive development. Sadly, due to lack of expertise and passion in development law among lawyers, the major existential challenge confronting ordinary citizens in Nigeria, which is lack of advancement in the various facets of development, fails to gain purchase among the legal community, whose trained voice ought to ventilate and heal such critical social problem.⁴⁵ Lawyers committed to development and social justice are often designated as cause lawyers or public interest lawyers. Cause lawyering therefore refers to the professional engagement by lawyers towards social, economic, cultural, and political development.⁴⁶ There is gapping need for public interest law to be integrated in the curriculum of law faculties in Nigeria and the Nigerian Bar Association's Section on Public Interest Law may well be replicated in every branch of the NBA to mobilize a large crop of lawyers embracing cause lawyering to instigate a robust crusade for the promotion of the right to development in Nigeria across the nation. It must be pointed out finally that some impediments to cause lawyering include, general insecurity in the country that make law practice precarious, judicial corruption, inefficient public institutions, and lack of democratic culture. The Nigerian society what with rife instability, corruption and poor culture of rule of law, is often hostile to the act of cause lawyering. Hence,

⁴² James Paul, 'The Human Right to Development: Its meaning and Importance' *The World Bank Legal Studies* Vol. 11, (1992) pg. 17

⁴³ C. Colford, 'How Lawyers can Help Promote Development' (World Economic Forum, 2015)

⁴⁴ L. M. Hager, 'The Role of lawyers in Developing Countries' *American Bar Association Journal*, Vol. 58, No. 1, (1972) pgs. 33-38

⁴⁵ S. Ibe-Ojiludu, 'Nigeria's Developmental Challenge: Conceptualizing Law and Development in the Nigerian Context' *Beijing Law Review*, Vol. 13 No. 1, (2022)

⁴⁶ S. Ellmann, 'Cause Lawyering in the Third World' (New York Law School, 1998)

engaging in the business of cause lawyering demands not only expertise but also physical courage. Lawyers and judges must unite in purpose to achieve the goal of entrenching the right to development in Nigeria, because lawyers cannot function effectively to that end if judges are not equally committed passionately to the same goal.⁴⁷ The Fundamental Rights (Enforcement Procedure) Rules, 2009 is an effective tool in the hands of cause lawyers and the activist judex to enforce and uphold the right to development as enshrined under Article 22 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

5.0 Conclusions:

The abysmal indices of human rights in Nigeria tell eloquently of gross failure of the right to development, because it is indeed difficult to foster every facet of human rights in a society where the social, economic, cultural and political development of the people is not effectively promoted and respected. Deficit of the right to development is therefore responsible for intense human suffering and widespread poverty in Nigeria. Lack of accountability and impunity among political office holders, public officers and law enforcement agents implicate in a rife culture of corruption in the country, which ensure that the resources of the nation are systematically diverted to the personal purses of the individuals occupying public offices who control public finances, make policy and wield official powers. With unmitigated corruption, it is well nigh impossible for government to live up to its responsibility of promoting and fostering the right to development.

Nigeria is at a dagger point of corruption, where checkmating of same has proven as precarious as allowing the culture to continue unabated. The culture of corruption has eaten so deep into the fabrics of society that even those tasked with fighting it are neck deep into it and would loathe a reverse in the status quo. At the same time, there is a lip-service consensus that failure to bridle the monster of corruption will bring the nation on its knees sooner rather than later. What is more, the deleterious culture of corruption among government officials has foisted on the entire Nigerian society the negative orientation of get rich quick syndrome. The impunity of government functionaries who steal public funds and use same to indulge in flagrant ostentation, has impressed upon the psyche of the exuberant and impressionable youths of the country who see no reason to "labour in vain" through honest and patient hard work, whereas there are hook or crook means to exploit for quick wealth that conduce to such ostentatious lifestyle. A government that is not committed to human development actively encourages mediocrity, jungle justice, dishonesty, crime, civil unrest and lawlessness. All these negative consequences of failure of the right to development are currently prevalent in Nigeria, but the problems are being treated with nonchalance by the government especially at the federal level, as the flurry of corruption constantly rises in sophistication, audacity and wantonness.

Any hope of realizing the right to development in Nigeria at the initiative of the political leaders is remote and farfetched given the relentlessness of corruption, which has all but emasculated the capacity and wherewithal of government to give substance to the spirit of that right. Therefore, the tenuous hope of conjuring the right to development in Nigeria may well rest on the initiative of lawyers as ministers of justice engaging the courts as temples of justice and the last hope of the common man in a robust unity of passion to recreate the right to development and by extension rejuvenate the atrophied indices of human rights in Nigeria. To realize this objective, the wind of judicial activism must be engendered to achieve a sustained commitment by the judiciary to bring about social change through holding leaders and ex-leaders to account for acts of

⁴⁷ Okechukwu Oko, 'The Lawyer's Role in Contemporary Democracy, Promoting Rule of Law, Lawyers in Fragile Democracies and the Challenges of Democratic Consolidation: The Nigerian Experience' *Fordham Law Review*, Vol. 77 Issue 4, (2009) pg. 1295

corruption, and by demonstrating judicial penchant or inclination to uphold the right to development without being cowed by technical bottlenecks. But to effectively instigate judicial activism, members of the Bar must be inclined to cause lawyering as a paradigm shift from the extant predominance of single-minded focus on private or commercial law, where the self-interest and personal economic ambition of lawyers hold sway. Public interest law needs to be incorporated into the curriculum of our law faculties and the NBA Section on Public Interest Law needs to be mushroomed into all the branches of the NBA, to engage many more lawyers across the nation in the art and skill of cause lawyering. With a sufficiently equipped and courageous Bar working in tandem with an activist Bench, the right to development will receive a new lease of life in Nigeria, and the country will experience a surge of unprecedented development, and then, corruption, widespread poverty and human suffering will largely be cast into the doldrums of things forgotten and things past.