The Legal Status of the Right to Development in Nigeria

By:

Onu, Kingsley Osinachi

November 5, 2019

Introduction

The United Nations Declaration on Right to Development (UNDRTD) of 1986 and the Vienna Declaration of 1993 unified the civil rights and socio-economic rights under the Right to Development (RTD) 'stating that human rights are inalienable, interdependent, indivisible, universal and justiciable.' Both declarations also stated that developmental efforts must-have man at their center. These declarations have a major limitation of being soft laws, hence, not binding on the parties. However, at the African level, article 22 of the African Charter on Human and Peoples Rights (ACHPR) of 1981 made provision for Peoples' Right to Development (PRTD) that is binding on all the signatories.

Nigeria has domesticated the ACHPR, which connotes that rights enshrined under ACHPR are enforceable in Nigeria. Sadly, this PRTD does not command the recognition and awareness that rights under chapter four of the 1999 Constitution of the Federal Republic of Nigeria as Amended in 2018. This paper

seeks to assess the legal status of RTD in Nigeria.

International Status of the Right to Development

Article 1 (1) of UNDRTD provides 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.’

The central subject to development should be the human person, who must also be an active beneficiary and participant to RTD.(See Article 2(1)). The attainment of RTD must be a collective effort of all human persons. (Article 2(2) of UNDRTD). States are to create an enabling environment for development. (Article 3) Parties are also mandated to promulgate policies and laws that will help actualize RTD. (See, Articles 2(3) & (3(3)). Parties also agreed to foster global policy efforts for the attainment of RTD for all.

Since the UNDRTD is a declaration, it does not create binding norms, rather it is 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.’

Right to Development from the African Perspective

The African Union in 1981 promulgated the African Charter of Human and Peoples’ Rights (ACHPR) which is binding on all its signatories. It made provisions for individuals' rights, peoples' rights, the duty of state parties to the charter, and individual duties. The African Commission seems to see RTD (which the ACHPR refers to Peoples’ Right to Development (PRTD)) as both an individual and a group right. Article 22 of the ACHPR provides for Peoples’ Right to Development (PRTD) in the following words:

- 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.

Unlike the UNRTD, the PRTD is binding and enforceable. (See the case of Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (Endorois case) (2009) Commission on Human and People's Rights Commission No. 276/03.)

At the ECOWAS level, the Revised ECOWAS Treaty of 1993 in its Article 4 made provision for the treatment of the ACHPR as a fundamental principle of the Treaty. The ECOWAS Court of Justice in the case of *Hon. Dr. Jerry Ugokwe v. Federal Republic of Nigeria & Hon. Dr. Christian Okeke & Other Intervening* held that the court had jurisdiction over ACHPR and that same is a supranational law. ACHPR has been ratified by all the ECOWAS States, which therefore connotes that all the rights enshrined therein are enforceable in all the ECOWAS states and against them.

Nigeria and the Right to Development

ACHPR has been ratified and domesticated by Nigeria. ACHPR is enforceable in Nigerian courts. In the celebrated case of *Gbemre v. Shell Petroleum Development Company Nigeria Limited and 2 others (SPDC)* the Court held that Article 24 of ACHPR that provided for peoples' right to the environment has been breached by the Defendant's gas flaring activities in the Plaintiffs' community. Though this case is centered on Article 24 of the ACHPR, it however gives credence to the fact that other Articles of the Charter include PRTD can also be enforced in Nigerian courts.

We agree with Onu that '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 the creation of awareness of the existence of this right among the Nigerian people.' See, K.O.N. Onu (cited above)

RTD does not connote a "right to everything" as developed countries have

feared, but, a right to a process of development with the human person at the center. In essence, RTD is a ‘golden right’ that demands from individuals and nations to treat others with the very manner that they would want to be treated in order to actualize their desired true development and emancipation.

Recommendation and Conclusion

Nigeria is obligated under extant international and municipal laws to acidulously respect, protect and fulfill PRTD. Though PRTD created under ACHPR is legally enforceable in Nigeria as exemplified in the enforcement of right to healthy environment (also created under ACHPR) in the case of *Gbemre vs. SPDC* (Supra); PRTD remains unpopular in Nigeria due to lack of awareness of its existence among the Nigerian people. We therefore suggest that an agency should be created by the Nigerian government with the responsibility of evaluating and monitoring the progress of RTD in Nigeria. Nigeria should revamp and prioritize her educational system for advancement in science, technology, and innovation for wealth creation. Finally, Nigeria should also work on diversifying her economy and strengthening the anti-corruption fight.

View online: The Legal Status of the Right to Development in Nigeria

Provided by Afronomicslaw