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The Legal Status of the Right to Development in Nigeria

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Abstract
The thrust for a Right to Development (RTD) was originally led by the new independence countries of the south in the 1950s and 1960s who were demanding for a New International Economic Order (NIEO) as the old was structured to favour only their former colonial masters. This move did not pay off for these developing nations as there were much economic activities and with little growth; and hunger, unemployment and poor health care system still ravaged the society. Therefore, there was a global out cry for a change of perception of economic development; stating that economic development should not be measured by economic growth but by human growth. this paper through desk base research methodology comparatively examines the legal status of RTD from international, African and Nigerian point of views and legal regimes as well as appraise the role of the RTD as a tool for human development in Africa in general and Nigeria in particular. The paper finds that RTD enjoys recognition at international, Africa and Nigeria spheres and argues that man should be at the centre of development. The paper further argues that the RTD is a human right capable of enforcement in Nigeria though there is a shortage of litigation on it. The paper therefore recommends that in order for RTD to be maximally exploited in Nigeria, she should diversify her economy, monitor and evaluate RTD, introduce fiscal federalism and engage the citizenry in enlightenment program for enforceability of the Peoples' Right to Development (PRTD).

Keywords: Right to Development; Nigeria; Human Rights; and ECOWAS

1.0 Introduction
Every nation desires growth and development. This has characterized the manifestos of nationalists and political office aspirants.[1] The second half of the 20th centuryexperienced an unmatched craving for economic development on the part of the developing nations in a bid to catch up with developed nations having been influenced by classical school of economics who led industrialization and economic growth in capitalist societies on the assumption that economic

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[1]The Manifesto of the Peoples Democratic Party, The Guardian, Nigeria, 28March, 2015, https://guardian.ng/lead-story/manifesto-of-the-peoples-democratic-party-pdp-2/ Accessed 16 August, 2017; Widner, Jennifer A. 'Political Parties and Civil Societies in sub-Saharan Africa.' In M. Ottaway, ed. *Democracy in Africa. The Hard Road Ahead*. (Boulder, Lynne Rienner, 1997) pp. 65-81; and Ware, Alan. *Political Parties and Party Systems*. (Oxford University, Oxford, 1996).

growth is development.[2] This move did not pay off for these developing nations as there were much economic activities and with little growth; and hunger, unemployment and poor health care system still ravaged the society.

The above served as a precursor to the declaration by United Nations known as Unite Nations Declaration on Right to Development (UNDRTD) of 1986 and the Vienna Declaration of 1993 that unified the first and second generations rights under the umbrella of RTD stating that human rights are inalienable, interdependent, indivisible, universal and justiciable.[3] It further postulates that man must be at the centre of every developmental stride. The above international declarations have the limitation of being soft laws and therefore are not binding on the signatories. Meanwhile, on the African scene, there exist the African Charter on Human and Peoples Right (ACHPR) of 1981 which is a binding charter on all the signatories; with a unique feature of not having to categorize the various human rights as civil liberties rights or socio-economic rights. Article 22 of ACHPR provides for Peoples' Right to Development PRTD.

Nigeria has ratified the ACHPR, which means that the rights enunciated under ACHPR are enforceable in Nigeria.[4] It therefore means that the first and second generations of rights which cumulate to RTD are guaranteed under the extant Nigerian legal jurisprudence. Unfortunately, this right does not enjoy the recognition and awareness that rights under the chapter four of the 1999 Constitution of the Federal Republic of Nigeria. This paper examines the legal status of RTD from international, African and Nigeria perspectives. This paper is divided in five parts. Part one deals with the introduction while parts two, three, and four deals with Right to Development from a historical, global, ECOWAS[5] and Nigerian perspectives respectively. F

