



# A Study on the Right to Development in Nigeria

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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 controversial one given its unsettled nature, scope, domain and content. It also finds that the right to development's 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.

**Keywords:** Right to development; African; Economic; Self-Determination; Nigeria

## Introduction

As a relatively new concept of human rights, the right to development represents the perfect example of a "from-Africa-toward-the-globe" legal creation given the highly significant African roots of the specific version of the idea of the right to development that has become ascendant. In effect, it was first proclaimed in history by the Organization of African Unity (OAU) and included in 1981 in the African Charter on Human and Peoples' Rights [1].

However, over the years, the concept of a right to development has remained one that is largely shrouded in ignorance by the Nigerian populace while remaining irredeemably controversial in the community of Nigerian jurists and academia given its unsettled content, which consequently has the extended effect of expropriating Nigerians of the instant legal preserve [2].

## 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 (Ratification and Enforcement) Act being a domestication of the African Charter on Human and Peoples' Rights in the Nigerian legal system; albeit not without difficulty.

It is against the above background that this article examines the nature, content, scope, and domain of the sui generis right to development and also just to what extent it can be enforced within the confines of Nigeria as a sovereign State [3].

## Conceptualization of the Right to Development in Nigeria

Prefatorily, it is expedient to define the scope, content, and domain of the subject matter of development before establishing any legal right or claim to development. This exercise will serve to define the extent and degree of the legal benefit, 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 effective 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 fraught with nuances. In essence, it is a concept whose permutations are

well-known across disciplines. Through the years of its development, the notion of development was expressed as chiefly an economic construct, being quantifiable in statistical terms, with such pointers as Per Capita Income, Balance of Payments, National Income, and Gross Domestic Product, among others, playing key positions in the discourse [5].

The concept of development in this wise has been associated with economic growth or improvement of states and, on a wider outlook, the collective growth or improvement of institutions within states. However, it became clear that the indicators used to determine development were not truly representative of the realities of the state's most important component, namely the people. To this extent, the notion of human development has evolved. Under this concept, focus shifted considerably from the ordinary economic position of the states to the quality of life within the states.

These novel arguments have been popularize in the field of development economics by renowned economists like Nobel Prize winner, Amartya Sen who have advanced widely accepted theories that are essentially human-centric in the determination of what constitutes development. The dominant narrative in this wise has come to conceive of development as a process that enables the creation of growth, progress, positive change, or the addition of physical, economic, environmental, social, and demographic components, with its purpose being an attempt to improve the level and quality of life of the population and the creation or expansion of local, regional income and employment opportunities without damaging the resources of the environment. In statistical terms, the notion of the Human Development Index has also come to occupy a pivotal position, dislodging the notions of National Income and Gross Domestic Product as focus in the statistical calculations.

However, despite significant progress in conceptualization, it is instructive to note that the emphasis on human development is yet another limitation to the vast potential open under the concept of a

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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 soft 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, such other 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 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]. This 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 a 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* to the existence of each other. In other words, they are necessarily complimentary or accompanying.

In effect, a failure to enforce and preserve rights constitutes an obstacle to development. The realization of the right to development cannot justify violations of human rights. This is also true of citizen participation in government and administrative processes as they affect their corporate existence, the entrenchment of an efficient and functioning justice system, and more importantly, the realization of their right to self-determination over their political status and all their natural wealth and resources.

The link between well-being and human rights in the definition of the right to development is therefore crucial both for its legal nature as well as its enforcement and justice-ability [13,14]. In terms of its legal nature, while the right to development requires the enjoyment of all fundamental rights, it is not merely a compilation or synthesis of these;<sup>23</sup> rather, it is an independent composite right that is enjoyed both collectively and individually, and it differs from the discrete rights that comprise it in that it requires duty-bearers to create an enabling environment for the realization of individual rights.