2.0 Historical Development of Right to Development

The idea of globalization of human right which brought about a crack on the previously fortified concept of sovereignty of States emerged as an aftermath of the infamous First and Second World Wars which was characterized of unspeakable man's inhumanity to his fellow man. The United Nations Organization (now United Nations (UN)) a world body that was started by the aliened countries of the Second World War had the maintaining of human rights internationally as one of its essential goals.[6]In 1948 it spearheaded the proclamation of the Universal Declaration of Human Rights (UDHR), which is a comprehensive literature on human rights.[7]The UDHR recognized individuals as the right holders, and the state as the duty bearer with the duty to respect, protect and fulfill these human rights. However, the UDHR had its nonbinding status on its signatories as its biggest limitation. It suffered a huge setback in the

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[2] For further reading on classical economic theory, see Adelman, Irma, *Theories of Economic Growth and Development.* (Stanford University Press, Stanford, 1961); Smith, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations*. (Random House, New York 1937); and Weil, David N., *Economic Growth.* 2nd Ed. (Pearson Addison-Wesley, Boston, 2008).

[3] 7 Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 Harvard Human Rights Journal 137; See also 5 Arne Vandenbogaerde, 'The Right to Development in International Human Rights: A Call for its Dissolution' (2013) 31/2 NQHR 187.

[4] See the case of *Abacha V. Fawehimwi,* (2000) 6 NWLR (Pt 600) 228.

[5] Economic Community of West African States.

[6] Kichmeier F., 'The Right to Development- where do we stand?' (2006) 20 Dialogue on Globalization, Friedrich-Ebert-Stiftung Occasional. 6

[7] Both the first and second generation rights.

hands of the Cold War which portioned the rights under UDHR into two groups along the ideologies of the western and eastern blocs respectively in the 1966 conventions. The first Convention is the International Convention on Civil and Political Rights (ICCPR) which was projected by the capitalist West which is centered on orthodox civil liberties' rights such as right to life, liberty, property, freedom of conscience and religion, movement, and assembly.[8] These rights are referred to as the first generation rights; they are calculated to shield "citizens from violations from the state and as well as private actors.,"[9] They "invoke a duty to respect and protect…"[10] The second Convention is the International Convention on Economic, Social, and Cultural Rights (ICESCR) which include rights to adequate health care, employment, decent standard of living, promotion of culture and education. They were projected by the Communist East and the then new independent nations in the South. These rights are referred to as the second generation rights or the participatory rights. They "invoke a duty to protect and fulfill".[11]

The push for a Right to Development (RTD) was originally led by the new independence countries of the south in the 50s and 60s who were demanding for a New International Economic Order (NIEO) as the old was structured to favour only their former colonial masters.[12]Onu noted that 'they demanded for sovereignty over their national resources, and self-determination. However, the 60s and 70s witnessed an unprecedented quest for economic development on the part of the developing nations. This was in a bid to catch up with developed nations having been influenced by classical school of economics who led industrialization and economic growth in capitalist societies on the assumption that economic growth is development.'[13] This move did not pay off for these developing nations as there was a lot of economic activities but no significant economic growth; and hunger, unemployment and poor health care system still ravaged the society. Therefore, there was a global outcry care for a change of perception of economic development; stating that economic development should not be measured by economic growth (that growth in GDP) but by human growth. That man should be at the centre of development. Therefore economic development is presently defined as:

> *[T]he process of improving the quality of human life through increasing per capita income, reducing poverty, and enhancing individual economic opportunities. It is also sometimes defined to include better education,*

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[8] These rights are contained in Chapter Four of the 1999 Constitution of the Federal Republic of Nigeria, as Amended in 2011, Cap. C23, Laws of the Federation of Nigeria (LFN), 2004.

[9] Kichmeier F., 2006 op. cit. p.8

[10] Ibid

[11] Ibid 6. See also Shaw M.N. *International Law.* 6th Ed., (Cambridge University Press, Cambridge 2010) p. 268.

[12] Asbjorn E, 'Human Rights-Based Development in the Age of Economic Globalization: Background and Prospects' in Bard A. and Stephen M. (eds.). *Development As a Human Right: Legal, Political and Economic Dimensions* (Nobel Symposium, Harvard School of Public Health 2006) 220, 228.

[13] See K.O.N. Onu .The EU-ECOWAS Economic Partnership and It's Right to Development Implications for Nigeria. [2017] (20)(2) *The Nigerian Law Journal*, 392-425. - <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nlj20&div=24&id=&page=> accessed January 17, 2022.

For further reading on classical economic theory, see Adelman, Irma, *Theories of Economic Growth and Development.* (Stanford University Press, Stanford, 1961); Smith, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations*. (Random House, New York 1937); and Weil, David N., *Economic Growth.* 2nd Ed. (Pearson Addison-Wesley, Boston, 2008).

> *improved health and nutrition, conservation of natural resources, a cleaner environment, and a richer cultural life.*[14]

Historically, it was the former President of the Supreme Court of Senegal, in the person of Judge Keba M'Baye that initiated the consideration of "development' as a human right in a 1972 lecture held at the International Institute of Human Rights in Strasbourg, where he asserted that "every man has a right to live and a right to live better."[15] However, the General Assembly of United Nations by its resolution 41/128 proclaimed the United Nations Declaration of Right to Development (UNDRTD) on the 4th of December, 1986.[16] The USA casted the only dissenting vote to this declaration stating that the right would amount to right to everything. After the end of the cold war and collapse of the Soviet Union, that the world got a consensus on RTD at the UN World Conference on Human Rights in Vienna in 1993 as "a universal and inalienable right and an integral part of fundamental human rights".[17] RTD has been referred to as "solidarity" or "third generation" rights.[18]

3.0 International Status of the Right to Development

Article 1 (1) of UNDRTD states that '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.' According to Arjun Sengupta (a former independent expert to the UN on RTD) the above Article 1 (1) of UNDRTD established three pillars which the other Articles elaborated upon to wit:

(a) there is an inalienable human right that is called the right to development;

(b) there is a particular process of economic, social, political and cultural development, in which all human rights and fundamental freedoms can be fully realized;

(c) the right to development is a human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy that particular process of development.[19]

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[14] See Amartya Singh., *Development As Freedom* (Oxford University Press, Oxford, 1999) 35.

[15] Oduwole O.O. 'International Law and the Right to Development: A pragmatic Approach for Africa' (Inaugural Lecture as Professor to the Prince Claus Chair in Development and Equity 2013/2015 delivered at the International Institute of Social Studies, The Hague, The Netherlands, 2014).

[16] <www.un.org/documents/ga/res/41/a41r128.htm Resolution 41/128.> accessed July 10, 2017.

[17] Nayak, P.B., 'Development and Human Rights. The Right to Development: Reflections on the First Four Reports of the Independent Expert on the Right to Development by Franciscans' (2003) 38:37 Economic and Political Weekly. 3894-3896 <http://www.jstor.org/stable/4414021> accessed 17 July, 2014.

[18] Marks, S. 'The Human Right to Development: Between Rhetoric and Reality.' (2004) 17 Harvard Human Rights Journal 137. Oduwole also posited that "In the 1970s and 1980s the RTD was introduced as one of several rights belonging to a third 'generation' of human rights. The first generation consisted of civil and political rights conceived as freedom from state abuse. The second generation consisted of economic, social and cultural rights, claims made against exploiters and oppressors. The third generation consisted of solidarity rights belonging to peoples and covering global concerns such as development, environment, humanitarian assistance, peace, communication and common heritage." See Oduwole O.O. supra note 15 at p.23

[19] Sengupta A., 'On the Theory and Practice of the Right to Development' (2000) 24(4) Human Rights Quarterly, 837-889 at 884. <http://www.jstor.org/stable/20069637> accessed 26 May, 2015.