### Individual Right to Development Versus Peoples Right to Development

One of the problems which have through the years plagued the jurisprudence of human rights is the debates of individual and collective rights with limitations often placed on the enforcement of each class of rights. Contentions in this regard are generally to the effect that individual rights may not be enforced collectively while collective rights cannot be enforced for an individual person. The right to development is one which is very much affected by the debates. The controversies arise mainly from the wordings adopted by relevant legal instruments creating the instant right. In essence, the larger part of such legal instruments use constructs suggesting a collective right to development. Furthermore, in the early days of the development of the concept of a right to development, the objectives were promoted as a collective right of States and of peoples to development [15,16]. Against this background, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights all create the right as a people's right. Instructively, Article 1 (1) of the ICESCR and Article 1 (1) of the ICCPR which are pivotal to the right to development all read:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In the same vein, Article 22 (1) of the African Charter on Human and Peoples' Rights reads:

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.

A cursory evaluation of these provisions reveals the use of the word "people" in the creation of the right. The word "people" literally does not translate into an individual person. In this regard, does it follow that an individual person cannot unilaterally claim a right to development and approach the court for its enforcement premised on these provisions? Technically, the answer to this question will be in the

affirmative.

Contrasting this position, the United Nations Declaration on the Right to Development adopts the individual right approach in its provisions, although less persuasive in matters of legal relevance [17]. The text of the present Declaration, as captured in its Article 1 on the subject matter, states that:

5. 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.

6. 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 [18].

As affecting the interests of this study, the provisions of the African Charter on Human and Peoples' Rights are more relevant, and therefore the determination of the nature of the right it created is incumbent. The African Commission when faced with defining the term "people", held that the concept of a "people" comprises certain features that either the group may use to identify themselves or which other people may use to identify them in Sudan Human Rights Organization & Another v. Sudan. These traits may include their shared history, ethno- anthropological traits, language, religion, and culture as well as the region they occupy within a state. This therefore constitutes the basis for the enjoyment of the peoples' right to development, which is created under Article 22 of the African Charter on Human and Peoples' Rights. While this is the letter of the law, it should be noted that as at the time of writing this paper, there is yet to be a defined legal position on whether an individual can effectively press for a right to development under the current provisions by the Nigerian courts. To this end, caution must be exercised in defining collective rights so as not to be in direct conflict with individual rights.

Georges Abi-Saab<sup>30</sup> opining on the "squabble" between individual and collective rights points, there is really no fuss to worry about. His position is premised on his two-way approach to the deconstruction and enforcement of collective rights. Firstly, such exercises can be done by considering the collective right as an aggregate of the individual rights enjoyed by the affected people, while secondly, is to approach the right as accruing to the people only as a group of persons. When put into context, we consider under the first premise the right to development as the aggregate of the social, economic, and cultural rights of all the individuals constituting a collectivity. On the second premise, we approach the right to development from a collective perspective by considering it within the dimension of all its contents [19].

By using the first strategy, we are able to eliminate the contradiction that a right cannot be the legal domain of a single particular person. This has the benefit of emphasizing the connection between individual and collective rights, according to Abi-Saab. This strategy is also admirable since, in many instances, individual rights may only be satisfied in a community framework.

### Enforcement of the Right to Development in Nigeria

As affecting enforcement of the right to development, we note that the instant legal preserve has been widely litigated across the world, although under legal systems and within legal provisions substantially distinguishable from those applicable to Nigeria. Contrasting this

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. This is largely because for the right to development, the positive actions that are necessary may often make it very difficult to identify precisely the obligations of particular duty holders to make them legally liable to litigation.

Yet, the courts through the years have not been helpless when confronted with enforcing the right to development. In essence, the maxim *ubi jus ibi remedium*, literally translated to “where (there is) a right, there (is) a remedy,” has been a dodged guiding principle upon which grievances have been resolved and claims settled. To this extent, where the objection as to justice ability is not one rooted in express jurisdictional preclusion or such as is fundamentally inimical to the claim under the right to development, it is unlikely that the courts will decline to assume jurisdiction over such matters [19].