The central subject to development should be the human person, who must also be an active beneficiary and participant to RTD.[20]The attainment of RTD must be a collective effort of all human persons.[21]Parties are also mandated to promulgate policies and laws that will help actualize RTD.[22]Parties also agreed to foster global policy efforts for the attainment of RTD for all.[23]

Oduwole also posited that "it is now generally accepted that these provisions allude to both an individual and a collective right, and that the actual holders of this collective right are 'the people', with obligations resting on national governments as well as a duty of international cooperation amongst governments."[24]

In essence, RTD is a bridge between the first and second generation rights with the overriding principle that human rights are inalienable, indivisible, interdependent, universal and justiciable.

The UNDRTD is a mere declaration which means that it is not binding being a soft law. Onu noted that 'the South have been pushing for the convention on RTD; the North though not opposed to the principles of UNDRTD, are however reluctant to have a convention on RTD because of the fear that it may amount to "right to everything" or "right to development assistance" by the South.'[25] In the sense that nations or individuals from the South may place a demand on a Northern state for fulfillment of anything it perceives necessary for its enjoyment of RTD.

3.0 Status of Right to Development in the Africa

The African Charter of Human and Peoples' Rights (ACHPR)[26]was enacted by the African Union in 1981 and its provisions are binding on its signatories.[27] One outstanding feature of the Africa Charter over all other regional and international literature on human right is that it did not make classification of human rights as civil liberties rights or socio-economic rights.[28] Therefore, there is neither first, second, nor even third categorization of human rights by ACHPR. It made provisions for individuals' rights,[29] peoples' rights,[30] duty of state parties to the charter,[31] and individual duties.[32]

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[20] Article 2(1)
[21] Article 2 (2) of UNDRTD
[22] Article 3
[23] Article 4
[24] Oduwole O.O. supra note 15 at p.5
[25] K.O.N. Onu, supra note 13
[26] also known as the African Charter or the Banjul Charter
[27]See Oduwole O.O. supra note 15 at p.5.
[28] Ebobrah S.T., 'The Future of Economic, Social and Cultural Rights Litigation in Nigeria', (2007) 1(2) Review of Nigerian Law and Practice108, 114-124.
[29] "Right to the enjoyment of rights without distinction of any kind (article 2); right to equality before the law and the equal protection of the law (article 3(1)(2)); right to life (article 4); right to the dignity of the human person (article 5); right to liberty and security (article 6); right to have cause heard (article 7); right to freedom of conscience, the profession and free practice of religion (article 8); right to receive information and to express and disseminate opinions (article 9); right to freedom of association (article 10); right to freedom of movement {article 12(1) (2)}; right to seek asylum and freedom from arbitrary expulsion from a state {article 12(3)(4)}; right to freedom from mass expulsion of non-nationals {article 12(5)}; rights to participate in government, and equal access to the public service and public property {article 13(1)(2)(3)}; right to work under equitable and

Articles 19-24 of the ACHPR are arrangements of a mutual sort. Each of the arrangements contained privileges of people groups as additionally buttressed by the law of the African Commission and the ECCJ.[33] The real lacuna up to this point is the inaccessibility of the importance of the expression "people groups". However, none of the international institutions have been able to give solid meaning of the term.[34] The term has been left without a reasonable definition to stay away from contention; endeavors have just been made to offer significance to it contingent upon conditions.

The African Commission appears to see RTD (which the ACHPR refers to Peoples' Right to Development (PRTD)) as both an individual and a group right. It holds the view that the ACHPR was authorized by African States to secure human and people groups' privileges of the African people groups against both outside and inside mishandle.[35]

Article 22 of the ACHPR provides for Peoples' Right to Development (PRTD) in the following words:

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.

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satisfactory condition (article 15); right to physical and mental health (article 16); right to education and to participate in the cultural life of the community (article 17); right to property (article 14)." Culled from Ogbu .N. 'The African Charter On Human and Peoples' Right as Compatible with Despotism: the Nigerian Experience' (2006) 1:4 Nigeria Law Journal, 18.

[30] 'Equality of all peoples (article 19); right to existence and self determination (article 20); right to free disposal of natural wealth and resources (article 21); right to economic, social and cultural development and the equal enjoyment of the common heritage of mankind (article 22); right to international peace and security (article 23); right to satisfactory environment (article 24)." Culled from Ogbu, supra note 29.

[31] 'Duty to promote rights and freedoms contained in the Charter (article 25)' duty to guarantee the independence of the courts and to allow the establishment of human rights organizations (article 26).' Culled from Ogbu, supra note 29.

[32]'Duty to the family, society, the state and the international community (article 27); duty to respect and not to discriminate against fellow beings (article 28); duty to preserve the harmonious development of the family, to respect his parents and to maintain them in case of need {article 29(1)}; duty to preserve his national community {article 29(2)}; duty not to compromise the security of his state of origin or residence {article 29(3)}; duty to preserve and strengthen social and national solidarity {article 29(4)}; duty to preserve independence and territorial integrity of his country {article 29(5)}; duty to pay taxes {article 29(6)}; duty to preserve African cultures {article 29(7)}; duty to the achievement and promotion of African unity {article 29(8)}.' Culled from Ogbu, supra note 29.

[33] See *Kemi Pinheiro v Republic of Ghana* Suit no. ECW/CCJ/APP/07/10 (2012) (Pinheiro).

[34] "[T]he result has been that the precise meaning of the term 'people' remains somewhat uncertain". See *Reference re Secession of Quebec* (1998) 2 S.C.R. 217, Para 124, (Canadian Supreme Court) .See also *Endorois* below in 5 4 1 5 para 147.

[35] ME Salomon "Legal cosmopolitanism and the normative contribution of the right to development" (LSE law, Society and Economy Working Papers, 16-2008. Department of Law, London School of Economics and Political Science, London, UK, 2008) 7.

This PRTD is binding unlike the provisions of UNRTD. In the celebrated case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (Endorois case)*[36]the African Commission on Human Rights (the African Commission) upheld a suit for ventilation of PRTD. In this case, the Endorois an indigenous Kenyan tribe challenged the establishment of a games reserve in their tribal forest for over 30 years by the Kenyan government without consultation, adherence to the Kenyan Constitution, or even compensations for the pastoral lands acquired and religious sites desecrated; as a denial of the Endorois people's right to practice their culture and religion, and above all, their PRTD. "The African Commission was of the view that, if the government of Kenya had created conditions to facilitate the PRTD in this context, the game reserve would have aided the development of the Endorois as they would have made an informed decision and actively benefited from it. However, the forced evictions eliminated any choice as to where they would live."[37] It therefore found for the Endorois people.

4.0 ECOWAS and the Right to Development

The ECOWAS Treaty of 1975 did not make express provision on RTD.[38] However, the several and serial political killings and civil wars in Liberia (1989) and Sierra Leone (1991), made the ECOWAS Heads of States to adopt a Declaration of Political Principles in July, 1991.[39] The declaration among other things agreed to promote and encourage the full enjoyment of human rights for all.[40]

The above, being a mere declaration, is not binding on the ECOWAS States. However, in July 1993 at Cotonou, Benin Republic, the 1975 ECOWAS Treaty was revised. The Revised ECOWAS Treaty of 1993 unlike its predecessor made reference to ACHPR. Article 4 of the Revised ECOWAS Treaty is to the effect that the fundamental principles of the Treaty are as follows:

> *maintenance of regional peace, stability and security through the promotion of good neigbourliness, peaceful settlement of disputes among member States, recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights, accountability, economic and social justice and popular participation in development, promotion and consolidation of a distribution system of governance in each member State, and equitable and just distribution of the costs and benefits of economic integration. Commitment to the African Charter on Human and Peoples' Rights and to protection of both fundamental human rights and*

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[36] (2009) Commission on Human and People's Rights comm. No. 276/03(adopted May 2009, approved by the African Union January 2010) paras. 22 and 297-8.