Having regard to Nigeria, its courts have overwhelming jurisdiction over every matter except for those expressly ousted by the Constitution. This is by the cumulative provisions of Sections 4 (8) and 6 (6) (c) of the Nigerian Constitution in force. To this extent, the subject matter of a right to development as arising from a legal instrument not contained under Chapter II of the Nigerian Constitution cannot be deemed to be non-justice able.

Against a background of the foregoing, we note the Bakweri Land Claims case, which is considered the first in the long list of cases to follow on the subject matter of the right to development before an African regional court, where a claim for the right to development was brought under the provision of Article 22 of the African Charter on Human and Peoples’ Right. Sadly, in the instant case, the matter did not get past the admissibility stage, and hence the African Commission did not get to hear the case on its merit in order to decide on the right to development.

However, in the landmark Endorois case, the African commission, after hearing the case on its merit, which was also brought under Article 22 of the African Charter on Human and Peoples’ Right found a violation of the right to development of the complainants by holding that the government of Kenya had failed to adequately involve them in the development process, which was a major contention of the complainants. In its ruling, the commission held, *inter alia*, that:

The Respondent State (Kenya) is obligated to ensure that the Endorois are not left out of the development process or benefits. The African Commission agrees that the failure to provide adequate compensation and benefits or provide suitable land for grazing indicates that the Respondent State did not adequately provide for the Endorois in the development process. It finds against the Respondent State that the Endorois community has suffered a violation of Article 22 of the Charter [20].

Interestingly, the Endorois case was decided on the basis of the right to development being a right to participation in the process of development and the right to self-determination. This entailed that the Endorois people were, as a matter of right, entitled to participate in the development of the game reserve as well as to determine what became of their ancestral lands in default of which, reasonable compensation ought to be made [21].

As affecting Nigeria, given that the African Charter on Human and Peoples’ Rights has oftentimes been used to enforce the right to development across the continent, and that its provisions have been domesticated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act and that the Fundamental Rights (Enforcement Procedure) Rules, 2009 allows claims of violations of rights created under the former to be enforced following the rules set out in the latter, it, therefore, behoves to state that the right to development can be enforced within Nigeria. This is particularly so as the Nigerian Courts hold the rights contained in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act in high esteem creating them a *sui generis* right within the purview of the Nigerian jurisprudential hierarchy of rights. This was stated in the case of *Ubani v. DSS & Anor* [39] in the following words:

“... The African Charter being a fundamentally superior law of our land there is just the need to remind all organs of the sacred duty to respect its provisions.”

To this extent, the procedural requirements for the enforcement of the right to development within Nigeria are such as are contained within the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 2009. Furthermore, in an extended line of argument, we note the position of the Supreme Court of Nigeria in *Abacha & Ors v. Fawehinmi* wherein it was determined that an individual’s rights as contained in the African Charter can be enforced [22].

in Nigerian Courts. This therefore suggests that the Nigerian Courts will uphold a claimants’ right to development under Article 22 of the African Charter on Human and Peoples’ Rights at any time it is called upon to give legal effect to the instant provisions.

## Conclusion

Having reviewed the position of the relevant laws affecting Nigeria on the subject of a right to development and the nature, content, domain and scope of the instant right, this article notes that the right to development is one which must be given adequate legal effect given its potential for improving the welfare of the Nigerian citizenry.

Furthermore, in the guise of recommendation, the government and all stakeholders must rise to the situation to ensure that the ignorance of the right to development is addressed so that Nigerians can press for what is legally preserved for them. Additionally, all duty bearers within the right to development must ensure that they discharge their duties while the courts must be seen to be willing to give appropriate legal effect and judicial interpretation to the provisions of the law on the instant right. Finally, it is anticipated that in the coming years, with increased litigation, the right to development will acquire a more qualified and pronounced status in the Nigerian legal system.

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## Conflict of Interest

None

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