[37] Oduwole, supra note 15 *at* p.1.

[38]Treaty of the Economic Community of West African States 14 ILM, 1200 (1975), hereafter called "1975 ECOWAS Treaty".

[39]Ladan, M.T., '**Access to Justice as a Human Right under the ECOWAS Community Law', being a PAPER presented at Commonwealth Regional Conference with the theme-' 21st Century Lawyer, Present Challenges and Future Skills', Organized by Commonwealth Lawyers Association CLA, UK in collaboration with the Nigerian Bar Association, held at Transcorp Hilton Hotel, Abuja, Nigeria between 8 – 11 APRIL, 2010. P.10**

[40] Ibid, p. 11

> *international humanitarian laws are also fundamental principles of the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security.*[41]

Furthermore, ECOWAS States covenanted under Article 56 (2) of the ECOWAS Revised Treaty to cooperate with one another towards the actualization of several treaties which ACHPR is one of them.The ECOWAS Court of Justice in the case of *Hon. Dr. Jerry Ugokwe v. Federal Republic of Nigeria & Hon. Dr. Christian Okeke& Other Intervening*[42]while asserting its jurisdiction over ACHPR stated that the reference ofACHPR in Article 4 (g) of the ECOWAS Revised Treaty as a fundamental principle of the Community means that the Court is to "bring in the application of those rights catalogued in the African Charter."[43]Ladan posited that in similar provision (that is, provisions on fundamental principle of a treaty) under the EU, that the European Court of Justice has clarified the legal significance of such principles thus:

> *Fundamental rights form an integral part of the general principles of the law, the observance of which is ensured by the Court. In safeguarding these rights, the Court has to look to the constitutional traditions common to the member States, so that measures which are incompatible with the fundamental rights recognized by the constitutions of those States may not find acceptance in the Community.*[44]

Ladan further contended and we agree with him that:

> *…ECOWAS treaty is a supra-national treaty instrument directly applicable within its Member States, domestic application of the African Charter on Human and Peoples' Rights through the Fundamental Principles of ECOWAS is automatic and mandatory. The Charter is not just a source of law for the Court; it is also a legal instrument that frames the ECOWAS Court's human rights jurisdiction*[45]*…In this context, supra-nationality "refers to a situation where an international institution is endowed with powers to take decisions binding on sovereign States either generally or in specific areas of State activity.*[46]

We therefore also agree with Joshua that:

> *It follows then that, to the extent that the ECOWAS treaty is a supranational treaty instrument directly applicable within its Member States, to that extent the domestic application of the African Charter on Human and Peoples' Rights through the Fundamental Principles of ECOWAS is automatic and mandatory. The Charter is not just a source of law for the Court; it is also a legal instrument that frames the ECOWAS Community Court's jurisdiction on human rights.*[47]

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[41] Ibid, p. 12-13
[42] Ibid
[43] Ibid
[44] Ibid
[45]Ladan op. cit. p.14
[46]Ibid p.20.see also ECOWAS, *Review of the Treaty: Final Report by the Committee of Eminent Persons,* 16, paragraph 42 (1992).
[47] Joshua Dandali Ephraim 'An Appraisal of the Role of ECOWAS Court of Justice in the Protection of Human Rights Under the ECOWAS Treaty' (LL.M Thesis, Almadu Bello University, 2012) 161.

Suffice it to note that all the ECOWAS States have signed and ratified the ACHPR.[48] It therefore means that the rights enshrined under ACHPR (especially PRTD) are enforceable at the African Court of Justice and the ECOWAS Court of Justice against these ECOWAS States, persons, agencies, and corporations within these ECOWAS States.[49]

5.0 Right to Development from a Nigerian Perspective

Nigeria is a signatory to the ACHPR and has also domesticated this Charter.[50] ACHPR haven satisfied the requirements of ratification and domestication under Section 12 of the 1999 Constitution of the Federal Republic of Nigeria[51] is now part and parcel of the Nigerian laws, and is therefore enforceable in Nigerian courts.[52] Furthermore, the Fundamental Rights (Enforcement Procedure) Rules 2009 in its Order 1 Rule 2 defined fundamental humans to include 'any of the rights stipulated in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act'.[53]

In the case of *Gbemre v. Shell Petroleum Development Company Nigeria Limited and 2 others (SPDC)*[54] the Federal High Court of Nigeria held that the peoples' right to environment under Article 24 of ACHPR has been violated gas flaring of the first Defendant in the suit in the Complainant's community; despite the fact that environmental right under Section 20 of the 1999 Constitution of the Federal Republic of Nigeria as Amended in 2011is not justiciable pursuant to its Section 6 (6) (c).[55]Olatunbosun and Onu[56] have submitted and we agree with them that this landmark decision is in tandem with global trends in developed countries.

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[48]Benin (1986), Burkina Faso (1984), Cape Verde (1987), Ivory Coast (1992), Gambia (1983), Ghana (1989), Guinea (1982), Guinea-Bissau (1985), Liberia (1982), Mali (1981), Niger (1986), Nigeria (1983), Senegal (1982), Sierra Leone (1983), Togo (1982) and Mauritania (1986) (which is not a member of ECOWAS). Retrieved October 22, 2015 from www.achpr.org/states/

[49] Ibid; See also *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (Endorois case)* (Supra).

[50] Nigeria ratified the African Charter on 22/6/83 and domesticated it in 1983.

[51] Cap. C23, Laws of the Federation of Nigeria, 2004.

[52]*Abacha v Fawehinmi*, (2000) 6 NWLR (Pt 600) 228.

[53] Emeka Polycarp Amechi, 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, In Ensuring Access to Justice for Victims of Environmental Degradation', 6/3 Law, Environment and Development Journal (2010), p. 320, http://www.lead-journal.org/content/10320.pdf accessed 16 August 2017.

[54] (Unreported) Suit no: FHC/B/CS/53/05. Text of judgment available at www.climatelaw.org The matter is now on appeal in the Court of Appeal

[55] "Certainly, the drafters of the Constitution did not intend that individuals should be put in a position to monitor state compliance with the duties imposed by chapter II until and unless the legislature takes the duty further by making a positive law in respect of any particular area contained in chapter II." See Ebobrah S.T., 2007 op. cit. p.119; See also the cases of *Archbishop Anthony Okogie and others v The Attorney General of Lagos State* (1981) 2 NCLR 350; and *A.G Lagos v A.G Federation* (2003) 15 NWLR (Pt 842) 113, 175.

[56] Adeniyi I. Olatunbuson and Kingsley Osinachi .N. Onu, Liberalization of the Concept of Locus Standi in Environmental Suits in Nigeria: An Appraisal of the Supreme court's Decision in the Case of Centre for Oil Pollution Watch v. NNPC [2019] 5 NWLR (pt. 1666) 518, [2020] (11)(2) *The Gravitas Review of Business & Property Law*, 1-11, at 6. <https://gravitasreview.com.ng/shop/liberalisation-of-locus-standi-in-environmental-cases-in-nigeria/> accessed January 17, 2022.

Therefore, there exist RTD, or rather PRTD in Nigeria which is enforceable as a fundamental human right. The major hindrance to this right is its unpopularity (hinged on lack of awareness) among the Nigerian citizens when compared to sister rights under Chapter of the 1999 Constitution of the Federal Republic of Nigeria (CFRN). Therefore, there is a great need for creation of awesome of the existence of this right among the Nigerian people.

In conclusion, human rights that are meant to be one indivisible and interdependent body has been partitioned and categorized by international political play of the cold war where the principal actors handpicked rights which are in consonance with their political ideology to be the fundamental human rights. The Capitalist West insisted that only the civil liberties right which guarantees the citizens freedom and political liberty are human rights. They argued that human rights inures to man by virtue of the fact that he is a man. It is a negative right that hinders the state or private individuals from encroaching on such rights. They therefore contending that any right that demanded from the state or any individual some sort of service or "doing responsibility" is not a human right, because it no longer inures to him as human anymore; as the state has only the responsibility to respect and protect human rights and nothing more. They therefore, came up with the ICCPR of 1966 which is now regarded as the first generation rights. On the other hand, the Communist East insisted that only the social, economic and culture rights are human rights when the contended that no liberty exist in the place of hunger, unemployment, lack of basic health care system, and poor standard of living. They argued that states do not only have the responsibility to protect human rights, but also the responsibility to fulfill them. They therefore, came up with the ICESCR of 1966 which is now referred to as the second generation rights.

However, the UNDRTD of 1986 and the Vienna Declaration of 1993 unified these first and second generations under the umbrella of RTD stating that human rights are inalienable, interdependent, indivisible, universal and justiciable. The above international declarations have this flaw of being soft laws and therefore are not binding on the signatories. Meanwhile, on the African scene, there exist the ACHPR of 1981 which a binding charter on all the signatories; with a unique feature of not having to categorize the various human rights as civil liberties rights or socio-economic rights. Article 22 of ACHPR provides for PRTD.

In Nigeria, the 1999 Constitution of the Federal Republic of Nigeria as Amended in 2011 in its Chapter 4 provided the first generation rights as fundamental human rights which are enforceable in Nigeria courts; while the second generation rights were provided for under chapter 2 as the fundamental objectives and principles of State's policy; which are not justiciable pursuant to Section 6 (6) (c) of CFRN. However, Nigeria has ratified the ACHPR, which means that the rights enunciated under ACHPR are enforceable in Nigeria.[57] It therefore means that the first and second generations of rights which flowing from our above discussion cumulates to RTD are guaranteed under the extant Nigerian legal jurisprudence.

Bye and large, RTD is not a "right to everything" as some developed nations have expressed this fear, but, it is a right to a process of development having the human person at its centre. At the national level, it has individuals and 'peoples' as the right holders; with their government (at all

[57] See the cases of *Abacha v. Fawehimwi* (supra); and *Gbemre v. SPDC* (supra)

levels) and other individuals or 'peoples' sharing the joint responsibility of duty bearers. The State's duty is to respect by not encroaching on the right; protect by making laws and policies that would shield its citizen from having this right been violated by the State or an individual or group; and finally to fulfill this right by providing the citizens with the basic amenities and not to enter into bilateral or multilateral agreement with other countries or enact policies that would hinder the citizens from enjoying their RTD. At the international scene, the developing states and 'peoples' are the right holders whereas the Developed nations and international agencies are the duty bearers. In essence, RTD is a golden right which demands from individuals and nations to treat others with the very manner that they would want to be treated in other to actualized their desired true development and emancipation. This will help developing states to cope with current and emerging challenges of the 21st century as pointed out by Onu and Onu.[58]

5.0 Recommendation and Conclusion

RTD have evolved over the years as fundamental right recognized under both international and municipal regimes. This right guaranteed under the African Charter on Human and Peoples' Right Act is enforceable in Nigeria. Nigeria is obligated under extant international and municipal laws to acidulously respect, protect and fulfill RTD, hence, we suggest that Nigeria should revamp and prioritize her educational system for advancement in science, technology and innovation for wealth creation. Secondly, an agency should be created by the Nigerian government with the responsibility of evaluating and monitoring the progress of RTD in Nigeria. Nigeria should also work on diversifying her economy and strengthening the anti-corruption fight.

[58] Elias O. Onu, and Kingsley Osinachi N. Onu, The Coping Strategies for Floods in Ebonyi State, [2020] (3)(1) *Adeleke University Journal of Engineering and Technology*, 36-48. <http://aujet.adelekeuniversity.edu.ng/index.php/aujet/article/view/112> accessed 12 January, 2022.